

the yard (private property) on weekends. How is the yard time to be recorded?

*Guidance:* On-duty (not driving).

FMCSA also published guidance in the guidance portal on February 28, 2020, that distinguishes between movements of the CMV that may be considered as off-duty “personal conveyance” and movements that are on-duty “yard moves.” This guidance is available on the Agency’s website in the guidance portal at <https://www.fmcsa.dot.gov/hours-service/elds/when-can-movement-cmv-during-duty-period-be-considered-personal-conveyance> and reads as follows:

*FAQ 12:* When can a movement of a CMV during an off-duty period be considered personal conveyance?

*Answer:* A move may be considered as personal conveyance if the driver is off-duty and the movement is not for the motor carrier, shipper or receiver’s commercial benefit. Examples include moving a CMV from one parking space to another at a shipper or port, or driving to a truck stop, rest area or any other location. In these situations, the CMV movement is made in the off-duty period. However, the CMV should be moved no farther than the nearest reasonable and safe location to complete the rest period.

An on-duty yard move, such as moving the vehicle a short distance while waiting to load, would not qualify as personal conveyance.

### III. Proposed Guidance Language

FMCSA proposes to clarify when a driver may record time performing “yard moves” as on-duty not driving time by providing examples of properties that qualify as yards. Therefore, the movement of a CMV on these properties would qualify as a “yard move” and be recorded as on-duty not driving time.

FMCSA proposes to replace Question 9 to 49 CFR 395.2 at <https://www.fmcsa.dot.gov/regulations/hours-service/ss3952-definitions> with the following revised Question 9 and seeks comments on this proposed guidance.

This guidance, if finalized, lacks the force and effect of law and is not meant to bind the public in any way. This guidance document is intended only to provide clarity to the public regarding the Agency’s interpretation of its existing regulations.

*Question 9:* Under what circumstances may a driver classify the operation of a commercial motor vehicle (CMV) as a yard move and record it as on-duty not driving time?

(a) *Guidance:* A driver may record time operating a CMV for yard moves as

on-duty not driving under 49 CFR 395.8(b) only if the movement of the CMV occurs in a confined area on private property (or intermodal facility or briefly on public roads, as described below). Examples of properties that may qualify as yards include, but are not limited to:

1. An intermodal yard or port facility.
2. A motor carrier’s place of business.
3. A shipper’s privately-owned parking lot.
4. A public road, but only if and while public access to the road is restricted through traffic control measures such as lights, gates, flaggers or other means. For example, if a driver must operate on a public road briefly to reach different parts of a private property, the movement may be considered a yard move if public access is restricted during the move.

(b) Examples of properties that do not qualify as yards, include, but are not limited to:

1. A public road without the traffic control measures in paragraph (a)(4) above.
2. Public rest areas.

### IV. Expiration Date of the Proposed Regulatory Guidance

In accordance with section 5203(a)(2)(A) and (a)(3) of the Fixing America’s Surface Transportation (FAST) Act, Public Law 114–94, 129 Stat. 1312, 1535 (Dec. 4, 2015), 49 CFR part 5, subpart C, and Executive Order 13891, the proposed regulatory guidance will be posted on FMCSA’s website in the guidance portal, <https://www.fmcsa.dot.gov/guidance>, if finalized. It would be reviewed by the Agency no later than 5 years after it is finalized. The Agency would consider at that time whether the guidance should be withdrawn, reissued for another period up to 5 years, or incorporated into the safety regulations.

### V. Request for Comments

Refer to the **ADDRESSES** section above for instructions on submitting comments to the public docket concerning this regulatory guidance. FMCSA will consider comments received by the closing date of the comment period to determine whether any further clarification of these regulatory provisions is necessary. In addition to general comments concerning the guidance, the Agency requests responses to the following questions:

1. Would defining “yard moves” in the Agency’s regulations provide necessary clarification and therefore benefit carriers and drivers?

2. Are there other properties or situations where drivers may be in a “yard move” status that should be included as examples in this guidance?

3. Would adding examples of “yard moves” be beneficial for this guidance (e.g., moving a CMV for maintenance)? If so, please provide examples for consideration.

4. How should “yard” be defined for the purposes of this guidance?

**James W. Deck,**

*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0011; Notice 1]

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

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

**ACTION:** Receipt of petition.

**SUMMARY:** Goodyear Tire & Rubber Company (Goodyear) has determined that certain Eagle F1 Asymmetric 5 tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Goodyear filed a noncompliance report dated December 10, 2019, and petitioned NHTSA on December 10, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Goodyear’s petition.

**DATES:** Send comments on or before February 3, 2021.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10

a.m. to 5 p.m. except for Federal Holidays.

- *Electronically*: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to [https://www.regulations.gov](https://www.regulations.gov/), including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petitions are granted or denied, notice of the decisions will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at [https://www.regulations.gov](https://www.regulations.gov/) by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477-78).

#### **SUPPLEMENTARY INFORMATION:**

*I. Overview*: Goodyear has determined that certain Eagle F1 Asymmetric 5 tires do not fully comply with paragraph S5.5(f) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139).

Goodyear filed a noncompliance report dated December 10, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on December 10, 2019, 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*.

This notice of receipt of Goodyear's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

*II. Tires Involved*: Approximately 550 Goodyear Eagle F1 Asymmetric 5 tires, size 255/40R20 (the subject tires), manufactured between November 17, 2019, and November 30, 2019, are potentially involved.

*III. Noncompliance*: Goodyear explains that the noncompliance is due to a mold labeling error in that the number of plies indicated on the sidewall of the subject tires do not match the actual number of plies in the tire construction, and therefore, do not meet the requirements of paragraph S5.5(f) of FMVSS No. 139. Specifically, the sidewall of the subject tires was marked with the number of plies as "1" when it should have been marked with the number of plies as "2."

*IV. Rule Requirements*: Paragraph S5.5(f) of FMVSS No. 139, includes the requirements relevant to this petition. Each tire must be marked on one sidewall with the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different.

*V. Summary of Goodyear's Petition*: The following views and arguments presented in this section are the views and arguments provided by Goodyear. They have not been evaluated by the Agency and do not reflect the views of the Agency. The petitioner described the subject noncompliance and stated the belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of the petition, Goodyear submitted the following reasoning:

1. Goodyear believes this noncompliance is inconsequential to motor vehicle safety because these tires were manufactured as designed and meet or exceed all applicable FMVSS. All of the sidewall markings related to tire service (load capacity, corresponding inflation pressure, etc.) are correct. Goodyear believes the mislabeling of these tires is not a safety concern and has no impact on the use of the tires or on the repair and recycling industries. Goodyear states that the affected tire mold has already been corrected and all future production

will have the correct number of plies shown on the tire sidewalls.

2. Goodyear states that NHTSA has previously granted petitions for the same noncompliance related to tire construction information on tires because of surveys that show most consumers do not base tire purchases on tire construction information found on the tire related to the number of plies in the sidewall.

Goodyear concluded by expressing the belief 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.

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, any decision on this petition only applies to the subject tires that Goodyear no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment 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 Goodyear 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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