submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under TitleII of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 29, 2004.

Betty Shackleford,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960 the table is amended by adding alphabetically the following inert ingredient.

§ 180.960 Polymer exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS NO.
* * * * *	
Isodecyl alcohol ethoxylated (2–8 moles) polymer with chloromethyl oxirane, minimum number average molecular weight (in amu) 2,500.	None
* * * * *	

* * * * *

[FR Doc. 04–18574 Filed 8–12–04; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10856; Notice 3]

RIN 2127–AI29

Motor Vehicle Safety; Disposition of Recalled Tires

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

ACTION: Final rule.

SUMMARY: This document implements section 7 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act by adding regulations that provide that a manufacturer's remedy program for the replacement of defective or noncompliant tires shall include a plan addressing how to prevent, to the extent

reasonably within the manufacturer's control, the replaced tires from being resold for installation on a motor vehicle, and also how to limit, to the extent reasonably within the manufacturer's control, the disposal of replaced tires in landfills. In addition, pursuant to section 7, this rule also requires the manufacturer to include information about the implementation of the plan in quarterly reports to the Secretary about the progress of notification and remedy campaigns.

EFFECTIVE DATE: This final rule will take effect on November 12, 2004.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than September 27, 2004.

ADDRESSES: Petitions for reconsideration may be submitted in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Petitions for reconsideration may also be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/info'' to obtain instructions for filing your petition electronically.

Regardless of how a petition is submitted, the docket number of this document should be referenced in that petition.

You may call Docket Management at 202–366–9324. You may visit the Docket from 9 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For technical issues: Mr. George Person, Office of Defects Investigation, NHTSA. Telephone 202–366–5210. For legal issues: Ms. Jennifer Timian, Office of Chief Counsel, NHTSA. Telephone 202–366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

On November 1, 2000, the TREAD Act, Public Law 106–414, 114 Stat. 1800, was enacted. The statute was, in part, a response to congressional concerns regarding the manner in which various entities dealt with defective motor vehicles and motor vehicle equipment, including tires. During congressional consideration of the bill that eventually was adopted as the TREAD Act, there had been media reports that some persons were selling defective Firestone ATX or Wilderness AT tires that had been returned to dealers for replacement under an ongoing safety recall.

Pre-TREAD Act law, 49 U.S.C. 30120(d), required the manufacturer of defective or noncompliant tires to file with the Secretary a copy of the manufacturer's program for remedying safety defects and noncompliances with Federal motor vehicle safety standards. But section 30120(d) did not require the manufacturer's program to include a plan for the disposition or disposal of recalled tires that were returned by the tire owners or purchasers.

Section 7 of the TREAD Act expanded 49 U.S.C. 30120(d) to require a manufacturer's remedy program for tires to include a plan for preventing, to the extent reasonably within the manufacturer's control, the resale of replaced tires for use on motor vehicles, as well as a plan for the disposition of replaced tires other than in landfills, particularly through methods such as shredding, crumbling, recycling, recovery, or other ''beneficial non-vehicular uses.'' Further, Section 7 requires the manufacturer to include information about the implementation of its plan in quarterly reports that it is required to make to the Secretary about the progress of its notification and remedy campaigns involving tires.

II. The New Regulatory Provisions

In order to implement section 7's new requirements, we are amending our regulations governing ''Defect Notification,'' 49 CFR part 573, at sections 573.6 and 573.7. These amendments are somewhat different from those we originally proposed in our December 18, 2001, Notice of Proposed Rulemaking (NPRM) on Disposition of Recalled Tires (66 FR 65165), primarily based upon comments we received in response to the NPRM and to the Supplemental Notice of Proposed Rulemaking (''SNPRM'') that we issued on July 26, 2002 (67 FR 48852). We are retaining the proposed regulatory structure that requires creation of manufacturers' plans for all tire safety recalls, regardless of size; prompt incapacitation of all returned recalled tires by retail outlets; and ''exceptions'' reporting, by tire dealers under the manufacturers' control to manufacturers, and then by manufacturers in the quarterly reports required by 49 CFR 573.7. However, in response to the comments, we are modifying the mechanisms for disposing of recalled tires and the contents of the proposed reports. The subsection numbers in the regulatory have been redesignated, as a result of the issuance of our Early Warning Reporting rule. *See* 67 FR 45872 (July 10, 2002), and we are using the resulting new section numbers in the regulatory text. Also, we have reorganized some of the subsections to improve their clarity.

In the NPRM, we proposed requirements for both manufacturers and tire dealers. We proposed to require manufacturers that conduct tire recalls to submit programs and file reports with us about their plans for incapacitating and disposing of recalled tires that addressed three major concerns: (1) Ways of assuring that entities replacing the tires are aware of the legal prohibitions on the sale of defective or noncompliant tires; (2) mechanisms to impair recalled tires so that they cannot be used on a vehicle; and (3) the disposition of recalled tires, consistent with applicable laws and in ways that minimize their deposit in landfills. The manufacturers would have to implement those plans. In addition, we proposed to require that tire dealers render returned recalled tires unsuitable for use on the day the tires are removed from the vehicle or from stock, and then dispose of them in accordance with manufacturers' plans and applicable laws, in ways that minimize the deposit of the tires in landfills. We also proposed to require ''exceptions reporting,'' by manufacturer-controlled tire outlets to manufacturers monthly, and by manufacturers to NHTSA in quarterly reports, to identify aggregate numbers of recalled tires that have not been rendered unsuitable for reuse or that have been disposed of in violation of applicable state and local requirements, and that describe failures by tire outlets to act in accordance with manufacturers' directions for disposing of recalled tires, including an identification of the outlets in question. We sought comments on the reporting burdens. Subsequently, in the SNPRM, we sought comments on an alternative proposal by the Rubber Manufacturers Association (RMA) that, among other things, would have restricted the applicability of the final rule to those recalls that involve more than 10,000 tires and that would not have required ''exceptions reporting'' by manufacturers to NHTSA.

