

DATES: Submit comments on or before January 9, 2023.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2022–0254 by any of the following methods:

- *On-line via the Federal Electronic Portal:* <http://www.regulations.gov>. Search using “MARAD–2022–0254” and follow the instructions for submitting comments.
- *Mail/Hand-Delivery/Courier:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. Submit comments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

Reference Materials and Docket Information: You may view the complete application, including the aquaculture support technical service requirements, and all public comments at the DOT Docket on-line via <http://www.regulations.gov>. Search using “MARAD–2022–0254.” All comments received will be posted without change to the docket, including any personal information provided. The Docket Management Facility is open 9:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Meurer, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–436, Washington, DC 20590. Email: Jennifer.Meurer@dot.gov. Phone: 202–366–4946.

If you have questions on viewing the Docket, call Docket Operations, telephone: (800) 647–5527.

SUPPLEMENTARY INFORMATION: Pursuant to 46 CFR 106.115, vessel owners, operators, or charterers of U.S. documented vessels with registry endorsements or foreign flag vessels are required to provide prior notification to the United States Coast Guard (USCG) of aquaculture support operations in U.S. waters. The notification, in part, must include a copy of a MARAD-issued Aquaculture Support Operations Waiver. Pursuant to 46 U.S.C. 12102(d), the Secretary of Transportation has the authority to issue Aquaculture Support Operations Waivers to U.S. documented vessels with registry endorsements or foreign flag vessels engaged in operations that treat aquaculture fish or protect aquaculture fish from disease, parasitic infestation, or other threats to their health after a finding that suitable vessels of the United States are not available that could perform those operations. The Secretary has delegated

this authority to the Maritime Administrator.

MARAD has received an Aquaculture Support Operations Waiver request from Cooke Aquaculture USA, Inc. (Cooke) for the operations of the Canadian-flag vessels COLBY PERCE, RONJA CARRIER, SADIE JANE, MISS MILDRED 1, KC COMMANDER. Cooke proposes, in part, “to use highly-specialized foreign-flag vessels referred to as a “wellboat” (or “live fish carrier”) to treat Cooke’s swimming inventory of farmed Atlantic salmon in the company’s salt-water grow-out pens off Maine’s North Atlantic Coast. This treatment prevents against parasitic infestation by sea lice that is highly destructive to the salmon’s health.” Cooke proposes to operate the vessels off Maine’s North Atlantic Coast during the 2023 calendar year, from January 1 to December 31, 2023. Further details of Cooke’s proposed operations may be found in the waiver request posted in the docket.

The public may submit comments providing detailed information relating to the availability of U.S.-flag vessels to perform the proposed aquaculture support operations set forth in Cooke’s waiver request. Comments should reference the docket number of this notice, the vessel names, the commenter’s interest in the application, and address whether there are suitable U.S. vessels available to conduct the proposed aquaculture support operations.

Privacy Act

In accordance with 5 U.S.C. 553(c), MARAD solicits comments from the public to inform its decision determining the availability of suitable U.S.-flag vessels to conduct the aquaculture support operations proposed in this notice. All timely comments will be considered; however, to facilitate comment tracking, commenters should provide their name or the name of their organization. If comments contain proprietary or confidential information, commenters may contact the agency for alternate submission instructions. Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT’s compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

(Authority: 49 CFR 1.93(w))

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By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2022–26821 Filed 12–8–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0038; Notice 2]

Mercedes-Benz USA, LLC and Pirelli Tire, LLC, Denial of Petitions for Decision of Inconsequential Noncompliance

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

ACTION: Denial of petitions.

