

March 10, 2016

Docket Management Facility  
Docket No. NHTSA-2016-0001  
U.S. Department of Transportation  
1200 New Jersey Avenue SE.  
Washington DC, 20590

RIN 2127-AL66

## VIA ELECTRONIC SUBMISSION

### **TIA Comments on Update Means of Providing Notification; Improving Efficacy of Recalls**

On January 25, 2016 the National Highway Traffic Safety Administration published an Advance Notice of Proposed Rulemaking (ANPRM) and request for public comment on Updating Means of Providing Notification [to consumers] and Improving Efficacy of Recalls. The Tire Industry Association (TIA) is submitting these comments on behalf of its members. TIA is a national trade association representing 8,000 members (who directly operate over 20,000 retail locations), engaged in the retail, retreading, importing and distributing of all varieties of tires. The majority of our members are independent businesses responsible for selling and servicing tires to the motoring public. TIA also represents companies in the wholesale distribution sector that reach more than 100,000 points of sale in the United States.

Independent retailers as a market segment are responsible for approximately 60% of all passenger and light truck replacement sales. Many of these dealers are small businesses that operate in rural communities where there are few options for tire service. The majority of the tires sold by independent tire dealers are purchased from wholesalers, so there is very little, if any, direct contact between the retailer and the manufacturer. Since the TIA membership base encompasses both the retail and wholesale channels, we are in the best position to influence and implement a national system that will improve the recovery rate for defective recalled tires.

In the Executive Summary, the ANPRM cites MAP-21's authorization for NHTSA to "improve recall effectiveness by requiring manufacturers to send additional notifications of defects or non-compliance if a second notification by the manufacturer does not result in an adequate number of motor vehicles or replacement equipment being returned for remedy." Finally, MAP-21 authorizes NHTSA to permit public notice in addition to individualized notification. More recently, Section 24104 of the Fixing America's Surface



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Transportation Act (FAST Act) requires the Agency to amend the means of notification to owners by including “electronic means” in addition to first class mail. The term “electronic means” includes electronic mail and may include other means of electronic notification, such as social media or targeted online campaigns. While TIA recognizes the importance of notifying owners when a tire recall becomes necessary, we believe the focus should be on recovery, so our comments are focused on removing defective tires from the highway.

In Section III on Public Participation, the ANPRM asked a series of questions related to the means and methods of notification. TIA’s answers to those questions are as follows.

*(1) How effective has traditional first class mail been at reaching owners?*

Since the tire manufacturers do not share any recall recovery data with the retail or wholesale distribution channels, TIA cannot provide any research or evidence as to the effectiveness or lack thereof. However, we can point to an accident investigated by the National Transportation Safety Board (NTSB) where a 15-passenger van experienced a tread separation on a defective tire. In December of 2014, NTSB reported that the owner of the van had changed addresses so the recall notice was never received. Again, we have no data that quantifies the effectiveness related to notification via first class mail, but we are certain that changes of address or vehicle ownership result in a significant number of motorists who are never notified in the event of a tire recall.

*(2) Other than by first class mail, in what ways can and do manufacturers notify owners about safety recalls?*

We are unaware of any methods other than first class mail and press releases used by tire manufacturers to notify owners about safety recalls. Here are examples of the efforts from the manufacturers on the four most recent safety recalls regarding tires:

On February 5, 2016, NHTSA’s Office of Defects Investigation notified email subscribers of a recall involving more than 36,000 Firestone truck tires manufactured by Bridgestone Americas Tire Operations, LLC. While they did post press releases explaining the recall on both the Bridgestone and Firestone websites, they made no mention on either of their corporate Facebook or Twitter pages.

NHTSA notified subscribers of a Hankook Tire America Corp. Ltd. recall regarding 46,988 tires in three different sizes on January 9, 2016. There is no press release on their website related to the recall and no mention of it on their Facebook or Twitter pages.

NHTSA’s Office of Defects Investigation notified email subscribers of a recall involving tires manufactured by the Cooper Tire & Rubber Company on January 6, 2016. Again, there is no mention of the recall on Cooper’s Facebook or Twitter pages and even more telling is the fact that the “Voluntary Recall Information” tab

on the Cooper website does not mention the recall nor does it include any record of recalls.