After considering the comments on the NPRM and the SNPRM, we have decided to retain the basic outlines of the notification and reporting requirements for manufacturers and for tire outlets that we originally proposed. We also have concluded that, under section 7 of TREAD, the notification and reporting requirements in §§ 573.6(c)(9) and 573.7(b)(7), set out below, must apply to all remedy programs involving the replacement of tires, rather than only to those remedy programs involving 10,000 or more tires, as suggested by RMA. However, in response to RMA's suggestions, we are modifying the notification requirement proposed for § 573.6(c)(9) to permit

manufacturers a choice of notifying retail outlets of the contents of their programs for the disposition of recalled tires either annually or for each tire recall that they conduct, and we have decided to permit permanent disposition of the returned recalled tires by either the manufacturer (normally but not necessarily from one or more central locations) or the retail outlets, at the manufacturer's option.

We are retaining the requirement that manufacturers notify retail outlets that they own, franchise or authorize to replace tires of the statutory prohibition on the resale or reintroduction into commerce of returned recalled tires. If the manufacturer elects to dispose of returned recalled tires from one or more central locations and requires retail outlets to send recalled tires to those locations promptly, we are not requiring the manufacturer to notify retail outlets of the requirement to dispose of the tires in accordance with applicable state and local regulations. If the manufacturer elects to have the retailers dispose of the returned recalled tires, we are requiring the manufacturers to notify the retail outlets of that requirement. However, because state and local requirements vary, we are not requiring manufacturers to advise the retail outlets of the particular requirements that are applicable in the jurisdictions in which they are operating.

For safety reasons, we have decided to retain a requirement for prompt incapacitation of returned recalled tires by retail outlets and others under the manufacturer's control that receive such tires from consumers, regardless of whether the retail outlets return the recalled tires to the manufacturer for disposition or dispose of the recalled tires themselves. However, we have modified the proposed requirement to permit retail outlets to incapacitate recalled tires within 24 hours of receipt rather than by the close of business on the day of receipt.

Finally, we have decided to retain the requirement for ''exceptions reporting,'' from retail outlets under the manufacturers'' control to manufacturers and from manufacturers to NHTSA, of deviations from the manufacturer's plan and/or failures to destroy returned recalled tires within the specified timeframe. In response to a suggestion by RMA, we are modifying the requirement by permitting retail outlets to report any such deviations to manufacturers either on a monthly basis or within 30 days of the occurrence of the deviation.

III. Discussion of Comments and Issues Raised Therein

We received five comments on the NPRM, including three from trade associations (the Rubber Manufacturers Association (''RMA'')) (two comments), the National Solid Waste Management Association (''NSWMA'') and the National Automobile Dealers Association (''NADA'')) and one from a vehicle manufacturer (Ford Motor Company (''Ford'')) that recently conducted a number of recalls of tires manufactured by other companies that were installed on its vehicles. RMA's second comment on the NPRM was filed after we met with RMA representatives on March 26, 2002. (That meeting was documented in a memorandum that we docketed on April 1, 2002, and resulted in our publication of the SNPRM.) We received six comments on the SNPRM, from three trade associations: RMA (two comments), NADA, and the Tire Industry Association (''TIA''), and one consumer advocacy group, Advocates for Highway and Auto Safety (''Advocates'') (two comments). The second comments filed by both RMA and Advocates are responses to comments filed by others.

The comments are discussed below. Because the same issues were discussed in both sets of comments, we have organized our discussion by issue rather than chronologically or by commenter.

A. Contents of Manufacturers' Notices

We proposed that, for each tire recall, manufacturers include language notifying all entities that are authorized to replace the recalled tires of the prohibitions and notifications in the Safety Act as they apply to recalled tires, specifically including the ban on the sale of new defective or noncompliant tires (49 U.S.C. 30120(i), *see also* 49 CFR 573.11); the prohibition on the sale of new and used defective and noncompliant tires (49 U.S.C. 30120(j), *see also* 49 CFR 573.12; and the duty to notify NHTSA of any knowing and willful sale of a new or used recalled tire for use on a motor vehicle (49 U.S.C. 30166(n), *see also* 49 CFR 573.10). The manufacturer was to provide informational materials on the prohibitions to all authorized replacement outlets. For those outlets that are company-owned or otherwise subject to the control of the manufacturer, the manufacturer was also to provide written direction to the person in charge of each outlet to comply with the law and to notify all employees involved in replacing, handling or disposing of recalled tires of the requirements.