SUMMARY: Daimler AG (DAG) and Mercedes-Benz USA, LLC (MBUSA) collectively referred to as “DAG-Mercedes-Benz,” and Pirelli Tire, LLC (Pirelli), have determined that certain Pirelli P7 Cinturato RUN FLAT radial tires that were installed as original equipment in certain model year (MY) 2018–2019 Mercedes-Benz motor vehicles and also sold as replacement equipment do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Pirelli filed a noncompliance report dated February 25, 2019, and later amended it on March 15, 2019, and DAG-Mercedes-Benz filed a noncompliance report dated March 4, 2019. Pirelli subsequently petitioned NHTSA (the “Agency”) on March 18, 2019, and DAG-Mercedes-Benz petitioned NHTSA on March 27, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces and explains the denial of DAG-Mercedes-Benz’s and Pirelli’s petitions.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, Office of Vehicle Safety Compliance, NHTSA, (325) 655–0547, Jayton.Lindley@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Overview

DAG-Mercedes-Benz and Pirelli (the “petitioners”) have determined that certain Pirelli P7 Cinturato RUN FLAT radial tires that were installed as original equipment in certain MY 2018–2019 Mercedes-Benz motor vehicles and also sold as replacement equipment do not fully comply with paragraph S5.5(c) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139).

Pirelli filed a noncompliance report dated February 25, 2019, and later amended the report on March 15, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Pirelli subsequently petitioned NHTSA, on March 18, 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*.

DAG-Mercedes-Benz filed a noncompliance report dated March 4, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and subsequently petitioned NHTSA, on March 27, 2019,¹ 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 the petitioners' petitions was published with a 30-day public comment period, on May 19, 2020, in the **Federal Register** (85 FR 30014). One comment was received. To view the petitions, all supporting documents, and the comment from the public, log onto the Federal Docket Management System's website at <https://www.regulations.gov/>, and then follow the online search instructions to locate docket number "NHTSA-2019-0038."

II. Vehicles and Tires Involved

Approximately 2,023 Pirelli P7 Cinturato RUN FLAT replacement radial tires, size 245/45R18 100 Y (the "subject tires"), manufactured between April 3, 2017, and February 15, 2019, are potentially involved.

The subject tires were installed as original equipment on approximately 206 of the following MY 2018–2019 Mercedes-Benz motor vehicles, manufactured between May 4, 2017, and February 7, 2019:

- 2018 Mercedes-Benz E400 4MATIC Cabriolet
- 2018 Mercedes-Benz E400 Coupe
- 2018 Mercedes-Benz E400 Cabriolet
- 2019 Mercedes-Benz E450 4MATIC Cabriolet
- 2019 Mercedes-Benz E450 Cabriolet
- 2019 Mercedes-Benz E450 Coupe

¹ NHTSA notes that DAG-Mercedes-Benz's petition was incorrectly dated March 27, 2018.

- 2019 Mercedes-Benz E450 4MATIC Coupe

III. Rule Requirements

Paragraph S5.5(c) of FMVSS No. 139, includes the requirements relevant to the petitions. Each tire must be marked on each sidewall with the maximum permissible inflation pressure, and in the case of the subject tires, the maximum permissible inflation pressure must be followed in parenthesis by the equivalent load rating in pounds, rounded to the nearest whole number.

IV. Noncompliance

The petitioners explain that the noncompliance is that the subject tires, manufactured by Pirelli and sold as replacement equipment, as well as sold by DAG-Mercedes-Benz as original equipment on certain MY 2018–2019 Mercedes-Benz motor vehicles, were erroneously marked with the incorrect maximum permissible inflation pressure. Therefore, the tires do not meet the requirements of paragraph S5.5(c) of FMVSS No. 139. Specifically, the subject tires are marked with a maximum permissible inflation pressure of 340 kPa, when they should have been marked with the maximum permissible inflation pressure of 350 kPa.

V. Summary of Petitions

The following views and arguments presented in this section, "V. Summary of Petitions," are the views and arguments provided by the petitioners. They do not reflect the views of the Agency. The petitioners described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

On January 15, 2019, DAG-Mercedes-Benz received preliminary information from the Korea Automobile Testing & Research Institute (KATRI), which indicated that when KATRI tested the subject tires installed on a DAG-Mercedes-Benz vehicle, using the test specifications applicable for 340 kPa (the maximum permissible tire pressure that was indicated on the sidewall of the tire) the tire reportedly failed the strength test.² DAG-Mercedes-Benz relayed information about KATRI's test to Pirelli Deutschland GMBH, who informed Pirelli about this issue. Pirelli subsequently concluded that the subject tires were erroneously marked with a

² The test was conducted according to the applicable Korean standard. DAG-Mercedes-Benz stated that the applicable Korean standard is equivalent to FMVSS No. 139 in all material respects.

maximum permissible inflation pressure of 340 kPa.

