DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10856; Notice 2]

RIN 2127–AI29

Motor Vehicle Safety; Disposition of Recalled Tires

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice seeks comments on a May 9, 2002 comment from the Rubber Manufacturers Association (RMA), in response to our December 18, 2001 Notice of Proposed Rulemaking (NPRM) on Disposition of Recalled Tires (66 FR 65165).

In the NPRM, we proposed to require that tire dealers render returned recalled tires unsuitable for use on the day 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. RMA urged NHTSA to allow tire manufacturers the option of requiring that dealers return all recalled tires directly to the manufacturer, instead of requiring tire dealers and distributors to dispose of the tires themselves. RMA also urged us to consider a number of other suggested revisions to the NPRM. RMA attached suggested regulatory language to its comment.

We seek comments on the merits of RMA's general approach, on whether RMA's proposal is consistent with statutory requirements, and on RMA's proposed regulatory text.

DATES: *Comments:* You should submit your comments early enough to ensure that Docket Management receives them not later than August 26, 2002.

ADDRESSES: You should mention the docket number of this document in your comments, and submit your comments in writing to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/info'' to obtain instructions for filing the document electronically.

Regardless of how you submit your comments, you should mention the docket number of this document in your comments.

You may call Docket Management at 202–366–9324. You may visit Docket Management from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, tel. (202) 366–5226. For legal issues, contact Enid Rubenstein, Office of Chief Counsel, tel. (202) 366–5263.

SUPPLEMENTARY INFORMATION: Section 7 of the Transportation Recall, Enhancement, Accountability, and Documentation (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, particularly through methods such as shredding, crumbling, recycling, recovery, or other ''beneficial non-vehicular uses'' rather than in landfills. 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.

In order to implement Section 7's new requirements, we proposed on December 18, 2001 to amend 49 CFR 573.5 and 573.6 to impose requirements on tire manufacturers and on tire dealers. We proposed in the NPRM to require manufacturers that conduct tire recalls to file programs and reports 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, and to implement those plans. We also proposed to require ''exceptions reporting,'' by manufacturer-controlled tire outlets to manufacturers monthly, and by manufacturers to NHTSA in quarterly reports, that 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.

Rather than requiring dealers to render tires unsuitable for use and then transfer those tires to authorized disposal facilities, RMA suggested that the rule should permit manufacturers to require dealers to return all recalled tires directly to the manufacturer, at a central facility. *See* RMA's comment, on file in DOT's Docket Management System (DMS) at Docket 10856, Document Number NHTSA–2001–10856–9. Manufacturers would then inspect and sort the tires, destroy those that contain the defect or noncompliance, and, where appropriate, brand those tires that do not contain the defect or noncompliance (to permit their resale). According to RMA, this would simplify the process of recalling and disposing of defective or noncompliant tires, as well as the associated reporting requirements, and, in addition, avoid the unnecessary disposition of tires that are not defective or noncompliant.

RMA argued that the alternative of returning tires to a central location would permit manufacturers both to better control the recall process, as described above, and to test returned recalled tires in order to better understand the failure mechanism. RMA also urged us to eliminate the proposed requirement for dealers to alter recalled tires by the close of business on the day on which the recalled tire has been removed from the vehicle.

In its suggested regulatory text, RMA also proposed to require manufacturers to provide written guidance, either annually or for any recall involving 10,000 or more tires not returned to the tire manufacturer or manufacturer-controlled facility, to manufacturer-owned and manufacturer-controlled tire outlets as well as other tire outlets, about how to alter recalled tires permanently so that they cannot be used on vehicles. *See* RMA Comment, p. 3, ''Suggested Regulatory Language'' at §§ 573.5(c)(9)(A), (B)(1), (B)(2), and (C).

RMA further suggested revising our proposed ''exceptions reporting'' requirement, by changing the timing of required reports from manufacturer-owned or manufacturer-controlled outlets from monthly to within 30 days of removal of a recalled tire from a vehicle, and by requiring those outlets also to report to the manufacturer, within the same time frame, any deviation from the manufacturer-supplied recall plan and any violation of applicable laws and regulations on disposal of scrap tires. *See* RMA Comment at p. 2; RMA Suggested

Regulatory Language at p. 3, proposed §§ 573.5(c)(9)(B)(3), (C)(3).

We seek comments on whether the RMA proposal would effectuate section 7 of the TREAD Act, and whether it would better address the first two major concerns, identified above, than the proposal in the NPRM. We would expect that in most tire recalls, repairs and resale following inspection will not be possible. This was true in the recent Bridgestone/Firestone ATX, ATXII and Wilderness AT recalls, and also in the 1978–79 Firestone 500 recall. Further, we seek comments on mechanisms for assuring the security of recalled tires prior to shipment to the manufacturer, so that those tires do not enter the marketplace inadvertently.

