

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration**

[Docket No. NHTSA 2001-10288; Notice 2]

Cooper Tire & Rubber Company; Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety

Cooper Tire & Rubber Company (Cooper) has determined that certain Mastercraft, Roadmaster, Starfire and Futura brand tires in the P225/60R15 size do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires." Pursuant to 49 U.S.C. 30118(d) and 30120(h), Cooper and Pep Boys, the brand name owner for the Futura tires produced by Cooper, have petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and have filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Notice of receipt of the application was published on August 14, 2001, with a 30-day comment period (66 FR 42705). NHTSA received no comments on this application.

FMVSS No. 109 requires that each tire have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area if different (S4.3 (e)). The Tupelo, Mississippi, tire manufacturing facility had nine (9) molds involved in tire production during the thirteenth through sixteenth production weeks of 2001, in which the number of polyester tread plies was incorrectly stated. According to Cooper, the subject tires were molded "TREAD 2 PLY STEEL + 1 PLY POLYESTER, SIDEWALL 2 PLY POLYESTER." The correct molding to match the actual tire construction should have been "TREAD 2 PLY STEEL + 2 PLY POLYESTER, SIDEWALL 2 PLY POLYESTER."

The incorrect number of polyester tread plies was removed from the molds by buffing and the correct number of polyester tread plies inserted; however, prior to the molds being correctly stamped, 503 tires, of which 40 were Futura tires owned by Pep Boys, were inadvertently shipped marked as having only one polyester tread ply.

Cooper stated that the incorrect number of polyester tread plies on each tire does not present a safety-related defect. The involved tires, in fact, have two polyester tread plies instead of one

and they comply with all other requirements of 49 CFR 571.109.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act of November 2000 required, among other things, that the agency initiate rulemaking to improve tire label information. In response to section 11 of the TREAD Act, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments addressing the ANPRM, which sought comments on the tire labeling information required by 49 CFR sections 571.109 and 571.119, part 567, part 574, and part 575. Most of the comments were from motor vehicle and tire manufacturers, although several private citizens and consumer interest organizations responded to the ANPRM. With regard to the tire construction labeling requirements of FMVSS 109, S4.3 (d) and (e), most commenters indicated that the information was of little value to consumers. However, the tire construction information is valuable to the tire retreading, repair, and recycling industries, according to several trade groups representing tire manufacturing. The International Tire and Rubber Association, Inc., (ITRA) indicated that the tire construction information is used by tire technicians to determine the steel content of a tire and to select proper retread, repair, and recycling procedures.

In addition to the written comments solicited by the tire labeling ANPRM, the agency conducted a series of focus groups, as required by TREAD, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of the information molded into the tire sidewall with the exception of the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we believe that few consumers are influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) molded into the tire sidewall when making a motor vehicle or tire purchase decision. However, the tire repair, retread, and recycling industries do use the tire construction information, according to comments from industry associations, and the agency will consider this during development of the tire labeling rulemaking.

The agency believes that the best measure of inconsequentiality to motor vehicle safety in this case is the effect

of the noncompliance on the operational safety of 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 tire strength and durability, neither the agency nor the tire industry provides information relating the strength and durability of a tire to the number and types of plies in the tread and sidewall. Therefore, tire dealers and customers should consider the tire construction information along with other information such as the load capacity, tread wear, temperature, and traction when assessing 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. The agency believes the safety of the users of these tires will not be adversely affected by the noncompliance because most consumers do not base tire purchases or vehicle operation parameters on tire construction information. Additionally, the tire construction is more robust than the label indicates (2 polyester tread plies instead of 1). The agency has reached the conclusion that the noncompliance will not have an adverse 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, according to ITRA. In this case, the steel used in the construction of the tires is properly labeled.

In consideration of the foregoing, NHTSA has decided that the burden of persuasion has been met and that the noncompliance is inconsequential to motor vehicle safety. Accordingly, the applications from Cooper and Pep Boys are granted and the applicants are exempted from providing the notification of the noncompliance that would be required by 49 U.S.C. 30118, and from remedying the noncompliance, as would be required by 49 U.S.C. 30120.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

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Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

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