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Of Transportation
**National Highway
Traffic Safety Administration**



Preliminary Regulatory Evaluation

**Early Warning Reporting,
Foreign Defect Reporting,
and
Motor Vehicle and Equipment Recall Regulations**

Office of Regulatory Analysis and Evaluation
National Center for Statistics and Analysis

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EXECUTIVE SUMMARY

This document analyzes amendments to certain provisions of the early warning reporting (EWR) rule established pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. In the accompanying Notice of Proposed Rulemaking (NPRM), the agency is proposing to add requirements that light vehicle manufacturers specify the vehicle type and the fuel and/or propulsion system type in their quarterly EWR submissions. It also proposes to add new component categories of electronic stability control (ESC), forward collision avoidance (FCA), lane departure prevention (LDP), and backover prevention system for light vehicles and stability control system for buses, emergency vehicles, and medium-heavy vehicle manufacturers. In addition to the EWR proposals, this document proposes to require motor vehicle manufacturers to report their annual list of substantially similar vehicles via the Internet.

As to the regulations governing safety recalls, we are proposing to require certain larger volume vehicle manufacturers (manufacturers of 25,000 or more light vehicles annually, and manufacturers of 5,000 motorcycles annually) to submit the vehicle identification numbers (VIN) for vehicles affected by a safety recall to NHTSA, and to submit recall remedy completion information on those vehicles that is updated at least once daily by those manufacturers. In addition to present reporting requirements concerning safety recalls, we are proposing to require manufacturers to identify and describe the risk associated with the safety defect or noncompliance with a Federal Motor Vehicle Safety Standard (FMVSS), and, as to motor vehicle equipment recalls, the brand name, model name, and model number, of the equipment recalled. Also, manufacturers would be prohibited from including disclaimers in their defect and

noncompliance report if the disclaimers state or imply there is no safety defect or noncompliance. We are also proposing changes to add or make more specific current requirements for manufacturers to keep NHTSA informed of changes and updates in information provided in the defect and noncompliance information reports they supply.

We are proposing to require manufacturers to submit through a secure, agency-owned and managed web-based application, all recall-related reports, information, and associated documents. Further, we are proposing various changes to the content and formatting of owner notification letters and their envelopes in an effort to improve recalls completion.

Lastly, we are proposing to add a requirement for manufacturers to notify the agency in the event they file for bankruptcy.

Benefits

Though benefits in terms of lives saved and injuries prevented are nearly impossible to quantify, the agency believes that EWR data possess valuable predictive and monitoring information that may assist in the identification of potential safety-related defects in motor vehicles and motor vehicle equipment.

Since 2004, EWR data have played a role in the opening of 150 Preliminary Evaluations (PEs). Among those 150 PEs, 31 PEs have been opened based on EWR data, with the remaining 119 PEs supported—but not initiated—by EWR data.

Amending the information that is required to be submitted in a Part 573 Defect or Noncompliance Information Report will result in benefits to both the agency and the public. NHTSA will better serve the public by effectively monitoring safety recalls and by providing timely recall information to consumers regarding specific vehicles. Consumers will benefit from the increased ease with which they can ascertain information on recalled vehicles. Purchasers of used vehicles will have the ability to obtain information on a recalled vehicle and determine whether or not the vehicle has been repaired, benefitting them in time and money saved. The public at large will benefit from a decrease in the numbers of defect or noncompliant vehicles on public roads and, concurrently, a decrease in the incident or risk of incident of injuries and fatalities associated with those defects and failures to comply, that we expect to result from increased recalls completion rates stemming from the public's enhanced ability to quickly locate important safety recall information on vehicles they drive.

Costs (2010 dollars)

We can summarize the estimated costs in the proposed NPRM to motor vehicle manufacturers and motor vehicle equipment manufacturers as follows. We estimate the one-time cost for the 40 light vehicle manufacturers that submit EWR information to revise their data categorization and collection process, including in both call and written complaint review centers, and their software systems, to report the new EWR categories of vehicle type, fuel and/or propulsion system type and the four new components: ESC, FCA, LDP and backover prevention system on the amended template, which they can download from NHTSA's website, is \$62,208 per manufacturer. We estimate that the one-time cost for the 67 manufacturers of buses, emergency vehicles and medium/heavy vehicles that submit EWR information to revise their data

categorization and collection process and their software systems to report the new stability control system category on NHTSA's downloadable amended template, is \$10,368 per manufacturer. Thus, the estimated one-time total cost for these manufacturers to revise their data categorization and collection processes and their EWR software systems to report the new EWR categories on the amended template, is \$3.18 million.