RMA stated that there was no statutory requirement for manufacturers to make these notifications, but acknowledged that manufacturers could include such notifications in the materials they provide to dealers. NADA stated that ''perhaps'' manufacturer instructions should reference these prohibitions. Both RMA and NADA argued that retailers who are adequately compensated by manufacturers for properly handling recalled tires would have an economic incentive for complying with the requirements.

We have decided to retain the proposed notification requirements, and to require that they be furnished to retail outlets either annually or for each individual tire recall that a manufacturer conducts. The requirements further the safety objectives of section 7 of the TREAD Act, which broadly refers to preventing replaced tires from being resold, and manufacturers have acknowledged that they are feasible. Given that manufacturers must already notify dealers of decisions to conduct safety recalls and of procedures for implementing a remedy, it will not be difficult to add to those notices short instructions that satisfy these requirements.

We are also retaining the proposed requirement that manufacturers notify all of their retail outlets about the means for altering recalled tires to prevent their re-use and about the need to dispose of recalled tires in environmentally sound manner. Again, given that manufacturers must already notify retail outlets of decisions to conduct tire safety recalls, it will not be difficult to add to those notices short instructions regarding compliance with the prevention of resale and the environmental aspects of section 7 of the TREAD Act.

Based on our consideration of RMA's request, we are modifying the proposed notifications to permit manufacturers to select among alternative disposition procedures. Manufacturers may choose to manage the collection and disposition of recalled tires, which may involve having retail outlets return the tires to a designated location(s) or may involve employing contractors to collect the tires from the retail outlets. Or, manufacturers may choose to authorize retail outlets to dispose of recalled tires themselves. In the latter case, manufacturers must advise retail outlets of the requirement that they comply with applicable state and local laws and regulations governing the disposition of tires. The manufacturer may establish differing procedures regarding the disposition of recalled tires on a recall-

by-recall basis, so long as the manufacturer's plan for each such recall includes all of the elements of these regulations (§ 573.6(c)(9)). The choice of approaches is up to the manufacturer; however, at a minimum, a manufacturer must notify retail outlets about tire disposition programs annually.

B. RMA Proposal To Limit Reporting Requirements to Recalls Involving at Least 10,000 Tires

RMA proposed to limit the applicability of this rule to recalls that involve at least 10,000 tires, stating that the previously existing requirements of part 573 were sufficient for recalls of lesser magnitude. According to figures submitted by RMA in its comments, this would exempt most tire recalls from the requirements of this rule. Other commenters did not take a position on this aspect of RMA's proposal; however, Advocates argued that section 7 of TREAD applies to all recalled tires that are within the manufacturer's control, regardless of the quantity of tires covered by the recall.

Although we understand RMA's desire to minimize reporting requirements, we decline to grant this RMA request. Section 7 of the TREAD Act covers all tire recalls. That section states that a manufacturer's remedy program involving the replacement of tires shall include a plan addressing how to prevent replaced tires from being resold for installation on a motor vehicle and how to limit the disposal of replaced tires in landfills, particularly through beneficial non-vehicular uses. Section 7 also states that the manufacturer shall include information about the implementation of such plans with each quarterly report to NHTSA regarding the progress of the recall campaign. See 49 U.S.C. 30120(d). The use of the phrase ''shall include'' in both the sentence regarding the establishment of the plan and the sentence regarding quarterly reporting demonstrates that these elements are mandatory rather than optional. 2A Sutherland, Statutory Construction (6th Ed. Singer, 2000) at § 46.06, citing *United States* v. *Menasche*, 348 U.S. 528 (1955) and *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). The RMA proposal would eliminate the need for a plan for most tire recalls. In any event, we do not agree that existing part 573 is sufficient for small volume recalls because it does not contain any provisions regarding disposition of recalled tires or any provisions for reporting of failures to implement recall plans. Therefore, we have concluded that the notification and reporting requirements in §§ 573.6(c)(9) and 573.7(b)(7) will apply to all remedy programs involving the replacement of tires.

However, in response to RMA's comments, we are modifying the proposed reporting requirement in § 573.6 to permit manufacturers a choice of notifying retail outlets of their programs either annually or for each tire recall they conduct. We do not see a reason to restrict this choice to recalls covering a particular number of tires.

C. Disposition By Tire Outlets or at a Central Location

RMA suggested that manufacturers be permitted the option of requiring tire outlets to return recalled tires to the manufacturer for disposal, rather than having the outlets dispose of the tires themselves. RMA asserted that this would enhance public safety and permit accurate assessments of the progress of recalls by allowing for systematic accounting for collected recalled tires. RMA also claimed that this would permit manufacturers to test recalled tires to analyze their performance and potentially improve their design and would permit manufacturers to return to service any tires that had been included in the recall by mistake or that did not contain the defect or noncompliance that was the subject of the recall. RMA stated that linking reimbursement for replacement of recalled tires to a requirement to return the recalled tires would create an incentive for retail outlets to return recalled tires to the manufacturer.

NADA, representing automobile dealers, supported this aspect of RMA's proposal, stating that manufacturer plans normally should involve ''take-back programs'' and that manufacturers rather than retailers should physically arrange for tire disposition or, alternatively, instruct retailers to use specific transporters and third-party management facilities. NADA noted that this would give manufacturers more control over tire disposition and thus make it more likely that tires will be disposed of in an environmentally sound manner. The Tire Industry Association (TIA), representing tire dealers, wholesalers and distributors, and others, also supported RMA's proposal. Advocates did not object to this aspect of RMA's proposal.

