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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2019-0038; Notice 1]

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

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

ACTION: Receipt of petitions.

SUMMARY: Daimler AG (DAG) and Mercedes-Benz USA, LLC (MBUSA) collectively referred to as “Mercedes-Benz,” and Pirelli Tire, LLC (Pirelli), have determined that certain Pirelli P7 Cinturato RUN FLAT radial tires installed as original equipment in certain model year (MY) 2018-2019 Mercedes-Benz motor vehicles and 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 Mercedes-Benz filed a noncompliance report dated March 4, 2019. Pirelli subsequently petitioned NHTSA on March 18, 2019, and Mercedes-Benz subsequently 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 receipt of Mercedes-Benz and Pirelli’s petitions.

DATES: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments

and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petitions are granted or denied, notice of the decisions will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

SUPPLEMENTARY INFORMATION:

I. Overview: Mercedes-Benz and Pirelli have determined that certain Pirelli P7 Cinturato RUN FLAT radial tires installed as original equipment in certain MY 2018-2019 Mercedes-Benz motor vehicles and 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 it on March 15, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and 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*.

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*.

Mercedes-Benz and Pirelli are further referred to as the petitioners.

This notice of receipt of the petitioners' petitions is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

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, are potentially involved:

- 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

¹ The date on the petition is March 27, 2018. We believe the petitioner made an error and the intended date is March 27, 2019.

- 2019 Mercedes-Benz E450 Coupe
- 2019 Mercedes-Benz E450 4MATIC Coupe

III. 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 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 inflation pressure of 350 kPa.

IV. Rule Requirements: Paragraph S5.5(c) of FMVSS No. 139, includes the requirements relevant to this petition. Each tire must be marked on each sidewall with the information specified in paragraph S5.5(c): the maximum permissible inflation pressure, subject to the limitations of S5.5.4 through S5.5.6 of this standard. Specifically, the maximum permissible inflation pressure is subject to the limitations of paragraph S5.5.4 of FMVSS No. 139.

V. Summary of Petition: The following views and arguments presented in this section, V. Summary of this petition, are the views and arguments provided by the petitioners. They have not been evaluated by the Agency and 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.

Background: On January 15, 2019, DAG received preliminary information from the Korea Automobile Testing & Research Institute (KATRI), that when KATRI tested the subject tires installed on a Mercedes-Benz vehicle, the subject tires reportedly did not meet the performance requirements for the strength test. When the subject tire was tested according to the

applicable Korean standard (which Mercedes-Benz says is equivalent to FMVSS No. 139 in all material respects), using the test specifications applicable for 340 kPa (the maximum tire pressure that was indicated on the sidewall) the tire reportedly failed the strength test. DAG informed Pirelli Deutschland GMBH about the KATRI testing result on January 18, 2019.

On February 7, 2019, Pirelli was advised by Pirelli Deutschland GMBH that it was investigating an informal report from an original equipment manufacturer (OEM) customer, Mercedes-Benz, that KATRI allegedly tested the subject tire (fitted onto a DAG vehicle) and that the tire reportedly did not meet the tread strength (breaking energy) requirement under the Korean Motor Vehicle Safety Standard (KMVSS) performance standard “A,” which Pirelli says in substance is similar to the tire strength test contained in FMVSS No. 109 and FMVSS No. 139. Pirelli’s investigation concluded that the subject tires were erroneously marked with a maximum permissible inflation pressure of 340 kPa. As a consequence of using test criteria applicable to a 340 kPa marked tire, however, the KATRI test indicated a test failure.

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

1. The Petitioners cited the following noncompliance petitions that the Agency has granted previously:
 - a. 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. Mercedes-Benz and Pirelli 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. Mercedes states 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.
 - a. These 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, 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 (and FMVSS No. 109, paragraph S5.2). These tires meet the tire strength test specified for tires with a maximum inflation pressure of 350 kPa, as these tires were designed, under paragraph S6.5 (and FMVSS No. 109, paragraph S5.3).