We believe that there will be minimal recurring costs associated with the proposed requirement to the Foreign Defects rule that manufacturers submit their substantially similar list of motor vehicles directly to NHTSA's Artemis database.

The cost and burden to the small manufacturers for changes to Part 573 Reports, Quarterly Reports and recall documents are expected to be zero. All activity regarding recalls can be performed by small manufacturers on the Recalls Portal using their secure account on a Web Browser. The data entry required by the use of this online Recalls Portal will replace the data entry that manufacturers already incur by typing this information into a computer word processor.

We estimate the cost to the manufacturers associated with notifying owners and purchasers of recalls currently is \$30 million per year (20 million recall notification letters at \$1.50 per letter). The new proposal for Part 577 would require notification within 60 days. We anticipate that this may result in 25 percent of the recalls having two notifications, one within 60 days and another when a remedy is available. This will increase the notification costs per year on average by \$7.5 million (\$30 million x .25).

We estimate that the total one-time cost for certain manufacturers (manufacturers of 25,000 or more light vehicles annually, and manufacturers of 5,000 motorcycles annually) to meet the proposed changes to Part 573 Defect and Noncompliance Information Reports requirements in the NPRM, for hardware/software setup are as follows: the one-time software cost to set up daily VIN updates, for the 29 manufacturers that we believe will submit VINS, amounts to \$957,000; the one-time hardware setup cost to set up daily VIN updates, for the same 29 manufacturers, is \$145,000; the one-time cost to set up historical VIN information is \$191,400; and the one-time cost for the 29 manufacturers to create the VIN list template is \$191,400. Accordingly, the total industry one-time cost for hardware/software is estimated at \$1,484,800.

We estimate that the total one-time cost to the manufacturers, adding the cost for the EWR (\$3.18 million) and the cost for the proposed Part 573 VIN changes (\$1.48 million) is \$4.66 million. We estimate that the recurring annual increased cost to manufacturers for notifying owners and purchasers of recalls is \$7.5 million. We request comments on these estimates of costs for motor vehicle manufacturers and motor vehicle equipment manufacturers.

I. INTRODUCTION

In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Pub. L. No. 106-414. Up until that time, in its efforts to identify safety defects in motor vehicles and motor vehicle equipment, NHTSA relied primarily on its analysis of complaints from consumers and technical service bulletins from manufacturers.

Congress concluded that NHTSA did not have access to data that may have provided an earlier warning of safety defects or information related to foreign recalls and safety campaigns.

Accordingly, the TREAD Act required that NHTSA prescribe rules requiring motor vehicle and motor vehicle equipment manufacturers to submit certain information to NHTSA that would assist in the identification of potential safety-related defects and to submit reports on foreign defects and safety campaigns.

On July 10, 2002, NHTSA issued Early Warning Reporting (EWR) regulations requiring that motor vehicle and equipment manufacturers provide certain early warning data. 67 FR 45822.

The EWR requires quarterly reporting of the following: production information; information on incidents involving death or injury; aggregate data on property damage claims, consumer complaints, warranty claims, and field reports; and copies of field reports (other than dealer reports) involving specified vehicle components, a fire, or a rollover. The EWR requirements vary somewhat depending on the nature of the reporting entity (motor vehicle manufacturers, child restraint system manufacturers, tire manufacturers, and other equipment manufacturers) and the annual production of the entity.

On October 11, 2002, NHTSA published regulations requiring manufacturers to report foreign recalls or other safety campaigns in a foreign country covering a motor vehicle, item of motor vehicle equipment or tire that is identical or substantially similar to a motor vehicle, item of motor vehicle or tire sold or offered for sale in the United States. 69 FR 63310. Manufacturers are required to submit annual lists of substantially similar vehicles to NHTSA.

