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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2022-0102; Notice 2]

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)*. Hercules filed an original noncompliance report dated October 5, 2022. Hercules subsequently petitioned NHTSA on October 21, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of Hercules' petition.

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

SUPPLEMENTARY INFORMATION:

I. Overview: Hercules 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)*. Hercules filed an original noncompliance report dated October 5, 2022, pursuant to FMVSS No. 119, S6.5(b), *New pneumatic tires for motor vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds)* (49 CFR 571.119). Hercules petitioned NHTSA on October 21, 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 April 26, 2023, in the **Federal Register** (88 FR 25453). 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-2022-0102."

II. Tires Involved: Approximately 700 Hercules Power ST2 radial trailer tires, size ST175/80R13, manufactured between October 4, 2021, and October 10, 2021, were reported by the manufacturer.

III. Noncompliance: Hercules explains that the noncompliance is that the date code portion of the Tire Identification Number (TIN) on the subject tires was inverted, and, therefore, do not comply with the requirements specified in paragraph S6.5(b) of FMVSS No. 119.

IV. Rule Requirements: Paragraph S6.5(b) of FMVSS No. 119 includes the requirements relevant to these petitions. Paragraph S6.5(b) provides that the TIN must meet the requirements as stated in 49 CFR part 574 and may be marked on only one sidewall. As provided in 49 CFR 574.5(a), each new tire manufacturer must conspicuously label on one sidewall of each tire it manufactures, by permanently molding into or onto the sidewall, a TIN consisting of 13 symbols that contains the plant code, manufacturer's code, and date code, as described in paragraphs (b)(1) through (b)(3) of 49 CFR 574.5.

V. Summary of Hercules's Petition: The following views and arguments presented in this section, "V. Summary of Hercules 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 states that although the date code is inverted, the subject tires are clearly marked and contain the correct date code that specifies the correct week and year of manufacture. Hercules says that consumers can easily read the date code and if needed rotate the tire so that the date code "appears perceptually upright."

Hercules also states that the TIN on the subject tires complies with the TIN marking requirements and "otherwise conform to the performance requirements applicable to trailer tires."

Hercules says that NHTSA has granted previous inconsequential noncompliance petitions relating to inverted date codes and cited the following:

1. Grant of Petition of Hankook Tire, 87 FR 6941, (February 7, 2022).
2. Grant of Petition of Hankook Tire, 86 FR 49411, (September 2, 2021). [the date code] is properly located in the right-most position and shows the correct week and year of manufacture but has been imprinted upside-down, and the upside-down font cannot be confused with right-side up font. If a consumer reads the label as it is, the fact that the date code is inverted would become self-evident. In such a case, it would not be difficult to rotate the tire to a position where the code could be read and deciphered."
3. Grant of Petition of Cooper Tire & Rubber Company, 81 FR 43708, (July 5, 2016).

Hercules contends that the TIN is located in the "right-most" position and is clearly printed on the subject tires, similar to the previous petitions that NHTSA has granted. Hercules says that the subject noncompliance does not prohibit them from tracking the tire or notifying consumers in the event of a recall.

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: 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 three considerations:

1. NHTSA has no reason to believe that the subject tires do not meet the performance and labeling requirements of FMVSS No. 119, with the exception of the inverted date code marking.
2. NHTSA reviewed a photograph of the inverted date code and did not identify any possible interpretations that could cause confusion about when the tires were manufactured.
3. NHTSA believes that manufacturers and consumers will be able to identify the affected tires in the event of a recall for the following reasons:
    a. The oval surrounding the date code portion of the TIN visually groups the 4 numbers from the rest of the TIN. This helps the reader to understand that the mold plate for the date code portion of the TIN was inverted during manufacturing.
    b. The font style is such that it is evident that the numbers are inverted and may be read correctly by rotating the tire.
    c. If a consumer were to assume that the numbers were inverted but still placed in the correct order the date code would be interpreted as "1204". In this instance, the consumer would assume the tire is over 20 years old and should be disposed of.

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 tires that Hercules no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve commodity distributors 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 Hercules 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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