of 49 CFR 571.116, Federal Motor Vehicle Safety Standard (FMVSS) No. 116, ''Motor vehicle brake fluids.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), DOT Chemical has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the petition was published, with a 30 day comment period, on April 14, 2005 in the **Federal Register** (70 FR 19837). NHTSA received one comment.

Affected are a total of approximately 50,000 containers of DOT 4 brake fluid, lot numbers KMF02 and KMF03, manufactured in June 2004. FMVSS No. 116 requires that, when tested as referenced in S5.1.7 ''Fluidity and appearance at low temperature,'' S5.1.9 ''Water tolerance,'' and S5.1.10 ''Compatibility,'' the brake fluid shall show no crystallization or sedimentation. The subject brake fluid shows crystallization and sedimentation when tested as referenced in S5.1.7 at −40 °F and −58 °F, sedimentation when tested as referenced in S5.1.9 at −40 °F, and crystallization when tested as referenced in S5.1.10 at −40 °F.

DOT Chemical believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. DOT Chemical states that there are fiber-like crystals in the fluid, which are borate salts, and

> are a natural part (no contamination) of DOT 4 brake fluid production (just fallen out of solution in some packaged goods) and have not demonstrated any flow restrictions even at extended periods of low temperatures at −40 °F. Furthermore, when the fluid is subjected to temperatures in a normal braking system, the crystals go back into solution in some cases not to reappear at all at ambient temperatures.

NHTSA received one public comment from a private individual. The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety. The public comment does not address this issue, and therefore has no bearing on NHTSA's determination.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety.

NHTSA notes that we granted petitions for determinations of inconsequential noncompliance of FMVSS No. 116 to Dow Corning Corporation (59 FR 52582, October 18, 1994) and to First Brands Corporation (59 FR 62776, December 6, 1994). In the case of Dow, the FMVSS No. 116 noncompliance arose from a ''slush-like crystallization'' that dispersed ''under slight agitation or warming.'' NHTSA accepted Dow's argument that its ''slush-like crystallization'' does not consist of ''crystals that are either water-based ice, abrasive, or have the potential to clog brake system components.'' NHTSA concurred with Dow's conclusion that ''the crystallization that occurred ought not to have an adverse effect upon braking.'' In the case of First Brands, the FMVSS No. 116 noncompliance arose from a ''soft non-abrasive gel'' that also dispersed under slight agitation or warming.

NHTSA determines that facts leading to the grants of the inconsequential noncompliance petitions of Dow and First Brands are not analogous to the facts in DOT Chemical's situation. In contrast, DOT Chemical's noncompliance results from ''fiber-like crystals'' made of borate salts. These borate salt crystals did not disperse under slight agitation or warming, but had to be physically removed by filtration. DOT Chemical asserts that ''[f]iltration, using Whatman #40 filter paper (25–30 micron particle size) removed all crystals. The crystals are approximately 30–50 microns in width and 3–5 mm in length.'' DOT Chemical does not explain how it can assure that crystals smaller than 25 microns in width did not remain in the brake fluid.

Even assuming that all larger-sized crystals were removed from the fluid, NHTSA is concerned that crystals that are of a size smaller than 25 microns by 3–5 mm would remain in the brake fluid. The thread-like nature of this type of crystallization has the potential to clog brake system components, particularly in severe cold operation conditions. Impurities such as these in the brake system may cause the system to fail, *i.e.*, to lose the ability to stop the vehicle over time due to the accumulation of compressible material in the brake lines. These impurities may also result in the failure of individual brake system components due to the corrosive nature of the contaminants themselves.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, DOT Chemical's petition is hereby denied.

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

Issued on: July 8, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14033 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21270; Notice 2]

Mercedes-Benz USA LLC, Grant of Petition for Decision of Inconsequential Noncompliance

Mercedes-Benz USA LLC (Mercedes) has determined that the designated seating capacity placards for certain vehicles that it produced in 2004 do not comply with S4.3(b) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, ''Tire selection and rims.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mercedes has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on June 2, 2005 in the **Federal Register** (70 FR 32398). NHTSA received no comments.

Affected are a total of approximately 1,576 SLK class vehicles produced between March 24, 2004 and December 15, 2004. S4.3(b) of FMVSS No. 110 requires that a ''placard, permanently affixed to the glove compartment door or an equally accessible location, shall display the * * * [d]esignated seating capacity * * *.'' The noncompliant vehicles have placards stating that the seating capacity is four, when in fact the seating capacity is two.

