ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking jointly filed on behalf of petitioners TV 6, L.L.C., permittee of VHF TV Station KBCJ, NTSC Channel 6, Vernal, Utah (BPCT–960919KG), and by Kaleidoscope Foundation, Inc., permittee of VHF TV Station KBNY, NTSC Channel 6, Ely, Nevada (BPET–970331LN). Petitioners request the reallotment of NTSC Channel 6 from Vernal to Santaquin, Utah and reallotment of NTSC Channel 6 from Ely to Caliente, Nevada as the communities' first local television transmission services and modification of the their authorizations accordingly, pursuant to the provisions of section 1.420(i) of the Commission's rules. Coordinates to be used for NTSC Channel 6 at Santaquin are North Latitude 39–43–58 and West Longitude 111–56–34; and those to be used for NTSC Channel 6 at Caliente are North Latitude 37–47–00 and West Longitude 114–30–00. The DTV Table of Allotments contained in section 73.622(b) of the Commission's rules is not affected by the requested reallotments as there is no paired DTV channel for either Vernal or Ely.

DATES: Comments must be filed on or before January 14, 2002, and reply comments on or before January 29, 2002.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows:

Mark N. Lipp, Esq., Shook, Hardy & Bacon, 600 14th Street, N.W., Suite 800, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 01–323, adopted November 14, 2001, and released November 23, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 425 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863–2893, facsimile 202–863–2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 73 of Title 47 of the Code of Federal Regulations as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Utah, is amended by adding Santaquin, NTSC Channel 6 and removing NTSC Channel 6 at Vernal.

3. Section 73.606(b), the Table of TV Allotments under Nevada, is amended by adding Caliente, NTSC Channel 6+ and removing NTSC Channel 6+ at Ely.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01–31187 Filed 12–17–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10856]

RIN 2127–AI29

Motor Vehicle Safety; Disposition of Recalled Tires

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposes a rule implementing section 7 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 7 provides 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. Section 7 also requires the manufacturer to include information about the implementation of the plan in quarterly reports to the Secretary about the progress of any notification and remedy campaigns.

DATES: *Comments:* You should submit your comments early enough to ensure that Docket Management receives them not later than February 19, 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:

I. Background

On November 1, 2000, the TREAD Act, Pub. L. 106–414, was enacted. The statute was, in part, a response to congressional concerns related to the tire recall being conducted by Bridgestone/Firestone, Inc. (''Firestone'') during the summer and fall of 2000 with respect to safety-related defects in about 6.5 million Firestone ATX and ATX II size P235/75R15 tires (manufactured at all U.S. Firestone plants) and Firestone Wilderness AT tires of that size manufactured at Firestone's Decatur, Illinois plant.

Under 49 U.S.C. 30118(b), NHTSA may make a final decision that a motor vehicle or replacement equipment (including a tire) contains a defect related to motor vehicle safety or does

not comply with an applicable Federal motor vehicle safety standard. In addition, under 49 U.S.C. 30118(c), a manufacturer of a motor vehicle or replacement equipment (including a tire) is required to notify NHTSA if the manufacturer decides that the vehicle or equipment contains a defect that is related to motor vehicle safety or does not comply with an applicable Federal motor vehicle safety standard. In either instance, in the case of tires, the manufacturer of the defective or noncompliant tires (including original equipment tires that are installed on or sold with new motor vehicles, as well as replacement tires) is required under 49 U.S.C. 30119 to notify tire owners of the defect or noncompliance and is required under 49 U.S.C. 30120(b) to repair or replace the defective or noncompliant tires within 60 days of the notification to owners about the recall or about the availability of replacement tires. (This 60-day period may be extended if replacement tires are not available promptly.)

Also, pre-TREAD Act law, 49 U.S.C. 30120(d), required the manufacturer to file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. 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, 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.