The EWR information NHTSA receives is stored in a database called Artemis, which also contains information (e.g., recall details and complaints filed directly by consumers) related to defects and investigations. NHTSA reviews and analyzes the EWR data and documents submitted by manufacturers, using the data in conducting investigations of potential safety defects.

On May 29, 2007, NHTSA made three changes to the EWR rule. 72 FR 29435. First, the final rule amended the definition of “fire” to more accurately capture fire related events. 72 FR 29433. Second, the agency eliminated the requirement to produce hard copies of a subset of field reports known as “product evaluation reports.” Last, the agency limited the requirement to update missing vehicle identification number (VIN)/ tire identification number (TIN) or components on incidents of death or injury to a period of no more than one year after NHTSA receives the initial report. 72 FR 29444.

On December 5, 2008, NHTSA issued a notice of proposed rulemaking (NPRM), followed by a final rule on September 17, 2009, that modified the reporting threshold for light vehicle, bus, medium-heavy vehicle (excluding emergency vehicles), motorcycle and trailer manufacturers’

quarterly EWR reports. 74 FR 47740. This rule also required manufacturers to submit EWR reports with consistent product names from quarter to quarter and amended Part 573 *Defect and Noncompliance Responsibility and Reports* to require tire manufacturers to provide tire identification number ranges for recalled tires. 74 FR 47757. In addition, the final rule stated that manufacturers must provide the country of origin for a recalled component. Last, the rule amended the definition of “other safety campaign” to be consistent with the definition of “customer satisfaction campaign.”

The September 2009 rule did not address several proposals in the preceding December 2008 NPRM. 73 FR 74101. The proposals in the 2008 NPRM sought to require light vehicle manufacturers to include the vehicle type in the aggregate portion of their quarterly EWR reports, report on use of electronic stability control (ESC) in light vehicles and specify fuel and/or propulsion systems when providing model designations. The agency decided to issue a separate rulemaking addressing some of the foregoing proposals to obtain more meaningful comments. 74 FR 47744. The accompanying NPRM on Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and Equipment Recall Regulations addresses proposals raised in the December 2008 NPRM that were not resolved by the September 2009 final rule.

The EWR rule divides vehicle manufacturers into different segments based upon weight or vehicle application. These segments are light vehicles, buses, emergency vehicles, medium-heavy vehicles, motorcycles and trailers. The proposed amendments to the EWR rule in the accompanying NPRM concern manufacturers of light vehicles, buses, emergency vehicles, and medium-heavy vehicles.

The NPRM proposes requiring light vehicle manufacturers to report vehicle type in their death and injury and aggregate reports. Currently, light vehicle manufacturers submit vehicle type as part of production reports but do not report vehicle type in their death and injury reports or their aggregate reports. This proposal seeks to correct this inconsistency, thus enabling NHTSA to perform a more focused analysis of the EWR information. Light vehicle manufacturers should be able to identify the vehicle type from the VIN. If the VIN is not available, we propose that the manufacturer submit “UN” for “unknown” in the required field.

In the accompanying NPRM, we propose to add a requirement that light vehicle manufacturers provide the fuel and/or propulsion system type in their EWR reports for nine (9) fuel and/or propulsion system types, and we propose to add a definition for each. The fuel and/or propulsion system types are: compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel cell power (FCP); hybrid electric vehicle (HEV); hydrogen based power (HBP); plug-in hybrid (PHV); spark ignition fuel (SIF); and other (OTH). Currently, light vehicle manufacturers do not identify the specific fuel or propulsion system used in their vehicles. We seek comments on costs for manufacturers to revise their data categorization and collection processes and their software systems to report the new fuel and/or propulsion system types on the amended template.

The EWR regulation requires light and medium-heavy vehicle manufacturers to report the required information by specific component categories. The component categories have remained unchanged since the EWR regulation was published in July 2002. The NPRM

proposes to add the following four new component categories to EWR reporting: electronic stability control, forward collision avoidance (FCA), lane departure prevention (LDP), and backover prevention system for light vehicles; and stability control system for buses, emergency vehicles, and medium-heavy vehicle manufacturers. We also propose new definitions for each of these components. We are also proposing to correct a minor inconsistency in light vehicle manufacturer reporting vehicle types to capture several recently introduced light vehicle technologies. We seek comments on costs for manufacturers to revise their data categorization and collection processes and software systems to report the new components, stability control, FCA, LDP and backover prevention, on the amended template.