In support of their petitions, Pirelli and DAG-Mercedes-Benz submitted the following reasoning:

1. The petitioners cited the following noncompliance petitions that the Agency has granted previously:

a. DAG-Mercedes-Benz cited Continental Tire the America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance. See 83 FR 36668, July 30, 2018.

b. Pirelli cited Tireco Inc., Grant of Petition for Decision of Inconsequential Noncompliance. See 76 FR 66353, October 26, 2011.

c. The petitioners cited Michelin North America, Grant of Petition for Decision of Inconsequential Noncompliance. See 74 FR 10805, March 12, 2009.

Pirelli highlighted that in the Michelin case, the tire was marked on one sidewall as having a maximum permissible inflation pressure of "300 kPa," while the other sidewall was marked "350 kPa." In concluding that this noncompliance was inconsequential to safety, NHTSA cited the following justifications:

"Since the load that is marked on both sides of the tire (*i.e.*, 750 KG (1653 lb.)) is correct; the recommended inflation pressure (240 kPa (35 PSI)) is well below both the correct tire pressure of 300 kPa (44 PSI), and the incorrectly labeled tire pressure of 350 kPa (51 PSI); and, in any event, the tire was manufactured to safely accommodate a pressure of 350 kPa (51 PSI), the tire cannot be inadvertently overloaded."

2. DAG-Mercedes-Benz stated that the subject tires meet or exceed all performance and safety requirements for tires with a maximum permissible inflation pressure of 350 kPa, and the mislabeling has no effect whatsoever on their safety or performance. DAG-Mercedes-Benz asserted the following:

a. The subject tires were designed and engineered as tires with a maximum permissible inflation pressure of 350 kPa, and they meet or exceed all of the performance requirements for such tires. Specifically, the tires meet the applicable specifications contained in FMVSS No. 139 for tire dimensions under paragraph S6.1, the high-speed performance test under paragraph S6.2, the tire endurance test under paragraph S6.3, the low inflation pressure test under paragraph S6.4, and the bead unseating test applicable under paragraph S6.6 (which references FMVSS No. 109, paragraph S5.2). These tires also meet the tire strength test specified for tires with a maximum inflation pressure of 350 kPa, in accordance with paragraph S6.5 of

FMVSS No. 139 (which references FMVSS No. 109, paragraph S5.3).

b. Since the subject tires were labeled as having a maximum permissible inflation pressure of 340 kPa rather than 350 kPa, the tires would be subject to a different strength test specification under FMVSS No. 139 (which references FMVSS No. 109, paragraph S5.3), which they were not meant to satisfy.

c. The mislabeling of the subject tires has no effect on vehicle safety as compared to tires that are properly and correctly labeled with a maximum permissible inflation pressure of 350 kPa. The error does not present any risk of over-inflation since the design maximum permissible inflation pressure of 350 kPa is higher than the labeled inflation pressure of 340 kPa. Additionally, there is no risk of tire under inflation, since the calculated load-carrying capacity of the tire at 340 kPa is met and exceeded by the design for 350 kPa.

d. All of the tire load-carrying information labeled on the subject tires is correct and, in fact, that information understates the load-carrying capacity of the tires. Since the tires were designed to have a maximum permissible inflation pressure of 350 kPa, according to the European Tyre and Rim Technical Organization (ETRTO) guidelines, these tires have a load-carrying capacity that is higher by 15 to 20 kg.