NHTSA notified email subscribers on August 29, 2015 of a recall involving 9 different sizes of BFGoodrich light truck tires. On the official Michelin website, a diligent customer could locate the "Safety Recalls" page, but there is no mention of the recall and no posting on Michelin's Facebook page. On August 10, 2015, the BFGoodrich website posted a press release announcing the recall of 104,000 of these defective tires sold in the U.S. market, but there was no mention on the BFGoodrich Facebook or Twitter pages.

The fact of the matter is that the tire manufacturers do not make any concerted efforts to notify an owner in the event of a recall other than first class mail and/or a press release. They do not utilize social media or their websites to make motorists aware of defective tires that are a major safety risk and should be immediately removed from service. Tire manufacturers could use the Internet and social media to notify owners about safety recalls, but based on our research, we believe they could do a lot more.

*(3) What are the corresponding rates of remedy completion for these methods discussed in your response to paragraph (2)?*

Based on the apparent lack of utilizing social media or their official company websites, TIA estimates that the rate of remedy for notifying customers via the Internet is virtually nonexistent.

*(4) What sales and marketing methods and techniques could be employed for safety recall communications?*

Other than social media and their official company websites, the tire manufacturers could make a better effort to notify the retail and wholesale distribution channels. Trade publications often pick up the recall notifications. However, there are minimal attempts by the manufacturers to reach the points of sale outside their own dealer and distribution channels. The manufacturers notify the wholesalers and the limited number of dealers that buy direct, but that still leaves thousands of small retailers, automotive repair facilities, and service stations who could come across a recalled tire during the course of normal automotive service or maintenance. If the tire manufacturers developed some simple marketing materials to make the various distribution channels aware of a recall, it would definitely assist the effort to remove defective tires from the road.

Another method that would be effective involves the utilization of a third party for tire registration and recall notifications. If all of the tire registration information were stored in a third party database, that third party would represent another avenue to communicate a recall. Every effort must be made to notify motorists that a defective tire may be on their vehicle, so adding a third party will definitely

improve safety recall communications for defective tires.

*(5) If manufacturers communicate with owners through email, text messaging, smart phone applications, or other electronic means, which method of communication do manufacturers find the most effective at reaching owners?*

Again, the tire manufacturers are not forthcoming regarding the rate of effectiveness when contacting owners in the event of a recall and recovering the tires. Therefore, we cannot comment on which method would be the most effective.

*(6) Are manufacturers using social media to inform owners of safety recalls and influence owners' behavior to have recalls work completed?*

Based on our analysis of recent defective tire recalls, we are not aware of any efforts on the part of tire manufacturers to utilize social media to communicate with owners. The lack of transparency that tire manufacturers have demonstrated with the communication of recall campaign effectiveness is troubling at best. Defective tires pose a direct risk to the motoring public, yet the tire manufacturers make virtually no efforts to notify consumers other than direct mail and press releases, which we believe has been proven to be ineffective.

*(7) Are there any legal or other limitations of which the Agency should be aware in contemplating any of the alternatives noted above or mentioned in your comments?*

The current regulation for tire recordkeeping, 49 CFR Part 574, only accounts for the name and address of the tire purchaser when registering the tire. In the FAST Act, SEC. 24333 contains a provision where the Secretary can require retailers to submit additional information. The tire industry is completely different than the automotive industry in the sense that the automotive manufacturers do not sell directly to consumers. For that reason, collecting additional information such as email addresses and mobile phone numbers does not pose a threat to the automobile dealers because any contact from the manufacturer will still require the consumer to go through the dealer to make a purchase.

Now that the tire companies have started on-line direct sales to consumers, forcing the retailer to submit any information to the manufacturer is potentially damaging to the future of the independent tire dealer and possibly creates a competitive imbalance in the market. And while there is language that precedes 49 CFR Part 574 that prohibits a manufacturer from using registration information for marketing purposes, we are aware of situations where consumers have been contacted after registering their tires and reminded that they can purchase them directly from the manufacturer. Furthermore, investigating such claims would prove to be lengthy and costly. The damage to the independent dealer channel would be irreversible even if the claims were found to be true. TIA cautions the Secretary to require retailers to submit additional information directly to the manufacturer during the registration process under SEC. 24333. For that reason, we support a model where

all of the tire registration data is managed by a single third party designee that is independent of both the manufacturers and the retailers.