The TREAD Act authorizes the Secretary of Transportation (''the Secretary'') to issue various rules relating to a manufacturer's notification and remedy program, to carry out Chapter 301 of Title 49 of the United States Code, which is commonly referred to as the Safety Act. This rulemaking authority has been delegated to NHTSA's Administrator in 49 CFR 1.50.

In order to implement section 7's new requirements concerning manufacturers' plans to preclude resale and for disposition of replaced tires, we are proposing to amend 49 CFR 573.5 and 573.6. Below are a summary and explanation of the provisions of today's proposed rule.

II. Discussion

A. Introduction and Background

1. Reason for TREAD Requirements

a. Need To Prevent Resale of Recalled Tires

The provision in section 7 of the TREAD Act that requires manufacturers to provide plans to prevent the resale of recalled tires for use on motor vehicles supplements the pre-TREAD Act ban on the sale of new defective or noncompliant motor vehicles or motor vehicle equipment, unless and until (if possible) they have been remedied. 49 U.S.C. 30120(i). It also supplements section 8 of the TREAD Act, which prohibits the sale or lease of any (new or used) defective or noncompliant motor vehicle equipment (including a tire) for installation on a motor vehicle, unless and until (if possible) the defect or noncompliance has been remedied. 49 U.S.C. 30120(j). Finally, it is also related to section 3(c) of the TREAD Act, which requires any person who (1) knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire not in compliance with applicable safety standards and (2) has actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance, to report that sale or lease to NHTSA. 49 U.S.C. 30166(n). NHTSA has already issued regulations implementing section 30166(n); see 49 CFR 573.10.

Most tires that are recalled are unrepairable, and therefore most are replaced rather than repaired. Section 7 of TREAD recognizes the reality that tire recalls may result in the creation of stockpiles of dangerous, unremedied tires and requires manufacturers to develop plans to deal with them.

a. Problems Posed by Scrap Tires

Today's proposed rule would require manufacturers to develop plans addressing how they will prevent, to the extent reasonably within the manufacturers' control, recalled tires from being resold for use on motor vehicles, and that limit the disposal of recalled tires in landfills and provide instead, to the extent reasonably within the manufacturers' control, for disposition by other means, such as shredding, crumbling, recycling, and recovery. The proposed rule also would require manufacturers to include information about implementation of their plans in the quarterly reports that the manufacturers must file with us under our reporting regulations,49 CFR 573.6.

Defective tires pose a substantial risk to motor vehicle safety. The Firestone tires that have been recalled have been associated with numerous deaths. The recall included both new tires in stock and used tires. Many of the remaining tires had considerable remaining tread and could have been reused if they had not been physically altered to preclude their use on a motor vehicle.

The management and disposition of tires is an ongoing environmental concern that can be aggravated by a safety recall. More than 270 million tires are scrapped annually in the United States. Although the 6.5 million tires involved in last year's Firestone recall would in the aggregate amount to a substantial volume of tires, the recall has been characterized as representing ''just a drop in the bucket'' compared to the numbers of tires disposed of annually. *See* ''Recalled Tires Just a Drop in the Industry Bucket,'' *Recycling Today,* News (October 2000), *http://recyclbroker.com/info-tires.htm.* A copy of this article has been placed in the docket for this rulemaking.

In addition to being unsightly and large, stockpiled ''scrap'' tires may present serious health and environmental risks. Tire piles can collect gas, and they provide breeding grounds for rodents and mosquitoes. Whole tires tend to rise in a landfill and come to the surface, which may compromise a landfill cover, and allow water to enter a landfill which would generate leachate. Tire piles also are susceptible to fire from arson, lightning, and even spontaneous combustion. Tire pile fires pollute the air and are difficult to extinguish. Water used to extinguish them becomes polluted with toxic substances and may pollute watercourses.