e. The mislabeling does not cause any safety problems, such as increasing the probability of tire failure, if the tires were inflated to 350 kPa under a load of 750kg, and it is not likely to result in unsafe use of the tires. In a similar case, NHTSA granted an inconsequentiality petition with respect to two tires, one of which was mislabeled as having a maximum permissible inflation pressure of 350 kPa instead of 300 kPa, and the other tire was mislabeled as having a maximum permissible inflation pressure of 300 kPa instead of 350 kPa.³ As NHTSA has acknowledged, “the choice of the maximum inflation pressure level then becomes the choice of the tire manufacturer, as long as it is in compliance with the established values under FMVSS No. 139 paragraph S5.5.4.”⁴ Both 340 and 350 maximum inflation pressure levels are acceptable choices for this tire under paragraph S5.5.4.

f. NHTSA has previously stated that it has retained the requirement that tires

be marked with the maximum permissible inflation pressure only “as an aid in preventing over-inflation,” for which there is no risk in this case.⁵

3. Pirelli stated that the different tire strength test criteria for tires marked with a maximum permissible inflation pressure of 340 kPa vs. 350 kPa do not have any real-world safety relevance in this case.

a. Since these tires are labeled as having a maximum permissible inflation pressure of 340 kPa rather than 350 kPa, the tires would be subject to a different strength test criteria under FMVSS No. 109/139, which they were not meant to satisfy. Due to this labeling error, the appropriate specification to be applied should be that which is applicable to the tire as designed, with a maximum permissible inflation pressure of 350 kPa.

b. FMVSS No. 139, paragraph S6.5 incorporates the tire strength test requirements of FMVSS No. 109, paragraph S5.3. Specifically, under the tire strength test in paragraph S5.3 of FMVSS No. 109 (which is cross-referenced in paragraph S6.5 of FMVSS No. 139), tires with a maximum permissible inflation pressure of 350 kPa should be tested at 180 kPa, while tires with a maximum pressure of 340 kPa should be tested at 220 kPa.⁶ When tested at these pressures using the test procedures specified in FMVSS No. 109, a tire with a maximum permissible inflation pressure of 350 kPa must have a minimum breaking energy of 294 joules, while a tire with a maximum permissible inflation pressure of 340 kPa must have a minimum breaking energy of 588 joules. The subject tires have shown a breaking energy of 455 joules, which far exceeds the requirements for tires marked with a maximum permissible inflation pressure of 350 kPa (*i.e.*, 54.7% above the required threshold).

c. The subject tires were developed for a specific DAG-Mercedes-Benz application and, accordingly, they were subject to and fulfilled a very stringent DAG-Mercedes-Benz homologation process, including all customer requirements related to performance, quality and safety standards.

d. With specific reference to the DAG-Mercedes-Benz applications, the table

below shows the following information for each of the vehicles for which the tires were fitted as original equipment:

- a summary of vehicle weights under “Normal Load” and “Maximum Load” operating conditions;
- the recommended tire inflation pressures for “Normal Load” and “Maximum Load” operating conditions reported on each vehicle’s placard;
- minimum inflation pressures corresponding to each vehicle’s load condition according to the Tire and Rim Association standard; and
- the minimum inflation pressures corresponding to each load condition according to the ETRTO standard (as shown at page 8 of Pirelli’s petition⁷).

e. Either considering the Tire and Rim Association or the ETRTO standard for the maximum tire load-carrying capacity calculation, a tire with a load index of 96 “Standard Load” would be an appropriate fitment for each of the identified vehicles and would be more than sufficient to carry the vehicles’ load both under “Normal Load” and “Maximum Load” conditions. In other words, under the above-reported operating conditions, an “Extra Load” tire with a load index of 100 is not necessary to carry the vehicles’ loads.

f. Considering a tire with a load index of 96 “Standard Load,” and marked with a maximum permissible inflation pressure of 350 kPa, based on the above consideration, for each of the above-mentioned vehicles, the referenced strength test limit, and testing conditions are sufficient to achieve all strength test-related standards.

g. The subject tires are self-supporting “run flat” tires designed with a reinforcing element in the sidewall that carries the vehicle load under zero (0) kPa inflation pressure operating conditions, thereby avoiding the complete deflection of the tire sidewall which may lead to the tire rim roll-off. Thus, even in the event of a failure of the type that the tire strength test was originally intended to address (*i.e.*, road hazards), the subject tires’ run flat design enables the vehicle to maintain stability, drivability, and control. Accordingly, there are no safety consequences in the event of such a failure.

h. The safety of the subject tires has been confirmed through rigorous testing under different testing methods focused to measure resistance to accidental impact damage and tire durability.