*(8) Do manufacturers currently have access to owners' email addresses?*

Under the current tire registration system mandated by 49 CFR Part 574, the consumer can voluntarily submit an email address. The only information required is the physical address for notification via first class mail.

*(9) What contingencies do manufacturers have in place to avoid spam filters or to indicate that an email relates to a safety recall explicitly?*

Given the level of secrecy that the tire manufacturers employ in the recall notification and recovery processes, we cannot comment on any contingencies. However, we will point out that direct notification from the manufacturer via any means, first class mail or electronic, is certain to have situations where the message does not reach the owner.

*(10) The purpose of 49 CFR part 577 is "to ensure that notifications of defects or noncompliances adequately inform and effectively motivate owners of potentially defective or noncomplying motor vehicles or items of replacement equipment to have such vehicles or equipment inspected and, where necessary, remedied as quickly as possible." Does notification by means other than first-class mail and email carry out this purpose?*

TIA refers to our answer in question #9.

Section III, Public Participation of the ANPRM states that, "Commentators are encouraged to offer any suggestions or tactics that may not have been expressly mentioned in this notice." Based upon these directives, the remainder of our comments is focused on improving defective tire recovery. Therefore, our overarching view is that while improved notification processes are necessary, in the context of defective tires, electronic identification will be the most significant factor in improving recall efficacy and effectiveness.

Under the provisions of 49 U.S.C. 30117(b), tire retailers are currently required to collect and maintain the records of the purchasers of new tires. Specifically, 49 CFR Part 574 outlines the requirements for registering new tires with the manufacturer or a designated third party so owners can be notified in the event of defective or nonconforming tires. Part 574.7 requires that the tire manufacturer or new tire brand name owner or its designee provide tire registration forms [cards] to every distributor and dealer. During last year's Tire Safety Symposium held by the NTSB, Dr. Jack Chern of NHTSA's Office of Vehicle Safety Compliance testified that the current system for registering tires is burdensome. He provided an example where a tire dealer that sells 20 different brands would need 20 different cards from each of the manufacturers. His comments assumed manufacturer compliance with the law.

In reality, our retail and wholesale members consistently report that many tire manufacturers are not in compliance with this section of Part 574 and rarely provide tire registration forms. As a result, independent dealers and wholesalers are forced to *purchase* registration forms from a third party designee, such as Computerized Information Management Systems (CIMS). For more than 40 years, CIMS has been the primary third party designee for tire manufacturers. CIMS also offers a point-of-sale software interface enabling retail dealers to automatically register new tire purchases and complete the registration process. Like the all-brand registration forms, retailers must also *purchase* this software upgrade. Thus, it is clear that in large part, that many of the tire manufacturers have failed to comply with the law and the costs of acquiring registration forms or software has fallen on the retailer. More importantly, the expense does not include the additional costs to the tire dealer in man-hours for manual data collection and data entry. We emphasize that these burdens are particularly hard on the smaller retailers with limited staff and resources.

SEC. 24333 of the recently passed FAST Act attempted to improve the success of tire recalls by requiring the Department of Transportation (presumably through NHTSA) to initiate a rulemaking to require tire retailers to electronically transmit their customer data to the manufacturer or the designee by secure means at no cost to purchasers or lessors. Under the proposed rule, ALL customer data would have to be transmitted to manufacturer, placing the local retailer at a competitive disadvantage versus the manufacturer's online marketplace or other marketing tactics directed at the retailer's customers.

Setting aside for a moment TIA's objections based on competitive disadvantage, the problem with the provisions of SEC. 24333 in terms of failing to improve recall results is that it relies on the same outdated and burdensome manual data collection methods under the current law. While the ANPRM expressly contemplates "electronic" notification in addition to or in lieu of traditional postal notifications, both current law and the provisions of the FAST Act perpetuate the pencil and paper method to record the Tire Identification Number (TIN) or at best, manual collection of the TIN followed by manual entry into a database at the point of sale. In terms of recall efficiency, the problems of human error in the course of the initial data collection remain, in addition to the increased financial burden on the entire retail distribution channel.

As a response to SEC. 24333, TIA successfully convinced Congress to add SEC. 24334, which requires the Secretary to conduct a study to examine the feasibility of requiring tire manufacturers to include electronic identification on every tire to reflect the information currently required in the TIN. By incorporating technology into the tire registration and recall recovery systems, retailers could easily and accurately scan every tire that is sold. The TINs could then be automatically recorded in a database and human error dramatically reduced. Rather than relying on a technician with a pen and clipboard, a quick scan could capture the TIN without the risk of human error.

Neither current law (Part 574) nor SEC. 24333 of the FAST ACT addresses the core problem of tire recall recovery, which is removing defective tires from the highway. In the

real world, owners change address and they also sell or trade in their vehicles. Manual data collection methods, and the one proposed in SEC. 24333, only capture the original purchaser of replacement tires and their address or contact information at the time of purchase. We believe this represents a major shortcoming in the recall recovery process. However, if the TIN is automatically linked to the Vehicle Identification Number (VIN) and therefore the most current registered owner (and the defective tires) at the time of sale, it will be much easier to notify the owners of defective tires. TIA has referred to this concept as "TIN to VIN" and we are positive that it will close many of loopholes that Part 574 and SEC. 24333 leave open under the standard tire registration model. If the owner moves or transfers the title to another owner, the TINs remain linked to vehicle as long as it is licensed to operate in the United States. Since there is no way that Part 574 or SEC. 24333 can account for address or title changes, placing additional burdens on retailers while providing the manufacturers with a data-mining program and direct sales opportunity that is disguised as a tire registration system does not solve the problem of removing defective tires from service.

Since tire registration and recalls are not limited to passenger and light truck tires, there must be a system to recover defective tires used on commercial motor vehicles as well. Using current technology, identifying recalled tires in the field would require a flashlight, mirror, clipboard and thousands of man-hours to manually check the TIN on every tire. Given the fact that major interstate carriers have thousands of pieces of equipment scattered across the country, finding recalled truck tires on a major scale would be incredibly difficult and burdensome. Electronic identification is by far the best technology for locating defective truck tires that are the subject of a recall. As far as notification is concerned, connecting the TIN to the VIN on commercial motor vehicles is not practical. However, the TIN could be registered to the USDOT number that all interstate carriers must possess and display. In the event of a recall, the carrier would be notified of the TINs that are associated with the defect. When combined with electronic identification, this would significantly improve the recall recovery rate for commercial truck tires.

It's also important to note that there are countless offshore brands where tires would need to be registered under Part 574 or SEC. 24333. As a result, consumer information will be stored in an equal number of locations and quite possibly on the laptop of an importer (who would be the manufacturer for purposes of a recall). Besides the obvious security risks associated with having names, addresses, email addresses and mobile phone numbers in unknown and uncontrolled hands, the Secretary must also consider the methods that an importer would employ to contact owners in the event of a recall. It's fair to assume that a major manufacturer with national brand recognition on the line may react differently than importers who can simply close up shop and reopen under a new entity to relieve themselves of the responsibility and liability for managing a national recall campaign.

In order to improve the efficacy of recalls, and more importantly a defective tire recovery program, TIA strongly suggests that the Secretary mandate a TIN to VIN system where all of the tire registration data is collected and stored by a single third party designee and funded by the manufacturers. This would eliminate concerns about personal privacy as

well as the fear that manufacturers could use the information for marketing purposes. Retailers would scan the TIN on each tire and the VIN for the vehicle at the time of installation. Once a week, the retailer would connect the scanner to a computer and log on to the central registration database to upload the information. In the event of a recall, the manufacturer would contact the third party designee with the relevant TIN information and then receive a file with all of the information for the owners linked to the defective tires in need of recovery.

Given the fact that none of this technology is in place, TIA understands that electronic identification combined with a TIN to VIN system connected to a centralized third party database will come at a significant cost. Since the tire manufacturers are ultimately responsible for the defective tires in need of recovery, we strongly believe that they should collectively share the financial burden for the development and implementation of the entire system from the database to the scanners. Retailers have assumed the financial burden for decades even though they have not played any role in the cause of the defect that warrants a recall. We recognize and accept the responsibilities of the retailer to register tires at the point of sale and scan them for recalls during normal tire service or maintenance. However, we do not believe that the financial burden for the TIN to VIN system or the scanners should fall on small businesses. Defective tires are a manufacturing issue so they should bear the majority of the expense in creating a system to identify and remove them from service.

As a result of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, tire manufacturers are required to report any “customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.” If tires are required to include some form of electronic identification, then the TIN of every tire sent in for an “adjustment” could be recorded in the central database. Non-conforming tires have flaws resulting in premature wear patterns or other dangerous defects, which have not reached the reporting volume required for a recall. In these instances, when the consumer is not given a free replacement tire, an adjustment in the price of the replacement tire is made based on the amount of tread that remains on the tire. Electronic identification would enable the tracking of such tires to identify problematic patterns of non-conformance, thus allowing for a quicker determination of whether the defect sufficiently affects public safety to justify a recall.

In reality, there should not be any difference between an adjustment and a recall from the perspective of the consumer. In both cases, the tire had a defect that required the premature removal from service. In case of an adjustment, the consumer is given credit for the remaining tread depth while in the case of a recall, the consumer is given a new tire at no charge. Regardless of compensation and the differences between adjustments and recalls, there is still a definite time lapse between the moment that a defective tire is removed from service, the adjustment is submitted and the credit is issued to the retailer. If retailers scanned the TINs of the tires that will be submitted for adjustment at the time they are removed and uploaded that data to the third party designee on a timely basis, the necessary time for determining if a recall was necessary would be greatly reduced. NHTSA



would have the data to recognize trends in adjustment submissions so it could be compared to what the manufacturers were reporting. This would definitely improve the efficacy of identifying defective tires earlier in the lifecycle of a recall.

Another benefit of electronic identification linked to a centralized recall database in a TIN to VIN system is it will enable service providers to identify recalled tires during the course of normal tire service and maintenance. If retailers are equipped with scanners that include internal memory containing the TIN of every recalled tire, technicians can instantly determine if a tire should be removed from service during rotations, inflation pressure checks, or repairs. SEC. 24335 of the FAST Act directs the Secretary to establish a publicly available and searchable electronic database of tire recall information, which is to be searchable by TIN. This is intended to provide another method of notification to consumers regarding tire recalls. Expecting retailers to manually record the TIN of every tire and check for a recall via the Internet is unreasonable at best. The most effective way for retailers to check tires for a recall is for the manufacturers to equip them with scanners so the electronic identification can instantly assess the status of the tire.

The used tire market is currently not required to register tires that are installed on passenger vehicles and there are no provisions in SEC. 24333 to include used tires in tire registration. If used tire dealers were required to participate in the TIN to VIN system, then another loophole would be closed. The consequences of a defective tire are not limited to the owner that purchases new tires. Used tires should be registered to the owner of the vehicle for the same reason that new tires should be registered. Additionally, used tire dealers should be required to scan every tire before it is sold and installed on a vehicle to determine if has been subjected to a recall. While the used tire market is small in comparison to the new tire replacement segment, it still accounts for a large number of potentially dangerous tires if they were subjected to a previous recall.

Finally, while electronic identification and TIN to VIN will close most of the loopholes that allow defective tires to remain on the highway, the final piece of the puzzle would be to reinstate vehicle inspection programs in every state. If motor vehicles were required to pass an annual inspection, the inspector could scan the electronic identification and immediately determine if any of the tires on the vehicle or the spare were subjected to a recall. This would force the owner to replace the defective tire in order to pass the inspection. Motorists can ignore notifications from manufacturers when notified of a tire recall, but they cannot ignore a failed mandatory vehicle inspection for very long. If safety truly is the top priority, then it seems logical for every state to have an annual vehicle inspection program combined with electronic identification to ensure that none of the tires have been identified as the subject of a recall.

In conclusion, there are far too many unanswered questions regarding tire registration and recall recovery. Mandating the electronic submission of sensitive consumer information to a wide range of tire manufacturers with an even wider range of Internet security measures is incredibly risky. It also fails to recognize the potential market implications given the fact that the tire manufacturers have started selling directly to motorists. Utilizing an independent third party designee for all tire registration information centralizes the

database and protects consumer information. We urge the Secretary to complete the study outlined by SEC. 24334 so the full benefits of electronic identification can be determined before initiating the regulatory process mandated by SEC. 24333. TIA is confident that when a TIN to VIN or TIN to USDOT system for tire registration is combined with electronic identification, the recovery rate for recalled tires can be significantly improved.



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