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Department of Transportation

National Highway Traffic Safety Administration

[Docket No. NHTSA-2011-0054; Notice 2]

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

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Grant of Petition

SUMMARY: Cooper Tire & Rubber Tire Company,(Cooper)[1], has determined that approximately 6,964 passenger car replacement tires manufactured between January 23, 2011 and March 26, 2011, do not fully comply with paragraph S5.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper has filed an appropriate report dated March 31, 2011, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

[1] Cooper Tire & Rubber Tire Company (Cooper) is a replacement equipment manufacturer incorporated in the state of Delaware.

Notice of receipt of Cooper's petition was published, with a 30-day public comment period, on May 17, 2011, in the Federal Register (76 FR 28502). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: http://www.regulations.gov/. Then follow the online search instructions to locate docket number "NHTSA-2011-0054."

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5299, facsimile (202) 366-7002.

Affected are approximately 6,964 size LT285/75R16 Cooper brand Discoverer S/T MAXX model passenger car replacement tires manufactured between January 23, 2011 and March 26, 2011, at Cooper's plant located in Texarkana, Arkansas.

Cooper explains that the noncompliance is that, due to a mold labeling error, the sidewall marking on the reference side of the tires, required by paragraph S5.5(f), incorrectly describes the actual number of plies in the tread area of the tires. Specifically, the tires in question were inadvertently manufactured with "TREAD 1 PLY NYLON + 2 PLY STEEL + 3 PLY POLYESTER; SIDEWALL 3 PLY POLYESTER." The labeling should have been "TREAD 2 PLY NYLON + 2 PLY STEEL + 3 PLY POLYESTER; SIDEWALL 3 PLY POLYESTER."

Cooper also explains that while the non-compliant tires are mislabeled, the tires do in fact have 2 Nylon tread plies and meet or exceed all other applicable Federal Motor Vehicle Safety Standards.

Cooper reported that this noncompliance was discovered durning a review of the specified stamping requirements and visual inspection of tire stamping.

Cooper argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not create an unsafe condition and all other labeling requirements have been met.

Cooper points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

In summation, Cooper believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA DECISION: The agency agrees with Cooper that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of

the noncompliances on the operational safety of the vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall.

Therefore, tire dealers and customers should consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls do not contain steel plies, this potential safety concern does not exist.

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 6,964[2] tires that Cooper no longer controlled at the time that it determined that a noncompliance existed in the subject tires.

In consideration of the foregoing, NHTSA has decided that Cooper has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Cooper's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

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

[2] Cooper's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Cooper as a manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the affected tires. However, a decision on this petition cannot relieve 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 notified them that the subject noncompliance existed.

Issued on: February 15, 2012

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Claude H. Harris, Director
Office of Vehicle Safety Compliance

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