2. State Regulation of Management and Disposal of Scrap Tires

Because of the environmental risks posed by scrap tires, many states ban the disposal of whole scrap tires in landfills, and 49 of the 50 states have some form of regulations that cover scrap tire management, including in some instances charges for tire disposal and financial incentives for using scrap tires in other products. These state laws and regulations are summarized briefly in a booklet published by the U.S. Environmental Protection Agency (''EPA''), *State Scrap Tire Programs: A Quick Reference Guide: 1999 Update* (EPA–530–99–002) (August 1999). This

booklet presents a matrix that summarizes each state's scrap tire programs and regulations, provides information about how to contact state scrap tire program managers, and describes grants and other programs that are intended to improve scrap tire disposal and recycling and reduction. A copy of this booklet has been placed in the docket for this rulemaking action; it is also available at EPA's website: (*http://www.epa.gov*) . This is included in the docket as illustrative background material and not as an official statement or interpretation of applicable legal requirements.

3. Possible Uses for Scrap Tires

Today's steel-belted radial tires are not biodegradable and are difficult to dispose of or recycle, because they are made of a mixture of fabric, steel, carbon black, and several types of natural and synthetic rubbers. According to the U.S. Department of Energy (''DOE''), estimates of the number of ''scrap'' tires in stockpiles around the United States range from 500 million to three billion. *See* DOE, *Consumer Energy Information: EEC Reference Briefs, http://www.eren.doe.gov/consumerinfo/refbriefs/ee9/html,* which has been placed in the docket for this rulemaking action). Additional environmental information relevant to the subject of this rulemaking is available on the Scrap Tire Management Council Website and on the Website of *Scrap Tire News (http://www.scraptirenews.com/archive.html),* published by the Recycling Research Institute of Suffield. CT.

The need to develop uses for ''scrap'' tires has been recognized for many years, by government agencies and by the tire industry, which has established a Scrap Tire Management Council, a nonprofit organization that is devoted to expanding the market for scrap tires. (The council's Website address is *http://www.rma.org/scraptires/scraptires.html).* Section 7 of the TREAD Act recognizes this same need.

Another EPA booklet, *Summary of Markets for Scrap Tires* (EPA/530–SW–90–0748 (October 1991)) (''EPA Market Summary''), describes potential market uses for scrap tires. These uses include the manufacture of crumb rubber, which may be incorporated into asphalt pavement, into rubber products such as floor mats, vehicle mud guards and carpet padding, and into plastic products such as floor mats and adhesives, or processed further into reclaimed rubber, which is made by mixing crumb rubber with water, oil and chemicals and heating the mixture under pressure. Crumb rubber also can be used in railroad crossings. Shredded tires can be used as bulking agents in the composting of wastewater treatment sludge. Chipped tires can be used for playground gravel substitutes and lightweight road fill material. Whole or partial scrap tires also can be used for artificial reefs, breakwaters, erosion control, playground equipment, commercial fishing equipment, and highway crash barriers. *See* ''EPA Market Summary,'' pp. 8–9. This booklet has been placed in the docket for this rulemaking action. *See also* A. Moorse, ''Recycled rubber goods maker moves into production stage,'' *Capital District Business Review,* Sept. 2, 2000. A hard copy of this article has been placed in the docket for this rulemaking action; it also is available at *http://albany.bcentral.com/albany/stories/20000/09/04/story3.html.*

Scrap tires can also be used as fuel. They represent a potentially significant energy source, because they have a heat value slightly higher than that of coal (EPA Market Summary, p. 5) and they are comparable to or better than coal in terms of emissions of some pollutants. See L.Chubb, ''Firestone recall: Where have all the tires gone?'' Environmental News Network (''ENN'') , 9/20/2000 (citing statement of John Serumgard of the Scrap Tire Management Council). Power plants, tire manufacturing plants, cement kilns, and pulp and paper mills have used tires as fuel. Usually they burn tires that have been shredded into chunks (also known as tire-derived-fuel, or ''tdf''), because they do not have the capability to burn whole tires. Some plants can produce their own tdf in furnaces; others can use tdf prepared by others. According to one source, last year, a total of 110 electricity generating facilities in the U.S. held permits to burn tires. *See* Chubb, ''Firestone recall * * *'', *supra.* A hard copy of this article has been placed in the docket for this rulemaking action; it also is available from ENN's website (*http://www.enn.com/news/enn-stories/2000/09/09202000/tires—31672.asp?P=2).*

B. Who Would be Required to Comply with the Requirements to file Programs and Reports about Disposition and Disposal of Recalled Tires?