We have decided to permit manufacturers the option of disposing of tires centrally or having tire outlets dispose of tires. We agree with RMA and NADA that there are advantages to the manufacturers' managing the disposition of the tires, rather than having the tire outlets do so, and that linking reimbursement to return of the tires will encourage tire outlets to return the tires to the manufacturers. We also agree that there are advantages to placing disposal responsibility on the manufacturers. This should improve accounting for the progress of the recall, and thereby contribute to safety.

D. Incapacitation of Tires at Retail Outlets

RMA proposed to eliminate the requirement for tire outlets to incapacitate those returned recalled tires that they ship to the manufacturer's designated central location, and also to modify the requirement for tire outlets to destroy by the close of business on the day of receipt those recalled tires that they dispose of themselves. This issue engendered the most controversy of any issue raised in this rulemaking.

RMA argued that requiring retailers to incapacitate tires that are returned to the manufacturer would not increase safety, and that eliminating the requirement would permit manufacturers to do research and testing on the returned tires, and also to confirm that the returned tires were in fact subject to the recall and to return improperly returned tires to service. RMA also claimed that in some cases tire outlets were not sufficiently expert to determine whether tires are included in recalls.

NADA and TIA supported this aspect of RMA's proposal. NADA commented that it made no sense to require dealers to destroy tires in the event of a ''manufacturer take-back,'' and that, for those recalls in which retail outlets dispose of returned recalled tires, the requirement should be modified to permit retail outlets to destroy returned tires within 24 hours of receipt rather than by the close of business on the day of receipt. TIA claimed that destroying tires could be a needless waste of fully compliant or non-defective tires that are erroneously removed from vehicles.

Ford stated, in commenting on the NPRM, that it agreed that preventing the inadvertent reuse of tires that are subject to a recall campaign is important and that, in communications to its affected dealers regarding its owner notification campaign to replace Firestone Wilderness AT tires, Ford requested that its dealers render tires unusable as soon as they were removed from the vehicle.

Advocates opposed RMA's proposal, arguing that the interest of safety requires immediate destruction of all returned recalled tires and that retail outlets are capable of determining from the labeling on a tire whether the tire was included in the recall, by reason of experience and training. Advocates acknowledged that compliance with such a requirement would probably not

be universal, but thought it likely that the requirement would increase the number of recalled tires damaged on removal from the vehicle and thereby decrease the likelihood that recalled tires would inadvertently be reinstalled on vehicles. Advocates argued that, in light of experience during the recent Firestone recall, it was better to err on the side of caution and safety rather than take a chance that recalled and defective tires will be resold, and that the best way to accomplish this is by damaging the tread or sidewall of recalled tires immediately. Advocates also argued that repair facility personnel could be trained to recognize recalled tire markings, citing NHTSA's statements in rulings on inconsequentiality petitions with respect to tire labeling that such personnel are adequately trained to identify tire labeling problems. Advocates did not address the testing issue raised by RMA.

We have decided to retain the proposed requirement to incapacitate all returned recalled tires, regardless of whether they are sent back to the manufacturer for disposition or disposed of by the retail outlet, subject to one exception discussed below. There are numerous identifiers on tires, including the manufacturer (or brand name), size, tire identification number (TIN) in which information is encoded, and production period. As in other recalls, we believe that an inspection process for recalled defective or noncompliant tires can be sufficiently well defined to enable the entity or technician performing the recall to determine whether tires are included in the recall and should be replaced. Furthermore, we agree with Advocates that the best mechanism for ensuring that recalled tires are not reinstalled on vehicles (inadvertently or otherwise) is a requirement for prompt destruction of those tires. We believe that immediate incapacitation upon removal of the tires from a vehicle, as Ford requested of its dealers during its Firestone tire replacement campaign, is the most efficient way to ensure this. However, to accommodate possible differences in retail outlets' allocation of personnel, we are adopting NADA's proposed modification of the period for incapacitation, to permit alteration within 24 hours from receipt of the tires rather than requiring it to occur by the close of business on the day of receipt.

With respect to RMA's point that manufacturers can only do research on returned tires that are not incapacitated prior to being returned, we are allowing manufacturers to include a limited ''testing exception'' in their plans. The manufacturer's plan could describe a test program under which a limited number of tires would be tested, including the outlets that would supply those tires. The tires to be tested would have to be specially labeled and promptly returned to the manufacturer for testing. We note that some meaningful research would be possible even on incapacitated tires, as it has been done on tires that failed. For example, peel strength tests and X-raying could be performed on tires in which holes had been drilled in the sidewall or the tread, and general analysis of such tires would also be possible.