Neither petitioner is aware of any warranty claims, field reports, customer complaints, legal claims, or any

³ See *Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance*; 80 FR 31092, June 1, 2015.

⁴ See *Michelin North America, Grant of Petition for Decision of Inconsequential Noncompliance*; 74 FR 10805, March 12, 2009.

⁵ See *Michelin North America, Inc., Grant of Application for Decision that Noncompliance is Inconsequential to Motor Vehicle Safety*; 70 FR 10161, March 2, 2005 (concluding that “the mislabeling issue, in this case, will in no way contribute to the risk of over-inflation because the value actually marked is lower than the value required by the regulations”).

⁶ See FMVSS No. 109 *New pneumatic and certain specialty tires*; Table II.

⁷ The petition is available in the docket at NHTSA–2019–0038–0001.

incidents or injuries related to the original or the replacement tires.

VI. Public Comment

NHTSA received one comment from the public.⁸ The commenter posted anonymously in opposition to NHTSA granting the subject petitions. The commenter argued that if the petitioners' petitions were to be granted, it would protect the manufacturers rather than consumers. The commenter further asserted that most vehicle owners do not know how to properly check and maintain the air pressure in their tires or understand how damaging and dangerous under-inflated tires have the potential to be.

VII. NHTSA's Analysis

A. General Principles

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.⁹ NHTSA also 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."¹⁰ "[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."¹¹

B. NHTSA's Response to the Petitioners' Petitions

NHTSA considered several factors specific to these petitions and disagrees that mismarking the maximum permissible inflation pressure is inconsequential to motor vehicle safety.

Because the subject tires were marked with a maximum permissible inflation pressure of 340 kPa, these tires are required to meet the strength test conditions specified under paragraph S6.5, *Tire Strength*, of FMVSS No. 139, which points to the requirements documented in paragraph S5.3 of FMVSS No. 109. Based on Pirelli's testing and the sidewall picture Pirelli submitted to the Agency on July 11, 2019, the tire failed to meet the applicable requirement since it did not reach the minimum energy levels specified in the FMVSS standard. Specifically, a tire labeled with a maximum permissible inflation pressure of 340 kPa must meet or exceed a strength test requirement of 588 joules. Based on the information provided by Pirelli, the subject tires obtained energy levels up to 486.4 joules, which is significantly below the minimum requirement of 588 joules. NHTSA's regulations have different energy level requirements because a tire with a maximum permissible inflation pressure of 340 kPa is an "Extra Load" tire, whereas a tire with a maximum permissible inflation pressure of 350 kPa is a "Standard Load" tire.

Furthermore, based on the picture and information Pirelli provided to the Agency on July 11, 2019,¹² NHTSA does not believe that the only incorrect marking on the tire was the labeling of a maximum permissible inflation pressure of 340 kPa, as Pirelli described in its petition. The tire was also incorrectly marked as an "Extra Load" tire and the maximum load marked on the subject tires is 800 kg (1764 lbs.). This information correlates to a tire designed and manufactured as a tire having an inflation pressure of 340 kPa according to the 2019 edition of the *Tire and Rim Association Year Book*.¹³ Therefore, the tire appears to be marked in multiple ways that would indicate to users that it is an "Extra Load" tire.

Tires labeled with either a maximum permissible inflation pressure of 340 kPa or 350 kPa are both acceptable choices under FMVSS No. 139, S5.5.4. However, the 340 kPa labeling indicates that a tire can support a load that is 199 lbs. per tire more than a tire marked with a maximum permissible inflation pressure of 350 kPa. Because the subject tires were engineered and manufactured to support the maximum load carrying capacity for a tire marked with a maximum permissible inflation pressure

of 350 kPa, labeling the subject tires with an inflation pressure of 340 kPa creates the risk that the tires will be overloaded. For example, a consumer relying on the incorrect labeling may believe an overload condition of as much as 796 lbs. is safe—even though that overload poses a risk to motor vehicle safety.