We are proposing that the rule's requirements apply to all manufacturers that conduct tire recalls, including vehicle manufacturers that conduct recalls to correct defects in their vehicles in which the remedy is the replacement of tires.

TREAD section 7's amendment to subsection 30120(d) provides that, for a remedy involving the replacement of tires, the manufacturer shall include a plan addressing how to prevent replaced tires from being resold for use on motor vehicles or disposed of in landfills. In this amendment, Congress added these requirements to the pre-existing 30120(d) requirement that a manufacturer file with the Secretary a copy of the manufacturer's program for remedying a defect or noncompliance. In this context, the use of the term ''manufacturer'' in section 7 indicates that the term applies to all manufacturers that conduct recalls of tires under the Safety Act to correct safety-related defects or noncompliances with applicable standards.

Tires are motor vehicle equipment. With respect to the recall provisions of the Safety Act, 49 U.S.C. 30118–30121, by regulation tires are considered as replacement equipment, even if they were installed on a motor vehicle at the time of first sale. 49 CFR 579.4(b)(2). Therefore, tire manufacturers have the duty to conduct notification and remedy campaigns to address defective or noncompliant tires, including tires installed on new vehicles. *See* 49 CFR 579.5(b). Tire brand name owners, such as retail chain stores that sell tires under their own ''private labels'' or ''house labels'' are also considered manufacturers (49 U.S.C. 30102(b)(1)(E)) and have the same defect and noncompliance reporting requirements as manufacturers under 49 CFR 573.3(d). All of these would be required to file reports required under the proposed rule, if their tires were found to be defective or noncompliant.

In rare circumstances, vehicle manufacturers also may conduct recall campaigns regarding tires installed on their new vehicles. For example, Ford Motor Company (Ford) recently announced a recall to replace tires on MY 2002 Ford Explorer vehicles whose sidewalls had been cut during the vehicle assembly process. Because the tire disposition problem also affects tires that are removed during these recalls, the proposed rule also applies to vehicle manufacturers that initiate tire recalls.

C. What Elements Would the Manufacturers' Plans Address?

1. Summary

We are proposing to require manufacturers to include information about their plans for incapacitating and disposing of recalled tires in their remedy programs, and to require that manufacturers implement these plans. We are proposing that manufacturers' plans address, at a minimum, three

major issues: (1) Ways of assuring that the entities replacing the tires are aware of legal prohibitions on the sale of the defective or noncompliant tires under the Safety Act, (2) methods 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. NHTSA believes that the extent of the manufacturer's control over recalled tires likely would vary, depending on the nature of the manufacturer's relationship with each of the facilities that replace the recalled tires, which may range from wholly-owned and franchised tire dealers to independent tire dealers, motor vehicle dealers, and service stations. We are proposing that where the manufacturer controls the tire outlet, the manufacturer direct proper disposition of the tire. Where the manufacturer does not have control, we are proposing that the manufacturer provide informational materials to the outlets, including information about the legal prohibitions on the resale of the tires.

We are proposing ''exceptions reporting'', by manufacturer-controlled tire outlets to manufacturers monthly and by manufacturers to NHTSA in quarterly reports filed pursuant to 49 CFR 573.6. These reports would identify the aggregate number of recalled tires which the manufacturer becomes aware have not been rendered unsuitable for resale for installation on a motor vehicle in accordance with the manufacturer's plan; 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 such failures of tire outlets to act in accordance with the manufacturer's plan, including an identification of the outlets in question.