E. ''Exceptions Reporting''

We proposed to require manufacturers to report to us quarterly (as part of their quarterly reports on the progress of recall campaigns), based on reports from outlets they control, about the numbers of incidents in which tire outlets had either failed to dispose of tires in accordance with applicable laws and regulations or failed to promptly incapacitate returned tires. NADA commented that this requirement seemed unnecessary and that perhaps manufacturers should be required to file reports only if and when they are forced to arrange to stockpile used recalled tires in an environmentally safe manner in the event of a collapse of the marketplace for beneficial reuse. TIA urged that the ''exceptions reporting'' be limited to instances in which a company deviates from the manufacturer's recall plan, in order to reduce paperwork. RMA stated in its comments on the NPRM that it doubted the constitutionality or effectiveness of this proposal. It argued that the proposed monthly report from the outlet to the manufacturer was unnecessary and that the proposed ''exceptions report'' was not described and is not necessary or helpful. RMA subsequently stated that it ''recognizes that NHTSA believes that reports * * * are necessary,'' but urged NHTSA to minimize the number of reports and to consider ''exceptions reporting'' requiring reporting of deviations by retail outlets to the manufacturer within 30 days. RMA's proposed regulatory text, appended to its May 9, 2002, comment, did not contain any proposal for amending 49 CFR 573.6 (2001).

We are not adopting RMA's implicit suggestion to eliminate reporting by manufacturers to this agency about the success (or lack thereof) of their tire disposition programs. In section 7 of the TREAD Act, Congress mandated such reporting by manufacturers. We have tried to minimize the burden of the required reporting by limiting it to the ''exceptions'' in which requirements were not met, rather than providing for fuller reporting that would include reporting on activities that are in compliance with the regulations. We do not understand RMA's comment that the contents of the required ''exceptions reports'' are not clear. Although it does not use the term ''exceptions reporting,'' the regulatory text that we proposed in the NPRM clearly identified what we intended manufacturers to include in their reports.

We are adopting most of the regulatory text for § 573.7 that we proposed. The requirements now include three items of information: The aggregate number of recalled tires which the manufacturer becomes aware have not been rendered unsuitable for resale in accordance with the manufacturer's instructions; the aggregate number of recalled tires which the manufacturer becomes aware have been disposed of in violation of applicable state and local laws and regulations; and a description of any failure of a tire outlet to act in accordance with the directions in the manufacturer's plan, including an identification of the outlets in question. These requirements are intended to assist us in tracking the success of recalls from both a safety and an environmental perspective. We note that these limitations are similar to those requested by TIA in its comments.

We are not certain whether RMA continues to claim that these requirements are unconstitutional, but if so, we deny that claim.

F. Scope of Applicability of Requirements

Advocates proposed that we extend the incapacitation requirements of the rule to retail outlets that are not within the manufacturers' control. While Advocates appeared to recognize that our power to regulate tire disposition under the TREAD Act is not without limit, that organization argued that we have inherent authority and a ''public safety obligation'' to do so. RMA claimed that we lacked statutory authority to extend the mandatory elements of this rule (primarily the requirement to report deviations to the manufacturer) beyond outlets that the manufacturer controls.

We have concluded that Advocates' proposal goes beyond the TREAD Act. Congress was careful to insert, at two locations in the statutory section that mandates the manufacturer's inclusion of a plan for tire disposition in its tire remedy program, the phrase ''to the extent reasonably within the control of the manufacturer. * * *''

Under the ordinary rules of statutory construction, statutes are to be read to effectuate all of their provisions: ''It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.'' 2A Sutherland, Statutory Construction, *supra,* at § 46.06. If we followed Advocates' suggestion and ignored the phrase ''to the extent reasonably within the control of the manufacturer'' despite the fact that it appears twice in the statute, the regulation would not be consistent with this rule of construction.

We disagree with Advocates' claim that extension of the incapacitation requirements of the rule to retail outlets outside of the manufacturer's direct control is necessary to ensure the elimination of the safety problem of resale of unremedied recalled tires. This final rule does require manufacturers to notify outlets that are not under their direct control of the prohibition in 49 U.S.C. 30120(i) and (j) on the resale of unremedied recalled tires. Moreover, failure to comply with these requirements is an independent violation of the Safety Act, and the regulations promulgated thereunder, that can subject a retail outlet to substantial civil penalties.

Advocates also proposed that we include an explicit definition of the term ''to the extent reasonably within the control of the manufacturer'' in the regulation, arguing that the meaning of the phrase is not self-evident. Ford made a related request, asking that we specifically recognize that motor vehicle dealers that implement tire recalls are not reasonably within the control of motor vehicle manufacturers who initiate tire recalls. NADA supported Ford's view that there are significant differences between the degree of control that manufacturers exercise over their authorized retail outlets and the degree of control that vehicle manufacturers exercise over their dealers, many of which are independently owned and operated.

We do not find it necessary to include a definition of the statutory term ''reasonably within the control of the manufacturer'' in this final rule. We believe that this phrase is sufficiently clear to be applied without a definition. In any event, the comments were not sufficiently comprehensive and detailed for us to formulate such a definition that would cover various arrangements between manufacturers and the wide variety of retail outlets that may participate in tire recalls. As to vehicle manufacturers, we believe that it is appropriate for vehicle manufacturers that conduct tire recalls to be required to provide their dealers with the information. Vehicle manufacturers already have in place systems under which they notify dealers of recalls and require dealers to report remedy activities to the manufacturer. It will not be unduly burdensome for vehicle manufacturers and dealers to include in those notifications and reports the limited information specified in § 573.6(c)(9) in the relatively rare instances in which vehicle manufacturers conduct tire recalls.

