



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0065; Notice 2]

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

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

ACTION: Denial of petition.

SUMMARY: Goodyear Tire & Rubber Company (Goodyear), which acquired Cooper Tire &
Rubber Company (Cooper Tire), has determined that certain Cooper Discoverer SRX
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 August 19, 2021, and amended it on August 24, 2021. Additionally,
Goodyear petitioned NHTSA on August 20, 2021 for a decision that the subject noncompliance
is inconsequential as it relates to motor vehicle safety. This notice announces and explains the
denial of Goodyear's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA,
Office of Vehicle Safety Compliance, (325) 655-0547, jayton.lindley@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview: Goodyear has determined that certain Cooper Discoverer SRX passenger car tires
do not fully comply with 49 CFR § 574.5—and therefore also 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 August 19, 2021, and amended it on
August 24, 2021, under 49 CFR part 573, *Defect and Noncompliance Responsibility and*

Reports. Goodyear additionally petitioned NHTSA on August 20, 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, under 49 U.S.C. § 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Goodyear's petition was published with a 30-day public comment period on April 18, 2024, in the **Federal Register** (89 FR 27831). 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-2021-0065."

II. Tires Involved: Approximately 730 Cooper Discoverer SRX, size 255/55R20 110H XL, replacement passenger car tires, manufactured between March 28, 2021 and April 24, 2021.

III. Noncompliance: Goodyear explains that the tires are noncompliant because the Tire Information Number (TIN) on the subject tires exceeds the number of symbols allowed and therefore does not fully comply with Part 574.5(g), as required by S5.5.1 of FMVSS No. 139. Specifically, the 4-symbol curing press ID (C13R) was transposed with the 4-symbol numeric date code resulting in a TIN that appears to contain 15 symbols—more symbols than allowed by 49 CFR 574.5(g) for tire manufactures previously assigned two-symbol plant codes.

IV. Rule Requirements: Paragraph S5.5.1(b) of FMVSS No. 139, and section 49 CFR 574.5(g) include the requirements relevant to this petition. Tires manufactured after September 1, 2009 must be labeled with the TIN required by 49 CFR 574 on the intended outboard sidewall of a tire. 49 CFR 571.139 S5.5.1(b). For all tires other than retreads, the opposite sidewall must also show either the full TIN or a partial TIN that includes all characters except the date code and, optionally, any manufacturer-chosen code. *Id.* Under section 49 CFR 574.5(g)(3), manufacturers or retreaders may optionally include a third group of up to four symbols in the TIN to describe significant tire characteristics. If a tire is produced for a brand name owner, one

of the functions of this grouping must be to identify the brand name owner. *Id.* Manufacturers or rereaders using this grouping must maintain detailed records of any descriptive brand name owner code used, which it must provide to NHTSA upon request. *Id.*

V. Summary of Goodyear's Petition: The following views and arguments presented in this section, "Summary of Goodyear's Petition," are the views and arguments provided by Goodyear. They do not reflect the views of the NHTSA. Goodyear describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Goodyear first asserts that "[t]he subject tires were manufactured as designed and meet or exceed all applicable Federal Motor Vehicle Safety performance standards and will have no impact on the safety of vehicles on which they have been installed."

Goodyear then states that "[t]he date code portion of the TIN, though transposed with the curing press ID slug, is still visible on the sidewall of the tire following the DOT symbol. The date code becomes important in the event of a field action by enabling the consumer to identify the subject tires. In the unlikely event that a field action is required for the subject tires, the consumer notification letter could include the mismarked TIN information including the photograph above that clearly displays the mismarked TIN as it appears on the tire sidewall (including the date code). This would enable a consumer to easily identify if their tires are involved in the field action."