The Michelin petition¹⁴ for inconsequential noncompliance cited by the petitioners does not support the petitioners' claims. In the Michelin case, the Agency concluded that the incorrect labeling on the tire would not lead to the tire being inadvertently overloaded since the load on both sidewalls of the tire understates its capability. In contrast, the petitioners' petitions concern tires that were marked with information that would likely result in misuse of the tires, including the risk of overloading the tires. Overloading can lead to tire failure and resulting loss of vehicle control, increasing the risk of a crash.

The Continental Tire the Americas, LLC's petition for inconsequential noncompliance,¹⁵ which the petitioners cited does not support the petitioners' claims. In that petition, the tires in question were labeled with both 300 kPa and 350 kPa. Tires having both of these labels are tested using the same test inflation pressures and must comply with the same energy levels since both pressures are in reference to a "Standard Load" tire. In the petitioners' case, the tires are marked as "Extra Load" tires instead of "Standard Load" tires—thus distinguishing the petitioners' labeling error from the Continental Tire the Americas, LLC's petition.

In the Tireco Inc. petition¹⁶ the maximum permissible inflation pressures in kPa and PSI were reversed (*i.e.*, the kPa number was labeled as PSI and the PSI number was labeled as kPa). The Agency concluded the incorrect labeling of the tire inflation information will not have any consequential effect on motor vehicle safety because it is unlikely a vehicle owner would inflate the tires to the incorrectly labeled pressure because it was so obviously incorrect. Whereas, with respect to the petitioners' error, the incorrect markings on the subject tires are not obviously incorrect, and therefore, are likely to be

⁸ See <https://www.regulations.gov/comment/NHTSA-2019-0038-0004>.

⁹ 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).

¹⁰ *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

¹¹ *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").

¹² <https://www.regulations.gov/document/NHTSA-2019-0038-0005>.

¹³ According to the *Tire and Rim Association Year Book*, 2019 edition, the maximum loading capacity for a tire marked 350 kPa is 710 kg (1565 lbs).

¹⁴ See *Michelin North America, Grant of Petition for Decision of Inconsequential Noncompliance*; 74 FR 10805, March 12, 2009.

¹⁵ See *Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance*, 83 FR 36668, July 30, 2018.

¹⁶ See *Tireco, Inc., Grant of Petition for Decision of Inconsequential Noncompliance*, 76 FR 66353, October 26, 2011.

relied upon by vehicle owners in a way that poses a risk to motor vehicle safety.

The petitioners state that they do not foresee any safety issues due to consumers over-inflating the tires since a maximum permissible inflation pressure of 350 kPa is a higher pressure than the 340 kPa that is erroneously labeled on the subject tires—since the tires were engineered to sustain the higher of the two inflation pressures. NHTSA agrees with the petitioners on this one limited point; however, agreement on this one limited point does not affect NHTSA's ultimate decision to deny the petitions.

According to the Tire and Rim Association Year Book (2019), a tire for this size designation should have a load index of 96. The words "Extra Load" emphasizes that the tire has been marked or labeled with a maximum permissible inflation pressure of 340 kPa which corresponds to a load index of 100. Based on the sidewall pictures, the subject tires were also mistakenly labeled with a load index of 100, which pertains to an "Extra Load" tire or a tire with a maximum permissible inflation pressure of 340 kPa. For these reasons, the Agency believes that the tire was not correctly marked with respect to the load index labeling information and, therefore, misleads the public and vehicle owners as to the appropriate usage of the tire.

Even though the subject tires meet rigorous testing under the FMVSS and other methods employed by DAG-Mercedes-Benz, like the curb test, maximum pressure resistance (static blow out test), rim roll-off test, fatigue test, run-flat mileage test, rapid loss of inflation and lane change test, integrity tests, etc., that does not negate the fact that these tires must also meet the strength test according to FMVSS No. 139, section S6.5.1, *Tire Strength Test for Passenger Car Tires*. Furthermore, Pirelli seems to recognize that the subject tires fail to meet the minimum requirements under the FMVSS for a tire labeled with a maximum permissible inflation pressure of 340 kPa.

