Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK52.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Steven L. Keller (01C), Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials of claims for veterans' benefits. The Board's 59 Members decide about 35,000 to 40,000 cases per year.

For the purpose of deciding appeals, the Board sometimes obtains medical opinions from the Veterans Health Administration (VHA), the part of VA that provides medical treatment to veterans. The Board's current rules of practice at 38 CFR 20.901(a) state that ''[t]he Board may obtain a medical opinion from the Chief Medical Director of the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.'' This provision has always been intended to reflect that the Board may obtain medical opinions from appropriate health care professionals in VHA. However, there has been some confusion as to whether this provision permitted the Board to obtain a medical opinion from an individual in VHA other than the Under Secretary for Health (the title of Chief Medical Director was changed to Under Secretary for Health). This document amends the rules of practice at § 20.901(a) by deleting the reference to ''Chief Medical Director'' and by clarifying that the Board may obtain medical opinions from appropriate health care professionals in VHA.

Under 38 U.S.C. 7109 and 38 CFR 20.901(d), the Board can request an expert medical opinion, in addition to that available within the Department. Under 38 CFR 20.901, the Board can also request opinions from the ''Chief Medical Director,'' *id.* 20.901(a); the Armed Forces Institute of Pathology, *id.* 20.901(b); and the Department's General Counsel, *id.* 20.901(c). The U.S. Court of Appeals for Veterans Claims has both recognized the Board's authority to seek a medical opinion under 38 CFR 20.901(a), *Perry* v. *Brown,* 9 Vet. App. 2, 6 (1996), and, in a 1998 case, noted that the Board's authority to obtain an expert medical opinion irrespective of 38 U.S.C. 7109 was ''uncontested,'' *Winsett* v. *West*, 11 Vet. App. 420, 426 (1998), *aff'd*, 217 F.3d 854 (Fed. Cir. 1999) (unpublished decision), *cert. denied,* 120 S.Ct. 1251 (2000).

The Board has been using VHA medical opinions under 38 CFR 20.901(a) for many years. For example, from Fiscal Year (FY) 1993 through FY 1999, Board Members requested 1,235 such opinions. Reports of the Chairman, Board of Veterans' Appeals, Fiscal Years 1993–1999. In FY 1999, the Board requested 482 advisory opinions from VHA physicians, compared with 100 requests from non-VA medical experts under 38 U.S.C. 7109. Report of the Chairman, Board of Veterans' Appeals, Fiscal Year 1999 at 23.

Advisory opinions requested from VHA physicians have typically been provided in a much more timely manner than those obtained from non-VA physicians and generally have been well-reasoned, succinctly stated, and fully responsive to the questions asked by the Board. Additionally, the thoroughness and specificity of many VHA advisory opinions have provided sufficient information to allow the Board Members to issue final decisions without the need to remand cases to the regional offices to obtain the same information. As a result, this process reduces the time a veteran must wait for a final resolution of the appeal.

Since 1995, this process has been memorialized in a VHA ''Directive,'' which allocates the responsibilities between VHA and the Board. VHA Directive 10–95–040 (Apr. 17, 1995); VHA Directive 2000–049 (Dec. 13, 2000). The latter directive, which replaces the former, may be found on VA's internet site at *http://www.va.gov/publ/direc/health/direct/12000049.pdf.*

This interim final rule concerns rules of agency procedure and practice. Accordingly, under the provisions of 5 U.S.C. 553, we are dispensing with prior notice and comment and a delayed effective date.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this interim final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: July 9, 2001.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

2. Section 20.901(a) is revised to read as follows:

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) *Opinion from the Veterans Health Administration.* The Board may obtain a medical opinion from an appropriate health care professional in the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 5107(a))

* * * * *

[FR Doc. 01–18172 Filed 7–20–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 573

[Docket No. NHTSA–2001–10145]

RIN 2127–AI23

Motor Vehicle Safety; Reporting the Sale or Lease of Defective or Non-Compliant Tires

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

ACTION: Final rule.

SUMMARY: This final rule implements section 3(c) of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD Act). Section 3(c) directed us to issue a final rule by January 30, 2001, implementing that Act's requirement of the submission of reports concerning sales and leases of defective or noncompliant tires by certain persons. Accordingly, we published an interim final rule and request for comments in the **Federal Register** on December 26, 2000 (65 FR 81409). We are now publishing a final rule requiring any person who 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 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. There have been no significant changes to the interim final rule.