- b. Since these 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 cross-references FMVSS No. 109, paragraph S5.3), which they were not meant to satisfy.
- c. The mislabeling of the 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. As well, 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 tire is correct and, in fact, that information understates the load-carrying capacity of the tire. 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) guides, these tires have a load-carrying capacity that is higher by 15 to 20 kg.
- e. In accordance with FMVSS No. 110, all vehicles must be equipped with a placard bearing information regarding the tires, the loading, and the recommended inflation pressures, which have to be considered when choosing the tires to fit as a replacement on each vehicle. Since the design maximum

permissible inflation pressure of 350 kPa is higher than the labeled one of 340 kPa, the subject tire is always compliant to the placard.

- f. 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, where one tire 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. *See* 80 FR 31092 (June 1, 2015), Continental Tire the Americas, LLC, Grant of Petition for Decision of Inconsequential Noncompliance. 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.” *See* 74 FR 10806. Both 340 and 350 maximum inflation pressure levels are acceptable choices for this tire under paragraph S5.5.4.
- g. 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. *See* 70 FR 10161 (March 2, 2005), Michelin North America, Inc., Grant of Application for Decision that Noncompliance is Inconsequential to Motor Vehicle Safety, 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”.

3. Pirelli stated that the different tire strength test criteria for tires marked with a maximum permissible inflation pressure of “340” vs. “350” 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. (See FMVSS No. 109, Table II). 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 pressure of 350 kPa (i.e., 54.7% above the required threshold).

- c. The subject tires were developed for a specific Mercedes-Benz application and, accordingly, they were subject to and fulfilled a very stringent OEM homologation process, including all customer requirements related to performance, quality and safety standards.
- d. With specific reference to the 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 the vehicles’ placard;
 - minimum inflation pressures corresponding to each vehicles’ load condition according to TRA standard; and
 - the minimum inflation pressures corresponding to each load condition according to ETRTO standard, which the tire is intended to be referred to.

Car model		Loads on FRONT axle		Load on front tire and recommended inflation pressure on placard	
		Normal load	Maximum load	Normal load	Maximum load
E400 Coupé	Axle / Tire load	1126 kg	1160 kg	563 kg	580 kg
	recommended inflation pressure (up to 100 mph)*			33 psi (228 kPa)	33 (228 kPa)
	Min inflation pressure according to ETRTO**			190 kPa	200 kPa
E400 Coupé - 4MATIC	Axle / Tire load	1191 kg	1225 kg	595,5 kg	612,5 kg
	recommended inflation pressure (up to 100 mph)*			33 psi (228 kPa)	33 psi (228 kPa)
	Min inflation pressure according to ETRTO**			210 kPa	210 kPa
	Min inflation pressure according to TRA			29 psi	29 psi
E450 Coupé	Axle / Tire load	1126 kg	1160 kg	563 kg	580 kg
	recommended inflation pressure (up to 100 mph)*			33 psi (228 kPa)	33 psi (228 kPa)
	Min inflation pressure according to ETRTO**			190 kPa	200 kPa
E450 Coupé - 4MATIC	Axle / Tire load	1191 kg	1225 kg	595,5 kg	612,5 kg
	recommended inflation pressure (up to 100 mph)*			34 psi (234 kPa)	35 psi (241 kPa)
	Min inflation pressure according to ETRTO**			210 kPa	210 kPa
	Min inflation pressure according to TRA			29 psi	29 psi
E400 Cabiolet	Axle / Tire load	1121 kg	1160 kg	560,5 kg	580 kg
	recommended inflation pressure (up to 100 mph)*			33 psi (228 kPa)	33 psi (228 kPa)
	Min inflation pressure according to ETRTO**			190 kPa	200 kPa
E400 Cabiolet - 4MATIC	Axle / Tire load	1186 kg	1225 kg	593 kg	612,5 kg
	recommended inflation pressure (up to 100 mph)*			33 psi (228 kPa)	33 psi (228 kPa)
	Min inflation pressure according to ETRTO**			200 kPa	210 kPa
	Min inflation pressure according to TRA			29 psi	29 psi
E450 Cabiolet	Axle / Tire load	1121 kg	1160 kg	560,5 kg	580 kg
	recommended inflation pressure (up to 100 mph)*			33 psi (228 kPa)	34 psi (234 kPa)
	Min inflation pressure according to ETRTO**			190 kPa	200 kPa
E450 Cabiolet - 4MATIC	Axle / Tire load	1186 kg	1225 kg	593 kg	612,5 kg
	recommended inflation pressure (up to 100 mph)*			34 psi (234 kPa)	35 psi (241 kPa)
	Min inflation pressure according to ETRTO**			200 kPa	210 kPa
	Min inflation pressure according to TRA			29 psi	29 psi