2. Legislative Background

As described above, section 7 of the TREAD Act provides for two independent plans for the disposition of recalled tires: (1) Plans for the restriction of the resale of recalled tires and (2) plans for the limitation of the disposal of recalled tires in landfills. Each may be qualified by the degree of the manufacturer's control over the tire replacement process. The first of these provisions was addressed originally in proposed section 6 of the House Bill underlying the TREAD Act, ''Sales of Replaced Equipment,'' which would have amended 49 U.S.C. 30120 by adding a requirement, at subsection (d), for the manufacturer to have a plan addressing how to prevent replaced tires from being sold for installation on motor vehicles, unless they had been remedied, to the extent that the manufacturer could reasonably control such resales. *See* H.R. Report No. 106–954, 106th Cong., 2d Sess., pp. 4, 15. This provision did not address the issue of how to dispose of the unremedied tires, nor did any other part of the original bill.

The first version of the ''anti-landfill'' portion of section 7 of the TREAD Act, which was intended to preclude disposition of recalled tires in public landfills, was proposed as amendment 1(k) to H.R. 5164, offered by Congressman Pallone on October 5, 2000. This proposed amendment would have provided that ''[n]o person may dispose of any [recalled tire] except in a fashion that protects the public health and safety. Disposal of such tires in a public landfill shall not be considered adequate protection of the public's health and safety.'' Prior to passage of the House bill (H.R. 5164), this amendment was withdrawn. *See* H.R. Rep. No. 106–954, *supra,* at p. 9.

Eventually, section 6 of the H.R. 5164 was expanded to include a restriction on the disposition of recalled tires in landfills. The ''reasonable extent of control'' language from section 6 was applied to the ''anti-landfill'' provision as well as to the ''no resale without repair'' provision; the references to ''protection of the public health and safety'' and the direct prohibition of use of recalled tires in landfills were dropped from the ''anti-landfill'' provision. Both provisions, with identical reporting requirements, appear in section 7 of the TREAD Act. The legislative history does not provide further explanation of Congress' action.

3. The August 2000 Firestone Recall

Firestone prepared a Recall Fact Sheet (''Fact Sheet''), dated August 30, 2000, which was intended to provide Federal, State and local authorities with information about the scrap tires collected during the company's August 2000 recall. The Fact Sheet contained a general description of the procedures in place at the 13,000 authorized service centers that were replacing recalled tires to manage the proper disposition of those tires. It outlined the following four elements: (1) To ensure that recalled tires are not reused on vehicles, the tires are to be rendered useless by drilling a hole in or cutting through the sidewall upon removal from the vehicle; (2) the company arranged with its current scrap tire vendors for additional pickups of scrap tires from company-owned stores and arranged with its ''normal transportation vendors'' to visit Firestone stores and authorized service centers and remove scrap tires; (3) recalled scrap tires are being transported directly to licensed and permitted recycling facilities or to Firestone distribution facilities where they are checked to ensure that they have been rendered useless and then transported to licensed and permitted recycling facilities; and (4) ''[t]he majority of the recalled tires are being shredded or beneficially reused as fuel for power plants or cement kilns, or ground into crumb rubber for recycling into a variety of useful products such as playground mats, asphalt, and soaker irrigation hoses.'' It also stated that ''none of the recalled tires are being redistributed or retreaded.'' This Fact Sheet is available in the docket for this rulemaking.

4. Plan Elements

We are proposing that manufacturers' plans include three elements.

First, the plans would have to address legal requirements established by the Safety Act. In addition to the notifications of the existence of a defect or noncompliance required under 49 U.S.C. 30118–30119, at a minimum manufacturers would be required to notify all entities that are authorized to replace the tires in question, including their owned stores, franchised dealers, and distributors, as well as independent dealers, about the prohibitions and notification requirements in the Safety Act as they apply to recalled tires. This includes the ban on the sale of new defective or noncompliant tires (49 U.S.C. 30120(i), *see generally* 66 FR 38247 *et seq.* (July 23, 2001)); the prohibition on the sale of new and used defective and noncompliant tires (49 U.S.C. 30120(j), *see generally* 66 FR 38247 *et seq.* (July 23, 2001)); and the duty to notify NHTSA of any sale of a new or used recalled tire for use on a motor vehicle (49 U.S.C. 30166(n)), *see generally* 49 CFR 573.10, 66 FR 38159 *et seq.* (July 23, 2001)). The manufacturer would have to provide informational materials on the prohibitions and notification requirements to all authorized replacement outlets. For the tire outlets that are company-owned or otherwise subject to the control of the manufacturer, the manufacturer would also be required 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.