We request comments on whether RMA's proposal fulfills Congress' intentions in the TREAD Act with respect to minimizing the likelihood that recalled tires are disposed of in landfills and, specifically, with respect to encouraging independent tire dealers (as well as manufacturer-owned or manufacturer-controlled outlets) to meet their obligations under state and local law to dispose appropriately of recalled tires.

In addition, we seek comments on the issue of whether RMA's proposed alternative is consistent with 49 U.S.C. 30120(i) and (j), which by their terms preclude the resale of recalled tires that have not been remedied. Section 30120(i) provides that:

[i]f notification (of a defect or noncompliance) is required . . . and the manufacturer has provided to a dealer notification about a new * * * item of replacement equipment in the dealer's possession at the time of notification that contains a defect * * * or does not comply * * *, the dealer may sell or lease the * * * item of replacement only if—(A) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease[.]

Section 30120(j) provides that:

[n]o person may sell or lease any motor vehicle equipment (including a tire), for installation on a motor vehicle, that is the subject of a decision under section 30118(b) or a notice require under section 30118(c) in a condition that it may reasonably be used for its original purpose unless—(1) the defect or noncompliance is remedied as required by this section before delivery under the sale or lease[.]

In responding to this question, please provide a discussion that includes the reasons for your conclusion, as well as statutory analysis.

Finally, we seek comments on RMA's proposal to permit manufacturers the option of notifying dealers of their recall responsibilities either annually or for any recall that covers more than 10,000 tires, as opposed to requiring such notifications for all recalls.

We are not reproposing regulatory language because at this time, we have not made a tentative decision to adopt RMA's suggestion. After considering comments on this Supplemental Notice of Proposed Rulemaking, we may adopt an approach that includes one or more features of RMA's proposal, or we may choose to follow an approach that is closer to the one we proposed in the NPRM.

I. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

When we issued the NPRM, we considered the impact of this proposed rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. The NPRM was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This rulemaking was not considered ''significant'' under the Department of Transportation's regulatory policies and procedures. We expected the impacts of our proposed rule to be so minimal as not to warrant preparation of a full regulatory evaluation, because the proposal essentially would require only the supplementing of reports that manufacturers already must file with limited information about the disposition of recalled tires.

We estimated that the additional economic impact of the proposed rule upon manufacturers would be small. Manufacturers already assume the costs of the tire recalls that they conduct. They already are required by our regulations to notify dealers of recalls and to file plans and quarterly reports about their recalls with our Office of Defects Investigation (ODI). We stated that the additional notification and reporting elements that this rule would add would be very limited and wholly descriptive, and that they would not impose significant costs on manufacturers.

RMA's proposed alternative might limit still further the costs of the proposed rule. If, upon inspection, numerous recalled tires were found not to be defective or non-compliant, the RMA proposal could reduce the costs of disposition of recalled tires. The costs to dealers of incapacitating and recycling the recalled tires would be eliminated under the RMA proposed alternative. There could be increased costs to ensure the security of recalled tires. The extent to which the costs to dealers of shipping recalled tires to the manufacturer at a central location, and ultimately the costs to manufacturers of reimbursing dealers for those shipping costs, would depend on the locations to which recalled tires were shipped.

B. Regulatory Flexibility Act

We have also considered the impacts of RMA's proposed alternative under the Regulatory Flexibility Act. For the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this proposal would not have a significant economic impact on a substantial number of small entities. The primary impact of RMA's proposal would be felt by the major tire manufacturers, which are not small entities. This impact would be relatively minor, since it primarily would involve manufacturers' adding a requirement to ship recalled tires to central location(s) to their remedy programs, notifying affected retail outlets of the remedy plans, and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. We estimated the cost of our original proposal at approximately $1.00 per tire for transportation and $2.00 per tire for recycling. If the effect of RMA's proposal is to eliminate the need to recycle significant numbers of tires, the total recycling costs should be reduced.

We originally estimated the cost to manufacturers of notifying dealers of their plans at $1.00 per tire manufacturer per affected retail outlet, and stated that the cost could well be less because manufacturers might already be including descriptions similar to our proposed requirements in their notices to dealers. Under the first alternative in RMA's proposal, the cost could be even lower, because the content of the manufacturers' notices of recalls would be limited to one or two lines instructing dealers to ship the recalled tires to a designated central location. Under RMA's second proposed alternative, the cost to manufacturers could be somewhat higher, since they would include an annual mailing to all retail outlets of the manufacturers' requirements for the disposition of recalled tires.

We stated in the NPRM that the proposed rule could also have an impact on the nation's 3,500 tire dealers, many of which are small entities. We estimated the reporting costs associated with monthly ''exceptions reporting'' to manufacturers of any instances in which the dealer did not comply with the manufacturer's plan for disposing of

recalled tires at $1.00 per affected dealer per recall. Also, we estimated the potential one-time costs to each dealer for obtaining equipment to incapacitate tires so that the tires could not be resold to the public (although we believed that many dealers already owned such equipment) at 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 purchased a new drill and bit or cutoff saw and blade. We noted 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. Under RMA's alternative proposal, all of these costs to dealers could be eliminated.