Notes:

* for speed >100 mph the pressure should be increased by 4 psi

** considering a vehicle Vmax of 210 km/h

Front axle maximum camber under normal load conditions = 1,5° (including tolerances)

Front axle maximum camber under maximum load conditions = 1,7° (including tolerances)

worst cases

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

- f. Considering a tire with load index 96 “Standard Load,” and marked with a maximum permissible inflation pressure of 350 kPa, basing 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, their 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 these tires has been confirmed through rigorous testing under different testing methods focused to measure resistance to accidental impact damage and tire durability, as summarized below:
- **Curb test according to Mercedes-Benz test methodology.** This test was developed to verify the ability of a tire to resist road hazards. The subject tire fully meets OEM requirements showing performance in line with the competitor and better than a standard tire compliant to maximum permissible inflation pressure of 340 kPa.
 - **Maximum Pressure Resistance (static blow out test) according to Pirelli methodology.** This test is designed to measure the maximum

inflation pressure a pneumatic tire is able to resist. The test results demonstrate that the subject tire is able to resist an inflation pressure of more than 3000 kPa.

- **Rim roll-off test according to VDA (Verband Deutscher Automobilhersteller) methodology for run flat tires.** This test is designed to verify the maximum lateral acceleration achievable while driving in a bend with the front radially external tire at zero (0) kPa inflation pressure.
- **Fatigue Test with cleat after artificial aging according to FORD methodology.** This test is designed to verify the structural integrity of the tire to a very intensive stress in the tread and in the sidewall area.
- **Run flat mileage test according to Mercedes-Benz test methodology.** This test is designed to verify the maximum mileage that the tire is able to run in the “flat running” condition (meaning with zero (0) kPa inflation pressure due to rim valve not in place for the duration of the “flat running” phase of the test). It is conducted at a maximum speed of 80 km/h and limiting the maximum lateral acceleration to 0.4g. The results demonstrate the capability of the tire to carry the vehicle partial load (corresponding for this test to 80% of the vehicle maximum load) for at least 150 km and the vehicle maximum load for 59 km, ensuring the ability to maintain full control of the vehicle even if one tire is completely deflated. (A run flat

mileage test is clearly not foreseen by vehicle manufacturers for standard (non-run flat) tires.)

- **Rapid loss of inflation and lane change test** performed with the subject run-flat tire, with the aim to simulate the event of a sudden air-loss caused by tread damage. This test demonstrates that the driver is able to easily control the vehicle, performing a lane change to avoid an obstacle placed on the vehicle's trajectory and to safely stop it.
- **Integrity tests according to Pirelli methodology** confirm the high safety standards to which the subject tire has been designed and is able to achieve.

To summarize, even if these tires had been intended to meet the tire strength test requirements applicable to a tire with a maximum permissible inflation pressure of 340 kPa, rather than subjected to such standard as an unintended collateral consequence of the labeling error, any inability of this particular tire to satisfy the criteria of the tire strength test is inconsequential to motor vehicle safety.

Neither petitioner is aware of any warranty claims, field reports, customer complaints, legal claims, or any incidents or injuries related to the original or the replacement tires. The complete petitions and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov> and by following the online search instructions to locate the docket number as listed in the title of this notice.

Pirelli and Mercedes concluded by expressing the belief 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.

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, any decision on these petitions only applies to the subject tires and vehicles that Pirelli and Mercedes-Benz no longer controlled at the time it determined that the noncompliance existed. However, any decision on these petitions does not relieve vehicle and equipment 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 Pirelli and Mercedes-Benz 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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