

EMV explains it has only one source for supply of the pertinent rim style and that the absence of the manufacturer name, trademark, or symbol marking will therefore not inhibit traceability of the affected rims. It further states that other markings present, such as the date of manufacture and all other required rim markings from paragraph S5.2, (including some not required, such as “heat treatment lot”), provide for sufficient traceability of any given rim.

Given the nature of the vehicle, the markings present on the rim, and the rim’s unique design, it appears most likely that if a consumer encountered a problem with the rim, including finding a proper replacement, they could contact the vehicle manufacturer for further assistance or, if seeking a replacement, replace the rim based on the correct tire rim size present on the side of the rim. The aforementioned facts support a conclusion that the noncompliance is inconsequential to motor vehicle safety, as all other information markings as required by FMVSS No. 120 are correctly marked.

NHTSA’s Decision

In consideration of the foregoing, NHTSA finds that EMV has met its burden of persuasion that the subject FMVSS No. 120 noncompliance at issue is inconsequential to motor vehicle safety. Accordingly, EMV’s petition is hereby granted and EMV is consequently exempt 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 vehicles that EMV no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motorcycles under their control after EMV 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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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0046; Notice 2]

Goodyear 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: Goodyear Tire & Rubber Company (Goodyear), has determined that certain Goodyear Convenience Spare tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic and Certain Specialty Tires*. Goodyear filed an original noncompliance report dated June 8, 2021, and subsequently, Goodyear petitioned NHTSA on June 21, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Goodyear’s petition.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Overview: Goodyear has determined that certain Goodyear Convenience Spare tires do not fully comply with the requirements of paragraph S4.2.1(c) and S4.3(c) of FMVSS No. 109, *New Pneumatic and Certain Specialty Tires* (49 CFR 571.109). Goodyear filed a noncompliance report dated June 8, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Goodyear subsequently petitioned NHTSA on June 21, 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, 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 Goodyear’s petition was published with a 30-day

public comment period, on December 14, 2021, in the **Federal Register** (86 FR 71118). 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-2021-0046.”

II. Tires Involved: Approximately 534 Goodyear Convenience Spare tires, size T155/70D17 110M SL, manufactured between February 15, 2021, and April 8, 2021, were reported by the manufacturer.

III. Rule Requirements: Paragraphs S4.2.1(c) and S4.3(c) of FMVSS No. 109 include the requirements relevant to this petition. Each tire shall conform to each of the following: Its load rating shall be that specified in a submission made by an individual manufacturer, pursuant to paragraph S4.2.1(a), or in one of the publications described in paragraph S4.4.1(b) for its size designation, type, and each appropriate inflation pressure. If the maximum load rating for a particular tire size is shown in more than one of the publications described in paragraph S4.4.1(b), each tire of that size designation shall have a maximum load rating that is not less than the published maximum load rating, or if there are differing maximum load ratings for the same tire size designation, not less than the lowest published maximum load rating. Except as provided in paragraphs S4.3.1 and S4.3.2 of this standard, each tire, except for those certified to comply with paragraph S5.5 of § 571.139, shall have permanently molded into or onto both sidewalls, in letters and numerals not less than 0.078 inches high, the information shown in paragraphs S4.3 (a) through (g) of this standard. Paragraph 4.3(c) specifies the maximum load rating.

IV. Noncompliance: Goodyear explains that the noncompliance is that the subject tires incorrectly state the maximum load in kg on one sidewall of the tire and, therefore, do not comply with the requirements specified in paragraphs S4.2.1(c) and S4.3(c) of FMVSS No. 109. Specifically, the subject tires are marked on one sidewall with “Max Load 1,080 kg (2,337 lbs)”, when they should have been marked with “Max Load 1,060 kg (2,337 lbs)”.

V. Summary of Goodyear’s Petition: The following views and arguments presented in this section, “V. Summary of Goodyear’s Petition,” are the views and arguments provided by Goodyear and do not reflect the views of the Agency. Goodyear describes the subject noncompliance and contends that the

noncompliance is inconsequential as it relates to motor vehicle safety.

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

1. Goodyear says that “the subject tires were manufactured as designed and meet or exceed” the relevant FMVSSs.

2. Goodyear also states the subject tires are “original equipment on several Toyota and Subaru vehicle models and were designed and manufactured to meet or exceed the specified vehicle loading conditions as specified by the vehicle manufacturers.”

3. According to Goodyear, “[t]he 110 numerical Load Index marked on the tire as part of the Service Description (110M) is correct as marked.”

4. Goodyear claims the subject tires “that were mismarked Max Load 1,080 kg in place of Max Load 1,060 kg met the performance requirements of FMVSS No. 109 for endurance and high speed when tested at the 1,080 kg load.”

5. Goodyear says the subject tires “are marked correctly for Max Load in pounds. on both sides of the tire. Further, Goodyear says the subject tires are primarily sold in the domestic original equipment market, where the load in pounds would be the predominant consumer unit of measurement.”

6. Goodyear says the subject tires are “marked in letters 20-mm high ‘TEMPORARY USE ONLY’ as they are convenience spare tires.”

7. Goodyear contends that NHTSA has previously granted petitions for similar noncompliances “related to tire loading labeling information on tires and previous NHTSA surveys have shown most consumers do not base tire purchases on tire labeling information found on the tire sidewall.” Further, Goodyear claims, since the subject tires are temporary use only spare tires, any considerations about what information consumers rely on for tire purchases is even less of a concern.

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 a recall would otherwise protect.¹ 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.² 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 Goodyear’s petition and based on the specific facts of this case, believes that the incorrect max load value in kilograms (kg) marked on one sidewall on the subject tires is not consequential to safety given the totality of fact and circumstances detailed below:

- The affected population of tires were sent to vehicle manufacturers for use as T-type spares for specific vehicles. These tires, though incorrectly marked, were designed to meet or exceed the vehicle loading conditions of the vehicles on which they were sold. For this reason, NHTSA believes that the tires are unlikely to be overloaded.

- None of the affected tires were sent to distributors for sale in the replacement market where the incorrect load value could lead to overloading if tire users relied upon the incorrect maximum load marked on the tire.

- NHTSA has no basis to believe that the subject tires do not meet the performance requirements of FMVSS No. 109. Additionally, Goodyear stated that the affected population meets the performance requirements of FMVSS No. 109 when tested at the maximum load value of 1080kg.

- Any potential risk to the public is further reduced because T-type

temporary use spare tires are not frequently used, and when used are only intended for short duration use until a flat tire can be repaired or replaced.

- If the spare tires need to be replaced, the correct load index value “110” is marked on both sidewalls of the subject tires.
- The maximum load expressed in pounds (lbs) is correct on both sidewalls. The maximum load expressed in kilograms (kg) is correct on one sidewall.
- Because the subject tires are exclusively sold as original equipment items on new vehicles, the traceability of these tires is through the registration of vehicles vs. registration of the tires themselves. Additionally, the TIN is unaffected meaning that consumers will be able to identify the tires in the event of a safety recall.

VII. NHTSA’s Decision: In consideration of the foregoing, NHTSA has decided that Goodyear has met its burden of persuasion that the subject FMVSS No. 109 noncompliance in the affected tires is inconsequential to motor vehicle safety. Accordingly, Goodyear’s petition is hereby granted and Goodyear 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 Goodyear 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 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)

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¹ 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).

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”).