Finally, for a tire with a load index of 100, the energy level—as referenced in FMVSS No. 109—is 588 joules on Table I-C Radial Ply Tires for "Extra Load" tires. The subject tires failed to meet this required energy level, pursuant to FMVSS No. 139/FMVSS No. 109.

For the above-stated reasons, the Agency finds that the subject noncompliance is consequential to motor vehicle safety.

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA has determined that DAG-Mercedes-Benz and Pirelli have not met their burden of persuasion that the subject FMVSS No. 139 noncompliance is inconsequential to motor vehicle safety. Accordingly, DAG-Mercedes-Benz's and Pirelli's petitions are hereby denied, and DAG-Mercedes-Benz and Pirelli are consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.)

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2022-26769 Filed 12-8-22; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2021-0109; Notice No. 2022-13]

Hazardous Materials: Frequently Asked Questions—Applicability of the Hazardous Material Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice; response to comments and publication of finalized FAQ.

SUMMARY: On March 22, 2022, PHMSA announced an initiative to convert historical letters of interpretation (LOI) applicable to the Hazardous Materials Regulations that have been issued to specific stakeholders into broadly applicable frequently asked questions (FAQ). As such, PHMSA requested comment on the initiative and for input on the prioritization of future sets of FAQ. During the initial comment period, several commenters requested that PHMSA further clarify the future disposition of the LOI process and address commenters' initial concerns. In response to this feedback, PHMSA published a second notice on June 13, 2022, extending the comment period to July 22, 2022, and announcing that a webinar would be held on June 27, 2022. In this final notice, PHMSA is responding to comments received from stakeholders, summarizing the webinar event, finalizing the first set of FAQ, and announcing the topic for future FAQ.

FOR FURTHER INFORMATION CONTACT:

Arthur Pollack, Standards and Rulemaking Division, (202) 366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

The March 22, 2022,¹ notice announced an initiative to convert historical LOI applicable to the Hazardous Materials Regulations (HMR)² that have been issued to specific stakeholders into broadly applicable FAQ to facilitate better public understanding and awareness of the HMR. PHMSA also requested comment on the initiative and solicited input on the prioritization of future sets of FAQ. FAQ are not substantive rules, themselves, and do not create legally enforceable rights, assign duties, or impose new obligations not otherwise contained in the existing regulations and standards. Instead, the FAQ are intended as an aid to demonstrate compliance with the relevant regulations.

The comment period for the March 22, 2022, notice closed on May 23, 2022; however, on June 13, 2022, PHMSA published a second notice extending the comment period until July 22, 2022, and announcing a public webinar to clarify the FAQ initiative and address concerns expressed by commenters that PHMSA may eliminate the LOI process.

II. Purpose of the FAQ Initiative

This initiative will provide additional value to PHMSA's Online Code of Federal Regulations (oCFR) tool.³ The oCFR tool is an interactive web-based application that allows users to navigate with a single click between all content, including LOI, connected to an HMR citation. The oCFR tool includes the ability to sort, filter, and export search results. Upon completion of this initiative, PHMSA's Office of Hazardous Materials Safety (OHMS) will be able to achieve efficiencies for other more complex or novel requests for LOI and devote resources to other hazardous materials transportation safety projects.

¹ Hazardous Materials: Frequently Asked Questions—Applicability of the Hazardous Material Regulations, 87 FR 16308 (March 22, 2022), available at, <https://www.federalregister.gov/documents/2022/03/22/2022-05958/hazardous-materials-frequently-asked-questions-applicability-of-the-hazardous-material-regulations>; PHMSA-2021-0109-0001.

² 49 CFR parts 171-180.

³ The oCFR tool is available at, <https://www.phmsa.dot.gov/standards-rulemaking/hazmat/phmsas-online-cfr-ocfr>.