G. Disposition of Tires in Landfills

The National Solid Waste Management Association (NSWMA) urged us to permit the use of scrap tires in landfills, in recognition of newer, environmentally friendly landfilling techniques that assertedly are sanctioned by applicable state landfill permitting regulations and unspecified regulations promulgated by the Environmental Protection Agency (EPA) under subtitle D of the Resource Conservation and Recovery Act, as amended. NSWMA stated that these types of uses are among those classified by the Scrap Tire Management Council as ''civil engineering applications'' for scrap tires, and attached to its comments a table containing a partial list of landfills that use tires or tire chips for construction purposes. RMA, which runs the Scrap Tire Management Council, likewise urged NHTSA to acknowledge that scrap tires are now used in an economical and environmentally viable fashion as construction materials in landfill operations, such as lining, engineered fill, and daily cover.

Even if some State and local jurisdictions now permit specific uses of scrap tires in landfills, we cannot grant NSWMA and RMA's request to authorize such uses in this regulation. Section 7 of the TREAD Act specifically requires that the manufacturers' plans must address how to limit the disposal of replaced tires in landfills, particularly through various alternative beneficial non-vehicular uses. If NSWMA and RMA wish to utilize recalled tires in environmentally sanctioned mechanisms in landfills, they must convince Congress to amend section 7 of TREAD. Unless that occurs, we cannot adopt their comments.

H. Recycling and Reuse Opportunities

TIA recommended that the final rule include a requirement that manufacturers seek the highest and best recycling or reuse opportunities for recalled tires when it is practical and safe to do so. RMA opposed this request, stating that it supports all scrap tire market applications that are environmentally sound and that it is inappropriate for NHTSA to make subjective judgments that would value certain markets over others.

We are not adopting TIA's recommendation. Section 7 of TREAD permits manufacturers who dispose of recalled tires to choose to among ''beneficial non-vehicular reuse'' applications and does not specifically authorize NHTSA to favor certain uses over others. In any event, TIA's comment was in the nature of an undefined goal. Also, the market conditions for recycling may change from time to time, and it would be inadvisable for us to advocate particular uses over others when those uses might become commercially infeasible, or when additional uses might subsequently be developed. Some uses may be impractical in some states. For these reasons, we are leaving the choice of ''beneficial non-vehicular reuse'' applications to the manufacturers.

I. Anti-stockpiling Provision

TIA recommended adding a provision to require manufacturers who conduct centralized recalls to accept shipments of recalled tires from retail outlets, either every 30 days or once a minimum weight is reached, whichever comes first. RMA stated that it understood TIA's concern and recommended that manufacturers include in the recall plan a description of the frequency of shipments, rather than specifying a default frequency in the final rule, in order to allow the manufacturer to set shipment frequency at levels appropriate to specific recalls.

We agree both with TIA's concern about stockpiling and with RMA's recommendation against specifying a default frequency. Excessive stockpiling could have negative environmental consequences, such as the potential for mosquito propagation in collected water and emissions and runoff from tire fires. Therefore, we are adding a provision to the final rule that requires manufacturers that wish to limit the frequency of shipments of recalled tires to include in the recall plan a provision on the frequency of shipments, that includes both a minimum period of time and a minimum weight (to be specified by the manufacturer), whichever comes first, but does not specify default frequencies for either time or weight.

J. Costs

In the NPRM, we estimated the costs associated with our proposed reporting requirements and sought comments on our estimates. We estimated the maximum cost to manufacturers of notification at $1.00 per manufacturer

per affected retail outlet. We estimated the costs of recycling tires at approximately $1.00 per tire for transportation and $2.00 per tire for recycling, and noted that manufacturers and entities that replace tires might already be incurring these costs. We also estimated the cost of equipment to incapacitate the tires, as explained more fully below.

We received only one comment on our cost estimates. TIA addressed the cost of recycling; it stated that the cost of recycling is between $1.00 and $1.20 per passenger tire and that if tires are stockpiled, the cost is about $1.50 per tire (or $2.00 per tire if a fire were to result). Both the upper and the lower boundaries of the range of TIA's cost estimate for recycling are lower than our single estimate of $2.00 per tire. We note that TIA's estimate does not include the costs of notification, and that no commenter addressed the cost of the equipment to incapacitate tires.

Accordingly, we are not modifying our original cost estimates.

IV. Regulatory Analyses and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule has not been reviewed under E.O. 12866, ''Regulatory Planning and Review.'' After considering the impacts of this rulemaking action, and consultation with the Office of Management and Budget, we have determined that the action is not ''significant'' within the meaning of the Department of Transportation regulatory policies and procedures. The impact of this rule does not warrant preparation of a full regulatory evaluation because these provisions only involve restriction on the disposition of recalled defective and noncompliant tires. Tire recalls are uncommon and most involve fewer than 10,000 tires. In light of the statutory requirements, this action does not involve a substantial public interest or controversy.

B. Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. For the reasons discussed above under ''E.O. 12866 and the DOT Policies and Procedures,'' I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The primary impact of this final rule will be felt by the major manufacturers, which are not small entities. This impact will be minor, since it primarily will involve adding a description of plans for incapacitating and disposing of recalled noncompliant or defective tires to the manufacturers' remedy programs, notifying affected retail outlets of the plans, and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. We have estimated this cost at $1.00 per manufacturer per affected retail outlet, but the cost could well be less because manufacturers may already be including some of this information in their notices to dealers. We received no comments on this cost estimate.