DATES: *Effective date*: This rule is effective August 22, 2001.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than September 6, 2001.

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 website 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 non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA, telephone (202) 366–5226; for legal issues, contact Jennifer T. Timian, Office of Chief Counsel, NHTSA, telephone (202) 366–5263.

SUPPLEMENTARY INFORMATION:

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 manufacturers' inadequate reporting to NHTSA of information regarding possible defects in motor vehicles and motor vehicle equipment, with specific reference to tires. The TREAD Act directed the Secretary of Transportation (''the Secretary'') to issue various rules to improve reporting of information that is or could be related to defects and noncompliances with applicable Federal motor vehicle safety standards. The authority to carry out Chapter 301 of Title 49 of the United States Code, under which the rules directed by the TREAD Act are to be issued, has been delegated to NHTSA's Administrator pursuant to 49 CFR 1.50.

One of these congressionally mandated rules is found in section 3(c) of the TREAD Act, which added a new subsection (n) to 49 U.S.C. 30166. That subsection directs us to issue, within 90 days of enactment, a final rule requiring any person who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire which is not compliant with an applicable tire safety standard, with actual knowledge that the manufacturer of such tire has notified its dealers of such defect or noncompliance as required under 49 U.S.C. 30118(c) or as required by an order under 49 U.S.C. 30118(b), to report that sale or lease to NHTSA. Under 30166(n)(2), reporting of such sales or leases is not required where: (A) prior to delivery of any such tire pursuant to a sale or lease, the defect or noncompliance is remedied as required under 49 U.S.C. 30120; or (B) notification of the defect or noncompliance is required pursuant to an order issued under section 30118(b), but enforcement of the order is restrained or the order is set aside in a civil action to which 49 U.S.C. 30121(d) applies.

In order to timely implement this statutorily-mandated final rule, we published in the **Federal Register** on December 26, 2000, an interim final rule implementing section 3(c) (65 FR 81409). That interim final rule amended 49 CFR Part 573 to add a new section 573.10, which specified who would be required to comply with this new reporting requirement, when such a report would be due to the Agency, and what information would be required within such a report.

With respect to who would be required to comply with this rule, we explained that because Congress chose to use the general terms ''any person'' to describe who would be expected to report sales or leases of defective or noncompliant tires, the rule would not be limited to particular classes or categories of persons such as manufacturers or dealers.[1] Rather, the rule would apply to the actions of all persons, to include individuals and corporate entities alike. We were careful to explain, however, that only those persons who sell or lease a defective or noncompliant tire *for use on a motor vehicle,* as opposed to persons who sell or lease a new or used vehicle equipped with a defective or noncompliant tire, are covered by the rule. Thus, we explained, motor vehicle dealers, lessors and rental companies would not be subject to the rule unless, of course, those persons were to sell or lease a defective or noncompliant tire separate from a motor vehicle.

Additionally, we explained that to be covered under section 573.10, the person must have actual knowledge that the manufacturer of the tire at issue had notified its dealers of the defect or noncompliance. We added, however, that a person need not have received notification directly from the manufacturer, but that a person's actual knowledge that the notification was made to dealers would be sufficient to invoke the reporting requirement under this section.

Lastly, we explained that the principle of *respondent superior* applied to this rule, such that employers, principals and other persons who are legally accountable for the actions of their employees or agents are required to report any covered sales or leases that their employees or agents cause while acting within the scope of their employment. We noted, however, that only one report per covered sale or lease is required, such that either an employee or his/her employer could file a report pursuant to section 573.10.

With regard to the timing of reports required under section 573.10, we provided that such reports would be due to NHTSA no more than five working days after the person to whom the tire was sold or leased took possession of the tire. We explained that a five-day rule was chosen because it would be consistent with 49 CFR 573.5, which requires defect and noncompliance information reports to be submitted within a five-day time frame.

In terms of what information will be required in a report submitted pursuant to section 573.10, we set forth seven categories of information: (1) A statement that the report was being provided pursuant to section 573.10 regarding the sale or lease of a defective or noncompliant tire; (2) the name, address and telephone number of the person who purchased or leased the tire; (3) the name of the manufacturer of the tire; (4) the tire's brand name, model name, and size; (5) the tire's DOT

[1] We also explained that the interim final rule would be applicable to both new and used tires.

identification number; (6) the date of sale or lease; and (7) the name, address and telephone number of the seller or lessor. We additionally noted that each report must be dated and signed with the name of the person printed or typed below the signature, together with the official position of the individual signing the report where such a report is filed on behalf of a corporation.

