

subjects any other crewmember responsible to individual liability proceedings, including disqualification and/or civil penalties. See 49 CFR 240.117(e)(5), 240.305(a)(5), and 242.403(b) and (e)(5).

(2) Immediately conduct a complete audit of the PTC onboard design of all locomotives and cab cars equipped with PTC to determine how the onboard PTC equipment is integrated into each railroad's locomotive and cab car's braking system, to ascertain what percentage of the locomotive and cab car fleet is subject to the interface design issue described above;

(3) Within ten (10) days of the publication of this Safety Advisory, provide FRA, via the SIR site, with a report of the number and type of locomotives and cab cars that have this interface design issue;

(4) Upon completion of item (2) above, determine the mitigating measures and/or corrective actions necessary to address the safety risk presented by the design issue, and provide FRA, via the SIR site, with a report documenting the planned measures and/or actions, including a schedule for completion; and

(5) Immediately commence implementation of the planned measures and/or actions to address the safety risk presented by the design issue per the documented schedule, and provide FRA, via the SIR site, confirmation of completion.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0132; Notice 2]

Hankook Tire America Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Hankook Tire America Corporation (Hankook) has determined that certain Hankook Ventus V2 Concept 2 tires manufactured by Hankook's indirect subsidiary, Hankook Tire Manufacturing Tennessee, LP, do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No.

139, *New Pneumatic Radial Tires for Light Vehicles*. Hankook filed a noncompliance report dated November 19, 2019, and subsequently petitioned NHTSA on December 5, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces and explains the grant of Hankook's petition.

FOR FURTHER INFORMATION CONTACT: Abraham Diaz, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-5310, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Hankook has determined that certain Hankook Ventus V2 Concept 2 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).

Hankook filed a noncompliance report dated November 19, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA on December 5, 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*.

Notice of receipt of Hankook's petition was published with a 30-day public comment period, on April 17, 2020, in the **Federal Register** (85 FR 21504). 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/>, and then follow the online search instructions to locate docket number "NHTSA-2019-0132."

II. Tires Involved: Approximately 467 Hankook Ventus V2 Concept 2 tires, size 235/45R17V XL H457, manufactured between October 7, 2019, and October 12, 2019, are potentially involved.

III. Noncompliance: Hankook explains that the noncompliance is due to a mold error in which the subject tires, were marked with the date-code in the Tire Identification Number (TIN) inverted and; therefore, they do not meet the requirements of paragraph S5.5.1(b) of FMVSS No. 139. Specifically, the date code was printed upside down.

IV. Rule Requirements: Paragraph S5.5.1(b) of FMVSS No. 139 includes the requirements relevant to the

petition. Each tire must be labeled with the TIN required by 49 CFR part 574.5 on the intended outboard sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the TIN required by 49 CFR part 574.5 on one sidewall and with either the TIN or a partial TIN, containing all characters in the TIN except for the date code and, at the discretion of the manufacturer, any optional code, on the other sidewall. Each tire must be marked on each sidewall with the TIN required by 49 CFR part 574.5 as listed in the documents and publications specified in paragraph (b) TIN content requirement.

V. Summary of Hankook's Petition: Hankook describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety. In support of its petition, Hankook offers the following reasoning:

1. The purpose of the labeling requirements in Part 574 is to "facilitate notification to purchasers of defective or nonconforming tires." See Part 574.2. The date code portion of the TIN is required so that purchasers can identify the week and year of the tire's manufacture in the event the tire is subject to a safety recall.

2. The date-code characters reflect the correct week and year of the tires' manufacture, but the date code is technically out of compliance because the characters are inverted. Despite the inversion, the date code meets the character height requirements of Part 574 and is readily identifiable, permitting tire owners to easily determine the week and year of manufacture.

3. NHTSA has previously granted a petition for inconsequential noncompliance for a similar issue. In granting a petition from Cooper Tire & Rubber Company, 81 FR 43708 (July 5, 2016), the Agency explained:

The Agency believes that in the case of a tire labeling noncompliance, one measure of its inconsequentiality to motor vehicle safety is whether the mislabeling would affect the manufacturer's or consumer's ability to identify the mislabeled tires properly, should the tires be recalled for performance-related noncompliance. In this case, the nature of the labeling error does not prevent the correct identification of the affected tires. 49 CFR 574.5 requires the date code portion of the tire identification number to be placed in the last or correct position. In Cooper's case, it is in the right-most position, however, the manufacture date code is upside down.

Because the label is located on the tire sidewall, it is not likely to be misidentified. A reader will be able to read the date code, by spinning the tire, and therefore inverting the date code will allow it to easily be read.

The petitioner argues that, as with the Cooper tires, the date code on the subject tires is located on the sidewall, is not likely to be misidentified, and a reader will be able to read and understand the date code. Hankook communicated in an email to the agency on November 19, 2020, that a partial TIN is labeled on at least one sidewall of the tire. The subject tires otherwise meet the marking and performance requirements of FMVSS No. 139.

4. Hankook is not aware of any complaints, claims, or incidents related to the subject noncompliance.

Hankook 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 evaluating this tire labeling noncompliance issue, NHTSA considered if the incorrectly marked date code could mislead a consumer about the actual age of the tire or make it difficult to correctly determine if the tire has been recalled. The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such performance-related noncompliances inconsequential.¹ Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.² In general, NHTSA does not

consider the absence of complaints or injuries to show that the issue is inconsequential to safety. “Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.”³ “[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.”⁴

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.⁵ Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.⁶ These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

In the instant case, the date code required by FMVSS No. 139 is properly located in the right-most position and shows the correct week and year of manufacture but has been imprinted upside-down, and the upside-down font

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).

³ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

⁴ *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”).

⁵ See *Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

⁶ See *Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

cannot be confused with right-side up font. If a consumer reads the label as it is, the fact that the date code is inverted would become self-evident. In such a case, it would not be difficult to rotate the tire to a position where the code could be read and deciphered. The tire's age would then be available as needed and the tire could also be identified if recalled.

VII. NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Hankook has met its burden of persuasion that the subject FMVSS No. 139 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Hankook's petition is hereby granted, and Hankook is exempted from the obligation of providing notification of, and a remedy for, the 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 Hankook 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 Hankook 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 VETERANS AFFAIRS

[OMB Control No. 2900-0219]

Agency Information Collection Activity Under OMB Review: CHAMPVA Benefits—Application, Claim, Other Health Insurance, Potential Liability & Miscellaneous Expenses

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

¹ Cf. *Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

² 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*