Disposal requirements will be governed by applicable State and local laws and regulations. It is likely that manufacturers and entities that replace tires already are complying with applicable requirements for tire disposal. If not, manufacturers, which we understand currently pay for tire recalls, will ultimately incur the costs associated with tire disposal, *e.g.* the costs of transporting disabled tires and the costs of recycling the tires. We have estimated these costs at approximately $1.00 per tire for transportation and $2.00 per tire for recycling. As indicated above, the sole cost estimate we received, from TIA, was lower.

This final rule could also have an impact on the nation's 3,500 tire dealers, many of which are small entities. If they do not comply with applicable requirements for tire disposal, manufacturer-controlled tire dealers will incur the costs of ''exceptions reporting'' to manufacturers of any instances in which the dealer did not comply with the manufacturer's plan for disposing of recalled tires. We estimate these reporting costs at $1.00 per affected dealer per recall. Each dealer could also incur a one-time cost for obtaining equipment to incapacitate tires so that the tires cannot be resold to the public. The one time-cost would likely range between $70.00 (to purchase a power drill and a drill bit) and $95.00 (to purchase a cutoff saw and blade(s)) per affected dealer, or a maximum of between $245,000 and $332,500, assuming that each of the 3,500 dealers purchases a new drill and bit or cutoff saw and blade. We believe that many dealers already own such equipment and that therefore the maximum aggregate one-time cost would be far lower. Also, we note that, because not every dealer is involved in a tire recall every year, the aggregate one-time cost would be incurred over a multi-year time period. We received no comment on these estimates.

C. National Environmental Policy Act

We have reviewed this proposal for the purposed of compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and determined that, although it should have environmental benefits, it will not have a significant impact on the quality of the human environment. The final rule will not require manufacturers to conduct any recalls beyond those that they already are required to conduct. The sale of recalled tires is prohibited by other provisions in the Safety Act. Other State laws and regulations already govern disposal requirements, but we anticipate that this rule will increase compliance with those requirements. Hundreds of millions of tires are replaced each year, but this rule will address only a very small fraction of them.

D. Paperwork Reduction Act

This rule contains provisions that are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), and OMB's regulation at 5 CFR 1320.5(b)(2), NHTSA will seek approval from OMB for an amendment to a previously approved information collection requirement (OMB control number 2127–0004). As part of that process, the agency has issued a notice seeking public comment on the PRA burdens of the rule. See 69 FR 21881 (April, 22, 2004). In its submission to OMB, NHTSA will summarize the public comments received in response to the April 22, 2004, notice, and discuss any changes in the estimates of the collection of information resulting from the comments.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input'' by State and local officials in the development of ''regulatory policies that have federalism implications.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule, which requires that manufacturers include a plan for disposal of recalled tires in their remedy programs under section 30120 of the Safety Act, will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government, as specified in E.O. 13132. This rulemaking does not have those effects because it applies directly only to manufacturers that already are required to file remedy plans under section 30120, rather than to the States or local governments, and because it directs manufacturers to file plans that conform with applicable state and/or local requirements.

F. Civil Justice Reform

This final rule does not have a retroactive or preemptive effect. Judicial review of the rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribunal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one has not been prepared.

H. Data Quality Guidelines

The information that NHTSA is mandated to collect may be made available to the public via the agency's Web site. The distribution of such data via the agency's Web site may constitute ''information dissemination'' as that term is defined under the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (''Information Quality Guidelines''), issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002), and in Department of Transportation Guidelines that were issued on September 25, 2002 (67 FR 61719, October 1, 2002), and are available through the Department's Docket Management System (DMS) Web site at *http://dms.dot.gov* at OST–2002–11996.

If a determination were made that the public distribution of the manufacturer's programs and reports to ODI concerning the disposition of recalled tires constituted information dissemination and was, therefore, subject to the OMB/DOT Information Quality Guidelines, then the agency would review the information prior to distribution to ascertain its utility, objectivity, and integrity (collectively, ''quality''). Under the Guidelines, any affected person who believed that the information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant, and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

List of Subjects in 49 CFR Part 573

Defects, Motor vehicle safety, Noncompliance, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, 49 CFR part 573 is amended as follows:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–121, 30166; delegation of authority at 49 CFR § 1.50.

■ 2. Section 573.6 is amended by redesignating paragraphs (c)(9) through (c)(11) as paragraphs (c)(10) through (c)(12) respectively and by adding a new paragraph (c)(9) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(c) * * *

(9) In the case of a remedy program involving the replacement of tires, the manufacturer's program for remedying the defect or noncompliance shall:

(i) Address how the manufacturer will assure that the entities replacing the tires are aware of the legal requirements related to recalls of tires established by 49 U.S.C. Chapter 301 and regulations thereunder. At a minimum, the manufacturer shall notify its owned stores and/or distributors, as well as all independent outlets that are authorized to replace the tires that are the subject of the recall, annually or for each individual recall that the manufacturer conducts, about the ban on the sale of new defective or noncompliant tires (49 CFR 573.11); the prohibition on the sale of new and used defective and noncompliant tires (49 CFR 573.12); and the duty to notify NHTSA of any sale of a new or used recalled tire for use on a motor vehicle (49 CFR 573.10). For tire outlets that are manufacturer-owned or otherwise subject to the control of the manufacturer, the manufacturer shall also provide directions to comply with these statutory provisions and the regulations thereunder.