Second, manufacturers would be required to set forth their programs to assure, insofar as possible, that the recalled tires are not resold for

installation on a motor vehicle. As above, company-owned and other stores controlled by the company would be directed to permanently alter the tires so that they could not be used on vehicles. This could include, for example, drilling substantial (*e.g.* ½ inch) holes in the sidewalls, cutting the tire beads, or sawing the tires in half. To ensure that this alteration is performed, we are also proposing that stores be directed to do it before the end of the business day on which the recalled tire has been removed from the vehicle. We seek comments on whether this time period is sufficient or whether, and why, a different time period should be specified. The manufacturer would have to provide authorized tire outlets that it does not control with guidance on how to permanently alter the tires so that they could not be used on vehicles and request them to do that promptly.

Third, manufacturers would be required to describe their plans aimed at limiting the disposal of recalled tires in landfills and, instead, channeling them into a category of positive reuse (shredding, crumbling, recycling, and recovery) or another alternative beneficial non-vehicular use. The proposed rule would require that the manufacturers' plans provide that company-controlled outlets dispose of all recalled tires in accordance with applicable state and/or local laws and regulations. We are further proposing that manufacturers provide directions to their stores and guidance to independent dealers about disposition of tires in a manner that, to the extent possible, avoids landfilling.

We seek comments on whether to require manufacturers to provide outlets that are authorized to replace tires with information that summarizes the applicable laws and regulations regarding disposal of tires in their jurisdictions and that identifies reputable tire collection and transportation contractors as well as facilities in their areas that would accept unrepairable recalled tires for a beneficial use. We believe that this information would be useful to outlets that replace recalled tires, but we do not know the extent to which they already have it. We assume that some manufacturers already provide such information, but we do not know how many do so or the types of information that are provided. We are interested in comments on whether providing this information has proved useful to manufacturers and their dealers and on the extent of the burden that such a requirement would create.

It is possible that manufacturers could include conditions governing tire disposition in their contracts for supply of replacement tires to independent outlets. If this were done, it would help to assure appropriate disposition of recalled tires by outlets not controlled by the manufacturer. Because we do not know whether manufacturers' past and/or existing contracts contain restrictions or other provisions with respect to the re-use and disposition of recalled tires, the proposed rule does not address this topic. We seek comments on this issue, as well as on whether conditions could be included in the future and what they would be.

In addition, manufacturers would be required to implement their plans for conducting programs to ensure that recalled tires are rendered unsuitable for installation on a motor vehicle for resale and for limiting the disposal of recalled tires in landfills.

We seek comments on the above proposal for plans and, depending on the comments, may modify the plan requirements. If you suggest additional items, please include in your comments information about the associated costs.

5. Quarterly Reporting

Section 7 provides that we must require manufacturers to ''include information about the implementation of such plan with each quarterly report to the Secretary regarding the progress of any notification [and] remedy campaigns.'' The contents of these quarterly reports are currently described in 49 CFR 573.6.

In order to minimize administrative burdens on manufacturers, we do not plan to require that manufacturers include in their quarterly reports the number of recalled tires that have been rendered unsuitable for resale on motor vehicles or the number of recalled tires that have been disposed of by various means. Instead, we propose to require ''exceptions reporting'' under which manufacturers must advise us of only those instances of which they become aware in which their plans were not followed. The required quarterly reports from manufacturers to us would include the aggregate number of recalled tires which the manufacturer becomes aware have not been rendered unsuitable for resale for installation on a motor vehicle in accordance with the manufacturer's plan and 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. The manufacturer would also be required to describe any such failures of tire outlets to act in accordance with the directions in the manufacturer's plan, including an identification of the outlet(s) in question. To permit manufacturers to report this information in a timely fashion, the proposal would require manufacturer-controlled outlets that dispose of tires to report the same categories of information monthly to the manufacturer. We seek comments on effective reporting mechanisms and on the burdens that such reporting would impose on the outlets.