Mercedes believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Mercedes states:

> * * * most, if not all, consumers will look at the number of seats in the vehicle and the number of safety belts to determine its capacity, rather than looking at the tire information placard. Because the SLK Roadster is a two-seater vehicle with no rear seat, it is immediately obvious that the seating capacity is two and not four, and that it is not possible to seat four occupants in the vehicle.

Mercedes further states:

> Because it is impossible for the SLK to hold four occupants, the seating capacity labeling error has no impact on the vehicle capacity weight, recommended cold tire inflation

pressure and recommended size designation information. All of this information is correct on the tire information placard. Moreover, the purpose of providing seating capacity information is to prevent vehicle overloading. Because the SLK holds only two occupants, it is not possible to overload the vehicle due to reliance on the tire information placard.

NHTSA agrees with Mercedes that the noncompliance is inconsequential to motor vehicle safety. As Mercedes states, because the vehicles are two-seaters with no rear seat, it is obvious that the seating capacity is two and not four. Therefore it is impossible to overload the vehicles by relying on the incorrect designated seating capacity information. As Mercedes further points out, the other information on the tire information placard is correct. Mercedes has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Mercedes' petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

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

Issued on: June 8, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14034 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–21268; Notice 2]

The Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

The Goodyear Tire & Rubber Company (Goodyear) has determined that certain tires it manufactured in 2005 do not comply with S6.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on May 31, 2005, in the **Federal Register** (70 FR 31006). NHTSA received one comment.

Affected are a total of approximately 958 Wrangler AT tires produced from March 7, 2005 to April 4, 2005. S6.5(b) of FMVSS No. 119 requires that each tire shall be marked with ''[t]he tire identification number required by part 574 of this chapter.'' The noncompliant tires should have been marked ''DOT PJ10 MPH0 wwyy,'' but were actually marked with one of the following serial codes: DOT 1085 PJ10 MPH0, DOT 1086 PJ10 MPH0, DOT 2013 PJ10 MPH0, or DOT 2014 PJ10 MPH0.

Goodyear believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Goodyear states that the mislabeling creates no unsafe condition. Goodyear further states that all of the markings related to tire service including load capacity and corresponding inflation pressure are correct, and that the tires meet or exceed all applicable FMVSS performance requirements. Goodyear says that when consumers register these tires in Goodyear's registration database, they can be identified in the unlikely event that they would be involved in a tire recall.

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety. The mislabeling does not create an unsafe condition, nor will it result in unsafe use of the tires. As Goodyear states, when consumers register these tires in Goodyear's registration database, they can be identified in the event of a recall. In addition, the tires meet or exceed all of the performance requirements of FMVSS No. 119, and all other informational markings as required by FMVSS No. 119 are present. Goodyear has corrected the problem.

One comment favoring denial was received from a private individual. The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety. The comment does not address this issue, and therefore has no bearing on NHTSA's determination.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

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

Issued on: July 8, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14035 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–364 (Sub-No. 10X)]

Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—in Kent County, MI

On June 28, 2005, Mid-Michigan Railroad, Inc. (MMRR), filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. MMRR seeks to discontinue service over a 1.50-mile line of railroad, extending from milepost 157.97 on MMRR's east-west rail line to the end of the line in Kent County, MI.[1] The line traverses U.S. Postal Service ZIP Codes 49503 and 49504, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the possession of MMRR will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 14, 2005. Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must

[1] The line was leased from the Central Michigan Railway Company (CMRY) by the Grand Rapids Eastern Railroad, Inc. (GRE), in 1993. *See Grand Rapids Eastern Railroad, Inc.—Purchase, Lease and Operation Exemption—Rail Lines of Central Michigan Railroad Company*, Finance Docket No. 32297 (ICC served on July 26, 1993). GRE subsequently merged into MMRR. *See RailTex, Inc., Mid-Michigan Railroad, Inc., Michigan Shore Railroad, Inc., and Grand Rapids Eastern Railroad, Inc.—Corporate Family Transaction Exemption*, STB Finance Docket No. 33693 (ICC served Jan. 20, 1999). CMRY continues to own the assets that MMRR operates over, including, but not limited to, the track, ties, ballast, other track material and land. MMRR has no authority to alter, remove or dispose of any of the assets that are on the line. MMRR seeks discontinuance because The Grand Rapids Press, the only shipper on the line, has stopped using the line, moved its facility to another location and does not oppose the discontinuance.