(ii) Address how the manufacturer will prevent, to the extent reasonably within its control, the recalled tires from being resold for installation on a motor vehicle. At a minimum, the manufacturer shall include the following information, to be furnished to each tire outlet that it owns, or that is authorized to replace tires that are recalled, either annually or for each individual recall the manufacturer conducts:

(A) Written directions to manufacturer-owned and other manufacturer-controlled outlets to alter the recalled tires permanently so that they cannot be used on vehicles. These shall include instructions on the means to render recalled tires unsuitable for resale for installation on motor vehicles and instructions to perform the incapacitation of each recalled tire, with the exception of any tires that are returned to the manufacturer pursuant to a testing program, within 24 hours of receipt of the recalled tire at the outlet. If the manufacturer has a testing program for recalled tires, these directions shall also include criteria for selecting recalled tires for testing and instructions for labeling those tires and returning them promptly to the manufacturer for testing.

(B) Written guidance to all other outlets which are authorized to replace the recalled tires on how to alter the recalled tires promptly and permanently so that they cannot be used on vehicles.

(C) A requirement that manufacturer-owned and other manufacturer-controlled outlets report to the manufacturer, either on a monthly basis or within 30 days of the deviation, the number of recalled tires removed from vehicles by the outlet that have not been rendered unsuitable for resale for installation on a motor vehicle within the specified time frame (other than those returned for testing) and describe any such failure to act in accordance with the manufacturer's plan;

(iii) Address how the manufacturer will limit, to the extent reasonably within its control, the disposal of the recalled tires in landfills and, instead, channel them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use. At a minimum, the manufacturer shall include the following information, to be furnished to each tire outlet that it owns or that is authorized to replace tires that are recalled, either annually or for each individual recall that the manufacturer conducts:

(A)(*1*) Written directions that require manufacturer-owned and other manufacturer-controlled outlets either:

(*i*) To ship recalled tires to one or more locations designated by the manufacturer as part of the program or allow the manufacturer to collect and dispose of the recalled tires; or

(*ii*) To ship recalled tires to a location of their own choosing, provided that they comply with applicable state and local laws and regulations regarding disposal of tires.

(*2*) Under option (c)(9)(iii)(A)(*1*)(*ii*) of this section, the directions must also include further direction and guidance on how to limit the disposal of recalled tires in landfills and, instead, channel them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use.

(B)(*1*) Written guidance that authorizes all other outlets that are authorized to replace the recalled tires either:

(*i*) To ship recalled tires to one or more locations designated by the manufacturer or allow the manufacturer to collect and dispose of the recalled tires; or

(*ii*) To ship recalled tires to a location of their own choosing, provided that they comply with applicable state and local laws and regulations regarding disposal of tires.

(*2*) Under option (c)(9)(iii)(B)(*1*)(*ii*) of this section, the manufacturer must also include further guidance on how to limit the disposal of recalled tires in landfills and, instead, channel them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use.

(C) A requirement that manufacturer-owned and other manufacturer-controlled outlets report to the manufacturer, on a monthly basis or within 30 days of the deviation, the number of recalled tires disposed of in violation of applicable state and local laws and regulations, and describe any such failure to act in accordance with the manufacturer's plan; and

(D) A description of the manufacturer's program for disposing of the recalled tires that are returned to the manufacturer or collected by the manufacturer from the retail outlets, including, at a minimum, statements that the returned tires will be disposed of in compliance with applicable state and local laws and regulations regarding disposal of tires, and will be channeled, insofar as possible, into a category of positive reuse (shredding, crumbling, recycling and recovery) or another alternative beneficial non-vehicular use, instead of being disposed of in landfills.

(iv) To the extent that the manufacturer wishes to limit the frequency of shipments of recalled tires, it must specify both a minimum time period and a minimum weight for the shipments and provide that shipments may be made at whichever minimum occurs first.

(v) Written directions required under this paragraph to be furnished to a manufacturer-owned or controlled outlet shall be sent to the person in charge of each outlet by first-class mail or by electronic means, such as FAX transmissions or e-mail, with further instructions to notify all employees of the outlet who are involved with removal, rendering unsuitable for use, or disposition of recalled tires of the applicable requirements and procedures.

(vi) Manufacturers must implement the plans for disposition of recalled tires that they file with NHTSA pursuant to this paragraph. The failure of a manufacturer to implement its plan in accordance with its terms constitutes a violation of the Safety Act.

* * * * *

■ 3. Section 573.7 is amended by adding paragraph (b)(7) to read as follows:

§ 573.7 Quarterly reports.

* * * * *

(b) * * *

(7) For all recalls that involve the replacement of tires, the manufacturer shall provide:

(i) The aggregate number of recalled tires that the manufacturer becomes aware have not been rendered unsuitable for resale for installation on a motor vehicle in accordance with the manufacturer's plan provided to NHTSA pursuant to § 573.6(c)(9);

(ii) The aggregate number of recalled tires that the manufacturer becomes aware have been disposed of in violation of applicable state and local laws and regulations; and

(iii) A description of any failure of a tire outlet to act in accordance with the directions in the manufacturer's plan, including an identification of the outlet(s) in question.

* * * * *

Issued on: August 5, 2004.

Jeffrey W. Runge,

Administrator.

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