D. What Role Does NHTSA Intend to Play With Respect to the Manufacturers' Plans for the Disposition of Tires?

Under today's proposal, NHTSA's role with respect to reviewing the manufacturers' plans for the disposition of recalled tires would be limited to examining the manufacturers' plans, programs, and reports to see whether they contain the required items of information. We believe that our list of required reporting elements is sufficiently comprehensive and specific to ensure that the plans will effectuate Congressional objectives. Also, the proposed rule would require that the manufacturers' plans demonstrate that they have directed the entities that are replacing recalled tires to dispose of them in accordance with applicable laws. We note that in virtually every state, the disposition of used tires already is subject to regulation under State and/or local statutes and regulations. However, we do not have the resources or the expertise to review the manufacturers' characterizations of applicable requirements under those environmental laws. Of course, the failure of a manufacturer to implement its plan in accordance with its terms would constitute a violation of the Safety Act.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

We estimate that the additional economic impact of this 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). The additional notification and reporting elements that this rule would add would be very limited and wholly descriptive. They would not impose significant costs on manufacturers.

In general, the radial tires that are in widespread use today are far safer than older technology tires and are subject to few significant recalls. Although the two recalls recently conducted by Bridgestone/Firestone, Inc. of Firestone ATX and Wilderness AT tires were very large, this is unusual. In the 1980s and 1990s, there were relatively few recalls of large numbers of tires. In the past five years, the average number of tire recalls per year was five, the average population of recalled tires per year was 28,389, and the average recall involved 5,678 tires, excluding the aforementioned Bridgestone/Firestone recalls and a Cooper Tire recall (No. 99T–005), which covered only two (2) tires. (This excludes recalls to correct labeling errors.) Therefore, we do not anticipate that there will be large numbers of tire recalls for which manufacturers would be required to file programs and plans under our proposed rule.

Finally, this rule essentially would require manufacturers to take steps to facilitate compliance by entities that replace recalled tires with applicable state and local laws regarding tire disposition. Since it is likely that these entities already comply with applicable requirements for disposal of returned tires, this rule would not add any substantive burdens or compliance costs. Even in the unlikely event of complete disregard of applicable disposal requirements (in which case 100% of the cost of compliance might be viewed as a cost of this rule), the additional costs for recycling 100% of the tires recalled annually would be $141,945 for the tire industry as a whole, or $28,390 per average tire recall (assuming 28,389 tires recalled annually, or 5,678 tires recalled per average tire recall, multiplied by $5.00 (including $2.00 to incapacitate each recalled tire, $1.00 to collect each recalled tire, and $2.00 to recycle each recalled tire)). For these reasons, we believe that the additional economic effect of this rule would be minimal.

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 proposed rule would not have a significant economic impact on a substantial number of small entities. The primary impact of this proposed rule would be felt by the major tire manufacturers, which are not small entities. This impact would be minor, since it primarily would involve adding a description of plans for incapacitating and disposing of recalled noncompliant or defective tires to their 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 estimate this cost at $1.00 per tire manufacturer per affected retail outlet, but the cost could well be less because manufacturers may already be including such descriptions in their notices to dealers.

Disposal requirements would 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, who we understand currently pay for tire recalls, would incur the costs associated with tire disposal, *e.g.* the costs of transporting disabled tires and the costs of recycling the tires. We estimate these costs at approximately $1.00 per tire for transportation and $2.00 per tire for recycling.

This proposed 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 would incur the costs of 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. 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.