In our publication of the interim final rule we solicited the public's comments concerning this rule. We received three comments to our interim final rule. Those comments and our responses, organized by subject matter, follow.

Comments

Comments Relating to the Scope of Section 573.10

The National Automobile Dealers Association (NADA) commented that our rule should be amended to contain language specifying that it does not apply to the sale or lease of a new or used motor vehicle which is equipped with a tire that is defective or noncompliant. NADA suggested that such an amendment would clarify the rule's application to only those persons who sell or lease a defective or noncompliant tire ''for use on a motor vehicle,'' as specified in section 3(c) of the TREAD Act, and implemented in our interim final rule.

We believe the phrase ''for use on a motor vehicle'' in the statute is sufficient to explain that section 573.10 does not apply to sales or leases of motor vehicles that are equipped with one or more defective or noncompliant tires. Thus, we do not believe that a specific provision within section 573.10 to further clarify the rule's application is necessary. The rule will remain unchanged in this regard. However, in this context, we note that the sale of a new vehicle equipped with a defective or noncompliant tire new tire is prohibited by 49 U.S.C. 30120(i).

The Rubber Manufacturers Associations (RMA) asked that we consider requiring commercial entities to report sales or leases of used motor vehicles equipped with defective or noncompliant tires. We do not agree that such a requirement should be added to 49 CFR 573.10 for several reasons.

Section 3(c) does not apply to persons who sell or lease new or used motor vehicles that come equipped with defective or noncompliant tires. Rather, Congress specified in section 3(c) that it covers sales and leases of defective or noncompliant tires ''for use on a motor vehicle.'' An extension of our rule to sales and leases of vehicles by commercial entities would, therefore, be contrary to the terminology used within section 3(c).

Furthermore, extending the rule's application in this manner to only commercial entities would also be contradictory to the language and intent of section 3(c). As discussed in the preamble to the interim final rule, Congress chose to use the general terms ''any person,'' as opposed to the more restricted categories of ''manufacturer'' and ''dealer'' used elsewhere within 49 U.S.C. Chapter 301, in describing who was to be subject to the reporting requirement. Our application of this final rule to sales and leases by commercial entities alone and not to other groups, therefore, would be inconsistent with the statutory language.

We are, however, amending the applicability section of Part 573 (e.g., section 573.3(a)) to assure that there is no misunderstanding that section 573.10 applies to all persons and not simply to manufacturers. As published today, sections 573.3(a) and (g) make clear (although we do not believe that there was any doubt otherwise) that section 573.10 applies to all persons.

Comment Concerning Section 573.10's Relationship to Petitions for Inconsequentiality

The RMA asked that we clarify our rule with respect to tires for which a manufacturer has filed a petition for exemption from the recall requirements of 49 U.S.C. Chapter 301 on the basis that a defect or noncompliance is inconsequential to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h). In particular, RMA requested we consider tolling section 573.10's reporting requirement until such a petition is ruled upon, and consider an exemption of that reporting requirement where the agency makes a determination of inconsequentiality.

A reading of section 573.10 together with another of its counterpart regulations, section 573.5(c)(8)(iii), demonstrates that a distinct tolling provision or exemption to take into consideration petitions for determinations of inconsequentiality is not necessary. Accordingly, we have decided not to add the suggested provisions to section 573.10. Our explanation follows.

As set forth in section 573.10, one prerequisite to the application of this reporting requirement is that the person have actual knowledge that the manufacturer of the tire sold or leased has notified its dealers of the defect or noncompliance. Such a notification would not be issued during the pendency of the agency's consideration of a timely inconsequentiality petition. Under 49 CFR 573.5(c)(8)(iii), where a manufacturer has filed a timely[2] petition for a determination of inconsequential defect or noncompliance, that manufacturer's notification concerning the defect or noncompliance at issue is not required unless and until the agency denies that petition. Thus, where a manufacturer has not issued a notification to its dealers concerning a defect or noncompliance—such as in the circumstance where a tire manufacturer has petitioned for a finding of inconsequentiality and is awaiting a final determination from the agency—section 573.10's reporting requirement is not applicable.[3]

Comment Suggesting Educational Outreach to Small Businesses and Individual Retailers

The Specialty Equipment Market Association (SEMA) commented that because our rule extends to all persons, including individuals and small businesses, there may be hardships in informing the individual salesperson or small business as to our rule and its application to their conduct. SEMA suggested that comprehensive and ongoing efforts be made to notify and educate companies and individuals involved in the sale or lease of tires as to the rule's purpose, requirements, application and penalties for non-compliance. SEMA did not offer suggestions or descriptions as to what kinds of efforts it felt we should undertake that would be helpful in providing effective and comprehensive information to the individual salesperson or small retailer. SEMA stated it was taking steps to educate its members of their obligations under the TREAD Act, which would include 49 CFR 573.10.

We do not agree that a comprehensive and ongoing educational campaign directed at small businesses and individual tire retailers is necessary with respect to today's final rule. To begin, this is not a matter to be addressed in a rule. Even if it were, this rule is not complex and is consistent with ordinary judgment relating to the intentional sale of defective or noncompliant tires—conduct which is prohibited pursuant to 49 U.S.C. 30120(i) and (j). In addition, while this rule applies to all persons, its

[2] The deadlines for filing such petitions are discussed in 49 CFR 573.5(c)(8)(iv).

[3] The same would hold true if a petition were granted. This final rule's reporting requirements would be inapplicable in that situation because the tire manufacturer would not notify its dealers of an inconsequential defect or noncompliance.

application is limited to persons who both knowingly and willfully sell or lease a defective or noncompliant tire, and have actual knowledge that the manufacturer of that tire notified its dealers of the defect or noncompliance. Under this rule, a very limited number of individuals would be obligated to file reports. In the interim final rule we stated that we expect to receive fewer than ten reports of such incidents a year, and no one suggested that this estimate was erroneous. Under these limited circumstances, we do not believe a government-directed educational campaign directed at small businesses and individual tire retailers is appropriate.

Regulatory Analyses and Notices

1. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this 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 only involves reporting and the incidence of covered sales and leases of defective or noncompliant tires is expected to be small.

2. Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this rule will have no significant economic impact on a substantial number of small entities. The impacts of this rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because this provision only involves reporting and the incidence of covered sales and leases of defective or noncompliant tires is expected to be small.

3. National Environmental Policy Act

We have analyzed this proposal under the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

4. Paperwork Reduction Act

NHTSA has determined that this final rule will impose new collection of information burdens within meaning of the Paperwork Reduction Act of 1995 (PRA). Pursuant to 5 CFR 1320.13 *Emergency processing,* NHTSA asked for, and received, approval from OMB for a temporary emergency clearance for this collection. In the interim final rule, NHTSA began the process of requesting a 3-year clearance for this collection. In that interim final rule we also requested comments from the public on this new collection of information burden. No comments were received. NHTSA has submitted its request for a 3-year clearance for this collection to OMB.

5. 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 Executive Order 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 rule, which requires the reporting of knowing and willful sales or leases of defective or noncompliant tires where the person selling or leasing the tire has actual knowledge that the manufacturer of such a tire has notified its dealers of that defect or noncompliance pursuant to either section 30118(c) or 30118(b) 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 Executive Order 13132. This rule making does not have those implications because it applies to those persons who sell or lease defective or noncompliant tires, and not to the States or local governments.

6. Civil Justice Reform

This 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.

7. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (P.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 will not have a $100 million annual effect, no Unfunded Mandates assessment is necessary and one will not be prepared.

Final Rule

Accordingly, the interim final rule amending 49 CFR part 573 which was published at 65 FR 81409 on December 26, 2000, is adopted as final with the following changes:

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. Section 573.3 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 573.3 Application.

(a) Except as provided in paragraph (g) of this section, this part applies to manufacturers of complete motor vehicles, incomplete motor vehicles, and motor vehicle original and replacement equipment, with respect to all vehicles and equipment that have been transported beyond the direct control of the manufacturer.

* * * * *

(g) The provisions of § 573.10 apply to all persons.

* * * * *

Issued on: July 18, 2001.

L. Robert Shelton,

Executive Director.

[FR Doc. 01–18309 Filed 7–20–01; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 001226367–0367–01; I.D. 121500E]

Magnuson-Stevens Act Provisions; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to the 2001 specifications for the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the 2001 groundfish fishery specifications and management measures for the Pacific Coast