

By Order of the Maritime Administration.  
**T. Mitchell Hudson, Jr.**,  
 Secretary, Maritime Administration.  
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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0103; 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 Ironman iMove PT radial tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Hercules filed an original noncompliance report on October 26, 2022, and amended the report on November 28, 2022. Hercules subsequently petitioned NHTSA on October 27, 2022, and amended its petition on December 1, 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 Ironman iMove PT radial tires do not fully comply with paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139).

Hercules filed an original noncompliance report dated October 26, 2022, and amended the report on November 28, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Hercules petitioned NHTSA on October 27, 2022, and amended its petition on December 1, 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 July 26, 2024, in the **Federal Register** (89 FR 60686). 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–2022–0103."

*II. Tires Involved:* Approximately 5,146 Ironman iMove PT radial tires, size 215/55R17, manufactured between March 7, 2022, and May 16, 2022, were reported by the manufacturer.

*III. Noncompliance:* Hercules explains that the date code portion of the Tire Identification Number (TIN) on the subject tires inaccurately identifies the week of manufacture and, therefore, does not comply with paragraph S5.5.1(b) of FMVSS No. 139 and 49 CFR part 574.5(b)(3). Specifically, the TIN on the subject tires contains a date code in which the first symbol is "7" when it should be "1."

*IV. Rule Requirements:* Paragraph S5.5.1(b) of FMVSS No. 139 and 49 CFR 574.5(b)(3) include the requirements relevant to this petition. Each tire (manufactured on or after September 1, 2009) must be labeled with the TIN, as required by 49 CFR part 574.5(b)(3), on the intended outboard sidewall of the tire. The date code, consisting of four numerical symbols, is the final group of the TIN and must identify the tire's 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 tires were manufactured in calendar weeks 10–19 of calendar year 2022, therefore the first symbol of the date code portion of the TIN should be "1." However, the tires contain a TIN in which the first symbol of the date code is "7," indicating that the tire was manufactured in calendar weeks 70–79, which do not exist.

Hercules states that other than the incorrect first digit of the date code, all other content within the TIN is accurate and the tires comply with the applicable FMVSS No. 139 performance requirements.

Hercules believes that subject noncompliance will not cause consumers to be misled because the incorrect date code indicates a calendar week that does not exist. For example, if the date code listed on the subject tire is "7322," it indicates that the tire was manufactured in calendar week 73 of the year 2022, which does not exist.

According to Hercules, NHTSA has granted prior petitions in which the noncompliance involves mislabeled or inaccurate date codes because the noncompliance will not confuse or mislead the consumer. Hercules believes that NHTSA's main concern with TINs that are mislabeled or inaccurate is the potential for adverse safety consequences due to consumers using aged tires that are beyond the manufacturer's recommended service life, regardless of the condition of the tire.<sup>1</sup>

Hercules says that the incorrect date code "cannot be confused with any other reasonably related date code that would lead a consumer to use the subject tires for longer than the recommended time frame." Further, Hercules says the date code indicates the correct year that the tire was manufactured, thus the consumer would not be misled about the overall age of the tire.

Hercules says the subject noncompliance is similar to noncompliances in prior petitions that were granted by NHTSA that involved discrepancies in the TIN.<sup>2</sup> Hercules states that there is no risk a consumer would use the subject tire beyond the recommended maximum service life because the year of manufacture indicated by the date code is correct. In the worst-case scenario, Hercules expects that a consumer would contact them or their local tire distributor regarding the accuracy of the date code on the subject tires.

Hercules states that in the event of a recall, it is able to identify the subject tires and notify consumers. Hercules contends that NHTSA has granted prior petitions in which the manufacturer had the ability to identify affected tires if a

<sup>1</sup> See Cooper Tire & Rubber Company, 86 FR 47726 (August 26, 2021).

<sup>2</sup> See Bridgestone/Firestone, Inc., Grant of Petition, 71 FR 4396 (January 26, 2006), Bridgestone/Firestone, Inc., Grant of Petition, 66 FR 45076 (August 27, 2001).

recall were to occur.<sup>3</sup> Hercules quotes NHTSA as stating, “The purpose of the 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 notes that NHTSA has previously granted a petition for a noncompliance in which a date code was not provided but the manufacturer was able to notify consumers using that TIN with a missing date code.

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>4</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>5</sup>

<sup>3</sup> See Bridgestone/Firestone Grant of Inconsequentiality Petition, 64 FR 20090 (May 28, 1999); see also Cooper Tire & Rubber Co., Grant of Inconsequentiality Petition, 68 FR 16115 (April 2, 2003).

<sup>4</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>5</sup> See *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential*

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.

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

1. NHTSA has no basis to believe that the subject tires do not meet the performance and labeling requirements of FMVSS No. 139, except for the incorrect number used for the first digit of the week portion of the TIN.

2. The year portion of the date code is correct, indicating that the tires were manufactured in 2022, therefore consumers can rely on the correct year portion of the date code to determine when it is appropriate to replace their tires in order to avoid using them beyond their recommended life.

3. Hercules stated that they have ensured that the tires can be registered on the Ironman registration site such that Hercules will be able to isolate and identify any affected tires in the event that a safety recall were to be required. NHTSA has verified that the tires may successfully be registered using the incorrect date code.

Lastly, the agency would like to provide additional context to the petitioner’s quotation of previous statements made by the agency regarding the purpose of the date code portion of the TIN. The statement quoted by the petitioner was made in

*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”).

the context of responding to a specific petition and not intended to be a general statement regarding the sole purpose of the date code. The date code provides information to consumers about the age of their tires in addition to facilitating the identification of affected tires in the event of a recall.

**VII. NHTSA’s Decision:** In consideration of the foregoing, NHTSA finds that Hercules has met its burden of persuasion that the subject FMVSS No. 139 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 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,**

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