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

This 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 our ODI. There would be an incremental burden of adding to their 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 noncomplying 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 additional reporting elements that this proposed rule would require of manufacturers and of manufacturer-controlled outlets that implement recalls, *i.e.* periodic ''exceptions 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 very limited and primarily descriptive. We believe that compliance with the proposed rule 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. In furtherance of the recognition in section 7 that the manufacturer's ability to influence the recalls will vary according to the degree to which it controls the outlets that carry out the recalls, we do not propose to require even this limited ''exceptions reporting'' by manufacturers with respect to outlets that the manufacturer does not control.

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 plan to submit the proposed requirements to OMB for its approval, as required by the PRA. We seek comments on the information collection burdens associated with this proposed rule.

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 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. This rulemaking does not have those implications because it applies 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 it directs manufacturers to file plans that conform with applicable state and/or local requirements.

F. Civil Justice Reform

This proposed rule would 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 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 this rule would not 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.

IV. Submission of Comments.

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

In developing this notice of proposed rulemaking, we tried to address the anticipated concerns of all our stakeholders. Your comments will help us decide what to include in the rule and to improve the proposed rule. We invite you to provide different views on it, new approaches we have not considered, new data, how this rule 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.

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.

List of Subjects in 49 CFR Part 573:

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

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 573 as set forth below.

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

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

2. In § 573.5, redesignate paragraphs (c)(9) through (c)(11) as paragraphs (c)(10) through (c)(12) and by add a new paragraph (c)(9) to read as follows:

§ 573.5 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) Include a plan for assuring 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, including 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; and

(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.

(A) With respect to the requirement in paragraph (c)(9)(i) of this section, at a minimum, the manufacturer shall notify its owned stores, franchised dealers, and/or distributors, as well as all independent outlets that are authorized to replace the tires that are the subject of the recall, about the prohibitions and notification requirements in Chapter 301. This includes notification of the ban on the sale of new defective or noncompliant tires (49 U.S.C. 30120(i)); the prohibition on the sale of new and used defective and noncompliant tires (49 U.S.C. 30120(j)); and the duty to notify NHTSA of any sale of a new or used recalled tire for use on a motor vehicle (49 U.S.C. 30166(n)). 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.

(B) With respect to the requirement in paragraph (c)(9)(ii) of this section, the manufacturer's program must, at a minimum, include the following:

(1) Written directions to manufacturer-owned and other manufacturer-controlled outlets to alter the recalled tires permanently so that they cannot be used on vehicles, and instructions on how and when to perform such alterations. 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 by the close of business on the day on which recalled tire has been removed from the vehicle;

(2) Written guidance to all other outlets that 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; and

(3) A requirement that manufacturer-owned and other manufacturer-controlled outlets report to the manufacturer on a monthly basis 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 and describe any such failure to comply with the manufacturer=s plan;

(C) With respect to the requirement in paragraph (c)(9)(iii) of this section, the manufacturer's program must, at a minimum, include the following:

(1) Written directions that require manufacturer-owned and other manufacturer-controlled outlets to comply with applicable state and local laws and regulations regarding disposal of tires, and that provide further direction and guidance to manufacturer-owned and other manufacturer-controlled outlets 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;

(2) Written guidance to all other outlets that are authorized to replace the recalled tires regarding the duty to comply with applicable state and local laws and regulations regarding disposal of tires; and

(3) A requirement that manufacturer-owned and other manufacturer-controlled outlets report to the manufacturer on a monthly basis the number of recalled tires disposed of in violation of applicable laws and regulations. Each such report shall include a description of any such failure of the tire outlet to act in accordance

with the directions in the manufacturer's plan.

(D) As used in this paragraph, written directions to a manufacturer-owned or controlled outlet shall be sent to the person in charge of each outlet 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 above requirements.

(E) 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. In § 573.6, add paragraph (b)(7) to read as follows:

§ 573.6 Quarterly reports.

* * * * *

(b) * * *

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

(i) The aggregate number of recalled tires which 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 § 573.5(c)(9) of this part;

(ii) 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

(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 outlets in question.

Issued on: December 11, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

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