



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0096; Notice 3]

### Hercules 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:** Hercules Tire & Rubber Company, (Hercules), has determined that certain Hercules Power ST2 radial trailer tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds), Specialty Tires, and Tires for Motorcycles*. Hercules filed an original noncompliance report dated December 9, 2021, and amended the report on December 14, 2021, and March 9, 2022. Hercules petitioned NHTSA on December 16, 2021, and amended the petition on March 9, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Hercules's petition.

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

#### SUPPLEMENTARY INFORMATION:

**I. Overview:** Hercules determined that certain Hercules Power ST2 radial trailer tires do not fully comply with the requirements of paragraph S6.5(b) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds), Specialty Tires, and Tires for Motorcycles* (49 CFR 571.119).

Hercules filed an original noncompliance report dated December 9, 2021, and amended the report on December 14, 2021, and March 9, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Hercules petitioned NHTSA on December 16, 2021, and amended its petition on March 9, 2022, 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 Hercules's petition was published with a 30-day public comment period, on August 10, 2022, in the **Federal Register** (87 FR 48760). A correction to the notice of receipt of Hercules's petition was published on December 30, 2022, in the **Federal Register** (87 FR 80257) and extended the public comment period. 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-2021-0096."

**II. Tires Involved:** Approximately 67 Hercules Power ST2 size ST205/75R15 radial trailer tires, manufactured between November 23, 2020, and November 29, 2020, were reported by the manufacturer.

**III. Noncompliance:** Hercules explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) with the second and third numerical symbols in the date code transposed and therefore, do not meet the requirements of paragraph S6.5(b) of FMVSS No. 119. Specifically, the TIN on the subject tires incorrectly states the date code as "4280," when it should state "4820."

**IV. Rule Requirements:** Paragraph S6.5(b) of FMVSS No. 119 and part 574.5(b)(3) include the requirements relevant to this petition. FMVSS No. 119 states the TIN must meet the requirements set forth in part 574. Part 574.5(b)(3), states that the date code portion of the TIN must identify the 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 Hercules’s Petition:** The following views and arguments presented in this section, “V. Summary of Hercules’s Petition,” are the views and arguments provided by Hercules. They do not reflect the views of the Agency. Hercules describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Hercules explains that the subject noncompliance does not result in an increased risk to safety because the incorrect date code (“4280”) indicates that the subject tires were manufactured in the 42<sup>nd</sup> week of either 1980 or 2080. According to Hercules, “[t]he only years that a year code of 80 could potentially relate to are 1980, over 40 years ago, or 2080, which is so far into the future to be implausible.” Hercules claims the subject noncompliance would not cause a consumer to use the tire beyond its recommended maximum service life because a “consumer would not simply assume that the year code listed on the tire is in fact the correct date and be misled.” Hercules says that if a consumer did follow the date code listed on the subject tires, “the guidance provided on NHTSA’s website,” informs consumers that “tires should be replaced within six to 10 years regardless of treadwear.” In addition, because the year the date code indicates is implausible if a dealer were to store the subject tires for multiple years before selling them, Hercules believes “there is no risk of misleading the consumer about the age of the tire.”

Hercules says that while the second and third symbols in the date code were transposed in the TIN, “all other content within the TIN is accurate and the tires otherwise conform to the performance requirements applicable to specialty trailer tires.” Hercules states that the subject noncompliance “affects only the single week of tire production and the condition has been corrected in production.”

Hercules states that granting its petition would be consistent with similar decisions that NHTSA has previously granted for inconsequentiality. Hercules cited the following prior petitions that NHTSA has granted, and that Hercules believes support the granting of its petition:

- Bridgestone Firestone North America Tire, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 71 FR 4396 (January 26, 2006);
- Bridgestone/Firestone, Inc., Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety, 66 FR 45076 (August 27, 2001).

Hercules believes that NHTSA's primary concern related to mislabeled or inaccurate TINs is the potential for adverse safety consequences due to consumers using aged tires that are beyond the manufacturer's recommended service life and regardless of the service condition of the tire. *See Cooper Tire & Rubber Company*, 86 FR 47726 (August 26, 2021).

In the event of a recall, Hercules says that it has taken steps to ensure that it would be able to identify the subject tires and notify consumers successfully. Hercules says they have ensured that consumers will be able to register the tires with the noncompliant TIN (date code "4280") and that their database will identify the tire "as having been produced in calendar week 48, calendar year 2020" (correct date code "4820"). If a recall were necessary, Hercules says it would be able to contact consumers whose tires were registered and would include the TIN "as it is listed on the tire sidewall so that consumers could check the recall notification against the tire sidewall for verification purposes." Hercules believes that this further supports the granting of its petition because it says NHTSA has stated in prior grants of inconsequentiality petitions that the purpose of a date code is to identify the tire so that, if necessary, the appropriate action can be taken in the interest of public safety – such as a safety recall notice.

Hercules 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.

## **VI. NHTSA's Analysis:**

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.<sup>1</sup> 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.<sup>2</sup> Further, because each inconsequential noncompliance petition must be evaluated on its own facts and determinations are highly fact-dependent, NHTSA does not consider prior determinations as binding precedent. Petitioners are reminded that they have the burden of persuading NHTSA that the noncompliance is inconsequential to safety.

In response to the petitioner's statement that subject tires that have remained in dealer inventory for an extended period would not lead to confusion on the part of a consumer, NHTSA notes that noncompliant tires may not be offered for sale, sold, or introduced into interstate commerce. Thus, entities should be aware that selling noncompliant tires could result in civil penalties, regardless if the petition is granted or denied.

NHTSA has evaluated the merits of the petition submitted by Hercules and is granting Hercules' request for relief from notification and remedy based on the following:

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<sup>1</sup> 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).

<sup>2</sup> 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").

1. Based on its review of the information Hercules submitted, NHTSA has no basis for to believe that the tires do not meet the performance and labeling requirements of FMVSS No. 119, except for the incorrect date code.
2. While NHTSA recognizes that TIN labeling errors might prevent consumers from successfully registering their tires and this would impact safety, in the subject petition the noncompliance would not prevent tire registration. One purpose of the TIN is to provide a means of identifying tires, and while the date code portion of the TIN is useful to identifying tires, it also provides information to consumers about the age of their tires which could be safety related. In this specific instance, where the numbers two and eight were interchanged in the date code, the agency believes that consumers will recognize that the code is an error. It is unlikely that a reasonable person will believe that the tires were manufactured in 1980. Therefore, NHTSA does not believe the incorrect date code will cause consumers to use the tire beyond its recommended service life, but rather recognize that there is an error in the date code portion of the TIN.
3. NHTSA believes that the manufacturer has taken sufficient steps to ensure that the affected tires are included in future recalls by:
  - a. Verifying that the tires having the incorrect date code may be registered using their tire registration system.
  - b. Ensuring that their registration database will correctly identify the tires as having been produced in week 48 of 2020, when the date code 4280 is entered.

**VII. NHTSA's Decision:** In consideration of the foregoing, NHTSA finds that Hercules has met its burden of persuasion that the subject FMVSS No. 119 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Hercules's petition is hereby granted and Hercules 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 Hercules no longer controlled at the time it determined that the noncompliance existed. However, the granting of 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 they were notified that the subject noncompliance existed.

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

**Eileen Sullivan,**

*Associate Administrator for Enforcement.*

[FR Doc. 2024-30951 Filed: 12/27/2024 8:45 am; Publication Date: 12/30/2024]