

processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before July 28, 2005.

**ADDRESSES:** You may submit comments (identified by DOT DMS Docket Number FAA-200X-XXXXX) by any of the following methods:

- Web Site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Tim Adams (202) 267-8033, Sandy Buchanan-Sumter (202) 267-7271, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 6, 2005.

**Anthony F. Fazio,**  
Director, Office of Rulemaking.

#### Petitions for Exemption

*Docket No.:* FAA-2003-14563.

*Petitioner:* AirTran Airways, Inc.  
*Section of 14 CFR Affected:* 14 CFR 93.123.

*Description of Relief Sought:* To permit AirTran Airways, Inc., the use of three slots at Ronald Reagan Washington National Airport (DCA) for service from DCA to Atlanta Hartford International Airport.

[FR Doc. 05-14006 Filed 7-15-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 2005-21269; Notice 2]

#### The Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

The Goodyear Tire & Rubber Company (Goodyear) has determined that certain tires it manufactured in 2005 do not comply with S4.3.4(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New pneumatic tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on May 31, 2005, in the **Federal Register** (70 FR 31007). NHTSA received one comment.

Affected are a total of approximately 4,992 Kelly Signature HPT and Essenza B210 Type 2 tires produced from February 1, 2005 to March 31, 2005. S4.3.4(b) of FMVSS No. 109 requires that "[e]ach marking of the tire's maximum load rating \* \* \* in kilograms shall be followed in parenthesis by the equivalent load rating in pounds \* \* \*." The noncompliant tires have the correct maximum load rating in kilograms but the actual stamping for the maximum load in pounds is 2839 pounds, while the correct stamping should be 2833 pounds.

Goodyear believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Goodyear explains that the cause of the noncompliance was the use of a different conversion factor than that used by the Tire and Rim Association. Goodyear states that the noncompliance has no effect on the performance of the tires on a motor vehicle or on motor

vehicle safety. Goodyear says that the tires meet or exceed all other tire labeling requirements and all minimum performance requirements of FMVSS No. 109.

The agency agrees with Goodyear's statement that the mismarking does not present a serious safety concern. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling will have an inconsequential effect on motor vehicle safety because of the *de minimus* discrepancy in maximum load rating.

In addition, the tires are certified to meet all the performance requirements of FMVSS No. 109. All other informational markings as required by FMVSS No. 109 are present. Goodyear has also corrected the problem.

One comment favoring denial was received from a private individual. The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety. The comment does not address this issue, and therefore has no bearing on NHTSA's determination.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

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

Issued on: July 8, 2005.

**Ronald L. Medford,**

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05-14032 Filed 7-15-05; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-20858; Notice 2]

#### DOT Chemical, Denial of Petition for Decision of Inconsequential Noncompliance

DOT Chemical has determined that certain containers of brake fluid which it manufactured in June 2004 do not comply with S5.1.7, S5.1.9, and S5.1.10

of 49 CFR 571.116, Federal Motor Vehicle Safety Standard (FMVSS) No. 116, "Motor vehicle brake fluids." Pursuant to 49 U.S.C. 30118(d) and 30120(h), DOT Chemical has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of the petition was published, with a 30 day comment period, on April 14, 2005 in the **Federal Register** (70 FR 19837). NHTSA received one comment.

Affected are a total of approximately 50,000 containers of DOT 4 brake fluid, lot numbers KMF02 and KMF03, manufactured in June 2004. FMVSS No. 116 requires that, when tested as referenced in S5.1.7 "Fluidity and appearance at low temperature," S5.1.9 "Water tolerance," and S5.1.10 "Compatibility," the brake fluid shall show no crystallization or sedimentation. The subject brake fluid shows crystallization and sedimentation when tested as referenced in S5.1.7 at -40 °F and -58 °F, sedimentation when tested as referenced in S5.1.9 at -40 °F, and crystallization when tested as referenced in S5.1.10 at -40 °F.

DOT Chemical believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. DOT Chemical states that there are fiber-like crystals in the fluid, which are borate salts, and

are a natural part (no contamination) of DOT 4 brake fluid production (just fallen out of solution in some packaged goods) and have not demonstrated any flow restrictions even at extended periods of low temperatures at -40 °F. Furthermore, when the fluid is subjected to temperatures in a normal braking system, the crystals go back into solution in some cases not to reappear at all at ambient temperatures.

NHTSA received one public comment from a private individual. The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety. The public comment does not address this issue, and therefore has no bearing on NHTSA's determination.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety.

NHTSA notes that we granted petitions for determinations of inconsequential noncompliance of FMVSS No. 116 to Dow Corning Corporation (59 FR 52582, October 18, 1994) and to First Brands Corporation (59 FR 62776, December 6, 1994). In the case of Dow, the FMVSS No. 116

noncompliance arose from a "slush-like crystallization" that dispersed "under slight agitation or warming." NHTSA accepted Dow's argument that its "slush-like crystallization" does not consist of "crystals that are either water-based ice, abrasive, or have the potential to clog brake system components." NHTSA concurred with Dow's conclusion that "the crystallization that occurred ought not to have an adverse effect upon braking." In the case of First Brands, the FMVSS No. 116 noncompliance arose from a "soft non-abrasive gel" that also dispersed under slight agitation or warming.

NHTSA determines that facts leading to the grants of the inconsequential noncompliance petitions of Dow and First Brands are not analogous to the facts in DOT Chemical's situation. In contrast, DOT Chemical's noncompliance results from "fiber-like crystals" made of borate salts. These borate salt crystals did not disperse under slight agitation or warming, but had to be physically removed by filtration. DOT Chemical asserts that "[f]iltration, using Whatman #40 filter paper (25-30 micron particle size) removed all crystals. The crystals are approximately 30-50 microns in width and 3-5 mm in length." DOT Chemical does not explain how it can assure that crystals smaller than 25 microns in width did not remain in the brake fluid.

Even assuming that all larger-sized crystals were removed from the fluid, NHTSA is concerned that crystals that are of a size smaller than 25 microns by 3-5 mm would remain in the brake fluid. The thread-like nature of this type of crystallization has the potential to clog brake system components, particularly in severe cold operation conditions. Impurities such as these in the brake system may cause the system to fail, *i.e.*, to lose the ability to stop the vehicle over time due to the accumulation of compressible material in the brake lines. These impurities may also result in the failure of individual brake system components due to the corrosive nature of the contaminants themselves.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, DOT Chemical's petition is hereby denied.

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

Issued on: July 8, 2005.

**Ronald L. Medford,**

*Senior Associate Administrator for Vehicle Safety.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-21270; Notice 2]

#### Mercedes-Benz USA LLC, Grant of Petition for Decision of Inconsequential Noncompliance

Mercedes-Benz USA LLC (Mercedes) has determined that the designated seating capacity placards for certain vehicles that it produced in 2004 do not comply with S4.3(b) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, "Tire selection and rims." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mercedes has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Notice of receipt of a petition was published, with a 30-day comment period, on June 2, 2005 in the **Federal Register** (70 FR 32398). NHTSA received no comments.

Affected are a total of approximately 1,576 SLK class vehicles produced between March 24, 2004 and December 15, 2004. S4.3(b) of FMVSS No. 110 requires that a "placard, permanently affixed to the glove compartment door or an equally accessible location, shall display the \* \* \* [d]esignated seating capacity \* \* \*." The noncompliant vehicles have placards stating that the seating capacity is four, when in fact the seating capacity is two.

Mercedes believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Mercedes states:

\* \* \* most, if not all, consumers will look at the number of seats in the vehicle and the number of safety belts to determine its capacity, rather than looking at the tire information placard. Because the SLK Roadster is a two-seater vehicle with no rear seat, it is immediately obvious that the seating capacity is two and not four, and that it is not possible to seat four occupants in the vehicle.

Mercedes further states:

Because it is impossible for the SLK to hold four occupants, the seating capacity labeling error has no impact on the vehicle capacity weight, recommended cold tire inflation