Goodyear cites two previously granted inconsequentiality petitions that it asserts should inform the Agency's decision on the subject noncompliance:

- *Bridgestone Firestone North America Tire, LLC, Grant of Petition for Decision of Inconsequential Noncompliance*, 71 FR 4396 (January 26, 2006). Goodyear states this petition involved tires missing a date code and was granted because the Agency determined that a consumer notification could be accomplished by reference to the TIN.
- *Cooper Tire & Rubber Company; Grant of Application for Decision of Inconsequential Noncompliance*, 63 FR 29059 (May 27, 1998). Goodyear states this petition also

involved tires missing the date code and was granted because the Agency similarly determined that the tires' TIN would allow the manufacturer to notify purchasers in the event of a recall.

Goodyear concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that 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 the recall would otherwise protect.¹ In general, NHTSA does not consider the absence of complaints or injuries as evidence that the issue is inconsequential to safety. The absence of complaints does not mean consumers have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.²

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected do not justify granting of an inconsequentiality petition.³ Similarly, mere assertions that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance are unpersuasive. The percentage of potential consumers that could be adversely

¹ See, e.g., *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).

² 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").

³ See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

affected by a noncompliance is not relevant to whether the noncompliance poses an inconsequential risk to safety. Rather, NHTSA focuses on the consequence to a consumer who is exposed to the noncompliance.⁴

Certain labeling or marking noncompliances can lead to unsafe conditions or user behaviors. Regarding the noncompliance at issue here, the Agency recognizes that the TIN marking is important for several reasons, including serving as the primary identifier that both manufacturers and consumers use to identify potentially defective tires and remove them from service. Successful tire registration can be critical to a successful tire safety recall campaign—allowing for direct communication to the consumer—and TIN errors can impede the ability of consumers to register their tires and avail themselves of such communication.

That is the case here. The Agency attempted to register one of the subject tires (that, due to the noncompliance, appears to have a 15-digit TIN) on the Cooper Tire registration website, and was unable to do so because the TIN exceeds 13 characters. At the time of NHTSA’s evaluation, Cooper Tire’s registration system was apparently limited to accepting only a 13-character alpha numeric string. The subject tires, which appear to have a 15-character TIN, could not be successfully registered, and NHTSA would expect that some consumers would give up if their first attempt to register their tires proved unsuccessful. In short, the subject TIN marking error causes an impediment to tire registration, which impairs the execution of any necessary tire safety recall campaign.

Goodyear cites in support two previous decisions granting inconsequentiality petitions (63 FR 29059 and 71 FR 4396) involving tires from which the TIN’s date code was missing entirely. In 63 FR 29059, the Agency observed that the tires at issue were capable of being registered, and the manufacturer would be able to notify purchasers of the tires if they were properly registered. *See id.* (observing that “in the case of a tire mislabeling noncompliance . . .

⁴ *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

the true measure of its inconsequentiality to motor vehicle safety is, if the tires were to be recalled for a performance-related noncompliance . . . whether the mislabeling would affect the manufacturer’s ability to locate them.”). And in the grant notice for 71 FR 4396, the noncompliant tires contained an incorrect size designation in the TIN. Despite the error, NHTSA found that “the incorrect marking does not affect the ability to identify the tires in the event of a recall.” 71 FR 4396. Thus, the Agency agreed with the petitioner in observing that the noncompliance was inconsequential to safety because “a consumer notification of a recall of the tires could be accomplished by referring to the TIN.” *Id.*

In the subject tires, there is not a missing code, but rather additional characters that elongate a TIN such that online registration would be unsuccessful. Because tire registration facilitates identification of tires subject to safety recalls and, therefore, increases the effectiveness of safety recalls, and a purported means to register the tires here would be unsuccessful and potentially discourage future attempts, Goodyear has not established that the noncompliance is inconsequential to safety. Its petition is therefore denied.

VII. NHTSA’s Decision:

In consideration of the foregoing, NHTSA has decided that Goodyear has not met its burden of persuasion that the subject FMVSS No. 139 noncompliance is inconsequential to motor vehicle safety. Accordingly, Goodyear’s petition is hereby denied and Goodyear is consequently obligated to provide notification of and a free remedy for that noncompliance under 49 U.S.C. §§ 30118 and 30120.

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

Eileen Sullivan,

Associate Administrator for Enforcement.