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 it would not have a significant impact on the quality of the human environment. The proposed rule would 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. Disposal requirements are already governed by other State laws and regulations.

D. Paperwork Reduction Act

As we indicated in the NPRM, our proposed rule would impose new collection of information burdens within the meaning of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). However, those burdens should be minimal. Manufacturers already are required by our regulations to file plans and quarterly reports about tire recalls with us. There would be an incremental burden of adding to the manufacturers' descriptions of their programs. Even this impact would be minor, since it only would involve adding a description of plans for incapacitating and disposing of recalled noncompliant or defective tires to their remedy programs and providing minimal reporting on the plans in the quarterly reports that manufacturers already must file with NHTSA. The limited additional ''exceptions reporting'' that our proposed rule would have required of manufacturers and of manufacturer-controlled outlets that implement recalls, i.e. periodic Aexceptions reporting'' of aggregate numbers of recalled tires that have not been incapacitated for use or that have been disposed of unlawfully, describing any failure to comply with the manufacturer's plan to render tires unsuitable for installation on a motor vehicle for resale and any failure to comply with the disposal requirements of applicable state and local laws and regulations of which the manufacturer becomes aware, would be still more limited under RMA's proposal. We believe that both the proposed rule and RMA's proposal would not impose significant additional costs or burdens either on the manufacturers that conduct the tire recalls or on the manufacturer-controlled outlets that implement them.

Because this proposed rule would impose information collection requirements, albeit minimal, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1329, we stated in the NPRM that we plan to submit the proposed requirements to OMB for its approval, as required by the PRA. We sought comments on the information collection burdens associated with the NPRM. We now seek comments on the information collection burdens associated with the RMA proposal.

E. Executive Order 13132 (Federalism)

Executive Order 13132 on AFederalism'' requires us to develop an accountable process to ensure Ameaningful and timely input'' by State and local officials in the development of Aregulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations Athat 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.'' In the NPRM, we stated that our proposed rule, which would require that manufacturers include a plan for disposal of recalled tires in their remedy programs under either section 30118(b) or 30118(c) of the Safety Act, will not have 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. Both the NPRM and RMA's proposal do not have those implications because both apply directly only to manufacturers who are required to file a remedy plan under sections 30118(b) or 30118(c), rather than to the States or local governments, and because they directs manufacturers to file plans that conform with applicable state and/or local requirements.

F. Civil Justice Reform

Neither the RMA proposal nor our proposed rule would 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 cost, 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 neither our proposed rule nor the RMA proposal would have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this rule.

II. Submission of Comments

A. How Can I Influence NHTSA's Thinking on This Notice?

Your comments will help us decide whether to adopt RMA's alternative proposal, in whole or in part. We invite you to provide different views on this proposal, new approaches we have not considered, new data, information about

how this proposal may affect you, or other relevant information. Your comments will be most effective if you follow the suggestions below. Explain your views and reasoning as clearly as possible:

- Provide solid information to support your views.
- If you estimate potential numbers or reports or costs, explain how you arrived at the estimate.
- Tell us which parts of the rule you support, as well as those with which you disagree.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of the rule, such as the units or page numbers of the preamble, or the regulatory sections.
- Be sure to include the name, date, and docket number with your comments.

B. How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

Comments may also be submitted to the docket electronically by logging onto the Docket Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

C. How Can I be Sure that My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

D. How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel (NCC–30), NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

E. Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

F. How Can I Read the Comments Submitted by Other People and Other Materials Relevant to this Rulemaking?

You may view the materials in the docket for this rulemaking on the Internet. These materials include background information on the use of tires in landfills and written comments submitted by other interested persons. You may read them at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments and materials on the Internet. To read them on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation *(http://dms.dot.gov/)*

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–2000–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the materials in the docket you selected, click on the desired comments. You may download the comments.

(5) To view the RMA comment, which responds to docket NHTSA–2001–10856, type 10856, click on ''search,'' and click on Document Number NHTSA–2001–10856–9.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: July 22, 2002.

L. Robert Shelton,

Executive Director.

[FR Doc. 02–18996 Filed 7–25–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AI36

Injurious Wildlife Species; Snakeheads (family Channidae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to amend 50 CFR 16.13 to add snakeheads (family Channidae) to the list of injurious fish, mollusks, and crustaceans. This listing would have the effect of prohibiting the interstate transportation and importation of any live animal or viable egg of snakeheads into the United States. The best available information indicates that this action is necessary to protect the wildlife and wildlife resources from the purposeful or accidental introduction and subsequent establishment of snakehead populations in ecosystems of the United States. As proposed, live snakeheads or viable eggs could be imported only by permit for scientific, medical, educational, or zoological purposes, or without a permit by Federal agencies solely for their own use; permits would also be required for the interstate transportation of live snakeheads or viable eggs currently held in the United States, for scientific, medical, educational, or zoological purposes.

DATES: Comments must be submitted on or before August 26, 2002.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax