



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2018-0077; Notice 2]

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

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

ACTION: Notice of petition denial.

SUMMARY: Cooper Tire & Rubber Company (Cooper Tire) has determined that certain Cooper brand 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 May 4, 2018, and subsequently petitioned NHTSA on May 21, 2018, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Cooper Tire's petition.

FOR FURTHER INFORMATION CONTACT: Abraham Diaz, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-5310, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Cooper Tire has determined that certain Cooper brand tires do not fully comply with paragraph S5.5.1 of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR Part 571.139). Cooper Tire filed a noncompliance report dated May 4, 2018, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on May 21, 2018, 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 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Cooper Tire's petition was published with a 30-day public comment period, on December 6, 2018, in the **Federal Register** (83 FR 62949). 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-2018-0077."

II. Tires Involved: Approximately 327 Evolution H/T size 245/70R16 tubeless radial tires, manufactured between June 4, 2017, and June 10, 2017, are potentially involved.

III. Noncompliance: Cooper Tire explains that the noncompliance is that the subject tires were molded with an incorrectly ordered serial week and year on the outboard sidewall. This date is required by paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the subject tires were manufactured with serial week "1723" when they should have been manufactured with serial week "2317."

IV. Rule Requirements: Paragraph S5.5.1(b) of FMVSS No. 139, includes the requirements relevant to this petition:

- For tires manufactured on or after September 1, 2009, each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire.
- Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall.

V. Summary of Petition: Cooper Tire described the subject noncompliance and contended that the noncompliance is inconsequential as it relates to motor vehicle safety.

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

1. While the 327 tires in the subject population contain an incorrectly ordered week and year for the fourth grouping of Tire Identification Number's (TIN), they are in all other respects properly labeled and meet all performance requirements under the FMVSSs. The serial week of manufacture has no bearing on the performance or operation of a tire and does not create a safety concern to either the operator of the vehicle on which the tires are mounted, or the safety of personnel in the tire repair, retread, and recycling industry.
2. Tire registration and traceability will not be interrupted. Cooper Tire's internally controlled online registration system has been modified to be able to accept the incorrectly ordered 1723 date code. Any tires registered with that date code and TIN will be identified properly as having been manufactured in the 23rd week of 2017. This will ensure that Cooper Tire is able to identify these tires in the event they must be recalled. If a recall is necessary, Cooper Tire will explain the date issue in any recall notice.
3. Cooper Tire can also confirm that it will not use the same full TIN in year 2023. Cooper Tire uses the third grouping of numbers within the TIN to identify the SKU or make of the tire, as is permitted at the option of the manufacturer under the regulations. *See* 49 CFR 574.5(g)(3). In this case, IJ9 is the third grouping, which indicates that this tire is a Cooper Evolution H/T. While Cooper Tire has not yet set its year 2023 production schedule, if Cooper Evolution H/T tires are made in year 2023, Cooper Tire will assign another unique identifier so that the tires made in year 2017 will be distinguishable from the tires made in year 2023. This will eliminate the potential for SKUs produced in year 2017 to be confused with those produced in year 2023 and will allow for Cooper Tire to readily identify the 327 tires that are the subject of this petition. However, this will not be obvious to any consumer. Therefore, there is a risk a consumer could buy an aged tire assuming it is a new tire.

4. NHTSA has granted a number of previous inconsequentiality petitions relating to mislabeled TINs, provided that the mislabeling does not affect the manufacturer's ability to identify the tires. “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.; Grant of Application, 64 FR 29080 (May 28, 1999); and Cooper Tire & Rubber Company, Grant of Application, 68 FR 16115 (April 2, 2003). Accordingly, NHTSA has explained in multiple instances that “[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 a recall.” *Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (August 27, 2001)*. As a result, NHTSA has granted petitions and found that TIN noncompliance is inconsequential to safety in cases where the TIN is out of sequence or mislabeled, including where the week and/or year of manufacture is mislabeled and even where the date code is missing altogether. *See, e.g., Bridgestone Firestone North America Tire, LLC, Grant of Petition, 71 FR 4396 (January 26, 2006)* (granting petition where date code was missing because manufacturer could still identify and recall the tires); *Cooper Tire & Rubber Company, Grant of Application, 68 FR 16115 (April 2, 2003)* (granting petition where tires were labeled with wrong plant code, because “the tires have a unique DOT identification”); *Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (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.; Grant of Application, 64 FR 29080 (May 28, 1999)* (granting petition where the wrong year was marked in the date code on the tires); *Cooper Tire & Rubber Company; Grant of Application, 63 FR 29059 (May 27, 1998)* (granting petition where the date code was missing where tires had

a unique TIN for recall purposes); Bridgestone/Firestone, Inc.; Grant of Application, 60 FR 57617 (November 16, 1995) (granting petition where the date code was out of sequence); Uniroyal Goodrich Tire Company; Grant of Petition, 59 FR 64232 (December 13, 1994) (granting petition where week and year were mislabeled on tires). As with other cases in which NHTSA has granted petitions for a determination of inconsequential noncompliance, Cooper Tire will be able to identify the tires that are the subject of this petition in the event of a recall. As described above, these tires will have a unique DOT identifier that will allow for Cooper Tire to identify and recall them in the event that any issues arise in the future.

5. Cooper Tire has taken steps over the last two years to add additional checks in its processes to prevent TIN errors. For example, Cooper Tire has implemented software that allows for a specific plant to choose only its plant code from a drop-down menu when engraving that portion of the TIN. Date codes are updated on a weekly basis and often produced in advance of the serial week. The serial week and year are manually entered into the system and then engraved on a plug for use. Cooper Tire is working to prevent future issues and evaluating the possibility of additional technology which will restrict the selection of date codes to a contained period of time. Cooper Tire is also reviewing its inspection processes to ensure that errors of this sort are identified earlier in the process.

Cooper Tire concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification and a remedy for the noncompliance, as required by 49 U.S.C. 30118-20, should be granted. Lastly, Cooper Tire informed the Agency that there are no warranty adjustments, personal injury claims, or property damage claims related to the subject noncompliance.

VI. NHTSA's Analysis:

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect. In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. “Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.” “[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.”

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition. Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.

NHTSA has reviewed Cooper Tire’s statements on which it bases its belief that the noncompliance is inconsequential to motor vehicle safety. In this case, the subject tires were molded with an incorrectly ordered date code on the outboard sidewall.

NHTSA’s decision considered the following arguments:

1. Markings - On NHTSA’s website, the guidance for replacing a tire states the following: “As tires age, they are more prone to failure. Some vehicle and tire manufacturers recommend replacing tires that are six to 10 years old regardless of treadwear.”¹ In the case of the subject tires, the future erroneous date code “1723” may mislead a consumer about the age of the tire during its usage and lifetime.

The subject tires labeled with the incorrect date code “1723” instead of the correct date code “2317” may confuse consumers because it means the tires were made in the

¹ <https://www.nhtsa.gov/equipment/tires> (“Should I replace my tires?”).

17th week of year 2023. After the 17th week of year 2023, consumers may believe the date code is correct. An incorrect date code may affect a consumer's behavior, if the consumer believes that the tires are new instead of six years old.

In addition, tire dealers may store tires for multiple years before selling them. A customer who purchases tires with this type of labeling error may incorrectly believe the tire is not as old as it is and may not replace the tire, based on the manufacturer's recommendation for replacing tires due to age. For example, Cooper Tire recommends that all tires be replaced if 10 or more years has passed since the date of manufacture.²

2. Performance - Cooper Tire stated that the subject tires, in all other respects, are properly labeled and meet all performance requirements. Cooper Tire also stated that the date code has no bearing on the performance or operation of the tires. Cooper Tire further argued that the subject noncompliance does not pose a safety concern to either the operator, the vehicle on which the tires are mounted, or the safety of personnel in the tire repair, retread, and recycling industry. NHTSA does not find the arguments persuasive. The fact that a new tire meets all other minimum performance requirements fails to limit the potential risk from using a tire beyond the manufacturer's recommended maximum service life; thus, this labeling issue has potential performance implications.
3. Other petitions - In its petition, Cooper Tire cited a number of inconsequentiality petitions relating to TINs that the Agency previously granted. The Agency believes the facts of the petitions cited are sufficiently different and do not support granting the subject petition. The decision notice published at 64 FR 29080 (May 28, 1999) concerned a tire with an incorrectly labeled date code (one year past the actual date of production instead of six years as in the subject tires). The consequence of a consumer relying on the incorrect date was determined to be inconsequential under those circumstances.

² See <http://us.coopertire.com/safety/replacement-guide/tire-service-life> (last accessed May 26, 2021).

The decision notice published at 71 FR 4396 (Jan 26, 2006), concerned a missing date code. It is distinguished from the subject case because it does not point to a future production date, and therefore, does not mislead consumers by providing an incorrect date six years into the future. In the decision notice published at 60 FR 57617 (Nov 16, 1995) the date code was correct but misplaced. In the Bridgestone/Firestone case, 66 FR 45076 (August 27, 2001), the date code related to only one year of future production in the mislabeling. In the prior Cooper Tire case, 68 FR 16115 (April 2, 2003), the noncompliance was irrelevant as it referred to the mislabeling of the plant code and not the date code, which is the concern in the subject tires. The other prior Cooper Tire case cited, 63 FR 29059 (May 27, 1998), is also irrelevant, as it relates to mislabeling of the plant code and a missing date code. In that Cooper Tire case, the missing date code did not mislead consumers about the age of the tire.

The Agency considers the Uniroyal Goodrich petition, 59 FR 1994 (December 13, 1994), relevant to the petition being considered because the mislabeling of the date code is similar to the subject Cooper Tire noncompliance. However, the Uniroyal Goodrich petition was granted in 1994. Since then, the Agency's understanding of the negative safety consequences of tire aging has evolved. NHTSA now recommends that tires be replaced, regardless of their service conditions or useful tread life, based on the manufacturer's recommended maximum service life. NHTSA finds that such a mislabeling is not inconsequential to safety when the mislabeling has the potential to allow a tire to remain in service significantly beyond the manufacturer's recommended maximum service life by six years.

4. Other considerations - The Agency recognizes that Cooper Tire has taken measures to allow customers to register their tires with an incorrectly ordered date code. NHTSA agrees that this will help enable Cooper Tire to identify consumers who have purchased and registered the affected tires. However, this does not, in NHTSA's view, negate the

safety risk caused by the incorrect date code as tires may not be registered or may change hands subsequent to registration.

5. Claims - While Cooper Tire noted that there are no claims for property damage or crashes reported for the subject tires, this is not persuasive as the noncompliance likely only poses risk in the future.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Cooper Tire has not met its burden of persuasion of establishing that the subject FMVSS No. 139 noncompliance in the affected tires is inconsequential to motor vehicle safety. The mislabeled date code present in this case presents an obvious risk that the tires may be used or perhaps sold well after they have aged to the point where they cannot be safely used. Accordingly, Cooper Tire's petition is hereby denied. Cooper Tire is obligated to provide notification of, and a free remedy for, the noncompliance under 49 U.S.C. 30118 through 30120.

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

Joseph Kolly,

Acting Associate Administrator for Enforcement.

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