

that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

#### *Richard P. Wright*

Mr. Wright, 31, has had ITDM since 1998. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wright understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wright meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Oregon.

#### **Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the **DATE** section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).<sup>1</sup> The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum

period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: February 9, 2012.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2011-0054; Notice 2]**

#### **Cooper Tire & Rubber Tire Company, Grant of Petition for Decision of Inconsequential Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Grant of Petition.

**SUMMARY:** Cooper Tire & Rubber Tire Company, (Cooper)<sup>1</sup>, has determined that approximately 6,964 passenger car replacement tires manufactured between January 23, 2011 and March 26, 2011, do not fully comply with paragraph S5.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper has filed an appropriate report dated March 31, 2011, pursuant to 49 CFR part 573,

#### *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Cooper has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Cooper's petition was published, with a 30-day public comment period, on May 17, 2011, in the **Federal Register** (76 FR 28502). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2011-0054."

For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5299, facsimile (202) 366-7002.

Affected are approximately 6,964 size LT285/75R16 Cooper brand Discoverer S/T MAXX model passenger car replacement tires manufactured between January 23, 2011 and March 26, 2011, at Cooper's plant located in Texarkana, Arkansas.

Cooper explains that the noncompliance is that, due to a mold labeling error, the sidewall marking on the reference side of the tires, required by paragraph S5.5(f), incorrectly describes the actual number of plies in the tread area of the tires. Specifically, the tires in question were inadvertently manufactured with "TREAD 1 PLY NYLON + 2 PLY STEEL + 3 PLY POLYESTER; SIDEWALL 3 PLY POLYESTER." The labeling should have been "TREAD 2 PLY NYLON + 2 PLY STEEL + 3 PLY POLYESTER; SIDEWALL 3 PLY POLYESTER."

Cooper also explains that while the non-compliant tires are mislabeled, the tires do in fact have 2 Nylon tread plies and meet or exceed all other applicable Federal Motor Vehicle Safety Standards.

Cooper reported that this noncompliance was discovered during a review of the specified stamping requirements and visual inspection of tire stamping.

Cooper argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not create an unsafe condition and all other labeling requirements have been met.

<sup>1</sup> Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

<sup>1</sup> Cooper Tire & Rubber Tire Company (Cooper) is a replacement equipment manufacturer incorporated in the state of Delaware.

Cooper points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

In summation, Cooper believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

**NHTSA Decision:** The agency agrees with Cooper that the noncompliance is inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of the vehicles on which these tires are mounted. The safety of people working in the tire retread, repair, and recycling industries must also be considered. Although tire construction affects the strength and durability, neither the agency nor the tire industry provides information relating tire strength and durability to the number of plies and types of ply cord material in the tread and sidewall.

Therefore, tire dealers and customers should consider the tire construction information along with other information such as load capacity, maximum inflation pressure, and tread wear, temperature, and traction ratings, to assess performance capabilities of various tires. In the agency's judgment, the incorrect labeling of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the ply material in a tire.

The agency also believes the noncompliance will have no measurable effect on the safety of the tire retread, repair, and recycling industries. The use of steel cord construction in the sidewall and tread is the primary safety concern of these industries. In this case, since the tire sidewalls do not contain steel plies, this potential safety concern does not exist.

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 6,964<sup>2</sup> tires that Cooper no longer controlled at the time that it determined that a noncompliance existed in the subject tires.

In consideration of the foregoing, NHTSA has decided that Cooper has met its burden of persuasion that the subject FMVSS No. 139 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, Cooper's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

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

Issued on: February 15, 2012.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration

#### Advisory Council on Transportation Statistics; Notice of Meeting

**AGENCY:** Research and Innovative Technology Administration (RITA), Department of Transportation.

**ACTION:** Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72-363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Tuesday, March 6, from 9 a.m. to 4:30 p.m. EST in the Oklahoma City Room at the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC. Section 5601(o) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C. app. 2) to advise the Bureau of

<sup>2</sup> Cooper's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Cooper as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the affected tires. However, a decision on this petition cannot relieve 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 Cooper notified them that the subject noncompliance existed.

Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department.

The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Overview of prior meeting; (3) Discussion of the FY 2013 budget; (4) Update on BTS data programs and future plans; (5) Council Members review and discussion of BTS programs and plans; (6) Public Comments and Closing Remarks. Participation is open to the public. Members of the public who wish to participate must notify Courtney Freiberg at [Courtney.Freiberg@dot.gov](mailto:Courtney.Freiberg@dot.gov), not later than February 24, 2012. Members of the public may present oral statements at the meeting with the approval of Patricia Hu, Director of the Bureau of Transportation Statistics. Noncommittee members wishing to present oral statements or obtain information should contact Courtney Freiberg via email no later than February 17, 2012.

Questions about the agenda or written comments may be emailed or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, *Attention:* Courtney Freiberg, 1200 New Jersey Avenue SE., Room # E34-429, Washington, DC 20590, [Courtney.Freiberg@dot.gov](mailto:Courtney.Freiberg@dot.gov), or faxed to (202) 366-3640. BTS requests that written comments be received by February 17, 2012. Access to the DOT Headquarters building is controlled; therefore, all persons who plan to attend the meeting must notify Courtney Freiberg at 202-366-1270 prior to February 27, 2012. Individuals attending the meeting must report to the main DOT entrance on New Jersey Avenue SE. for admission to the building. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Courtney Freiberg at 202-366-1270 at least seven calendar days prior to the meeting. Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102-3) covering management of Federal advisory committees.