The accompanying NPRM proposes changes to how information related to safety recalls and other safety campaigns in foreign countries is reported under subpart B of Part 579. We propose to standardize the manner of submitting annual lists of substantially similar vehicles under 579.11(e) by uploading them, via a secure internet connection, to NHTSA's Artemis database using a template provided on NHTSA's EWR website. Currently, manufacturers may submit their substantially similar lists by mail, facsimile or e-mail.

Today's proposed rule proposes a host of changes and additions to the regulations governing safety recalls, Part 573, *Defect and Noncompliance Responsibility and Reports*, and Part 577, *Defect and Noncompliance Notification*.

As to the regulations governing safety recalls, we are proposing a number of measures in our effort to improve the information the agency receives from recalling manufacturers concerning

the products they are recalling and the plans for remedying those products, in addition to our distribution of that information to the affected public.

The agency intends to offer vehicle owners and prospective purchasers an enhanced vehicle recalls search tool through its website, www.safercar.gov. Currently, owners and other interested members of the public can search for safety recalls on vehicles and motor vehicle equipment using a products search function available on that site. That functionality is limited, however, since a safety recall can and often does only concern one portion of production of a certain make or model, and not the entire production. For vehicles, what is needed is a search tool that considers the VIN of a vehicle. Accordingly, today's document proposes to require certain vehicle manufacturers (manufacturers of 25,000 or more light vehicles annually, and manufacturers of 5,000 or more motorcycles annually) to submit the VINs for vehicles affected by a safety recall to NHTSA. We further propose to require these manufacturers to submit to NHTSA recall remedy completion information on those vehicles, again supplied by VIN that is updated at least once daily so that our search tool has "real time" information that can inform owners and other interested parties if a recall is outstanding on a vehicle.

In our effort to improve the information received from recalling manufacturers, and so NHTSA can better understand and process safety recalls, as well as manage and oversee the recall campaigns and the manufacturers conducting those campaigns, we are proposing to require certain additional items of information from recalling manufacturers. These additional items include: an identification and description of the risk associated with the safety defect or noncompliance with a FMVSS, and, as to motor vehicle equipment recalls, the brand name,

model name, and model number, of the equipment recalled. Also, manufacturers would be prohibited from including disclaimers in their defect and noncompliance report if the disclaimers state or imply there is no safety defect or noncompliance.

Similarly, as part of our effort to ensure we are apprised of necessary information related to safety recalls for which we are charged with oversight and enforcement, we are also proposing changes to add or make more specific current requirements for manufacturers to keep NHTSA informed of changes and updates in information provided in the defect and noncompliance information reports they supply.

We are proposing to require manufacturers to submit, through a secure, agency-owned and managed web-based application, all recall-related reports, information, and associated documents. This is to improve our efficiency and accuracy in collecting and processing important recalls information and then distributing it to the public. It is also to reduce what is a current and significant allocation of agency resources spent translating and processing the same information that is currently submitted in a free text fashion, whether that text is delivered via a hard copy, mailed submission, or delivered electronically through e-mail.

In order to ensure that owners are promptly notified of dangerous safety defects and failures to meet minimum safety standards, we are proposing to tighten current regulatory language requiring owners be notified within a reasonable period of time, and rather specify manufacturers notify owners and purchasers within 60 days of when a safety defect or noncompliance decision is made. In the event the free remedy is not available at the time of notification, we are

proposing that manufacturers be required to issue a second notification to owners and purchasers once that remedy is available.

In an effort to encourage owners to have important safety recall repairs made to their vehicles and vehicle equipment, we are proposing additional requirements governing the content and formatting of owner notification letters and the envelopes in which they are mailed in an effort to improve recalls completion. We are proposing that all letters include “URGENT SAFETY RECALL” in all capitals letters and in an enlarged font at the top of those letters, and that for vehicle recalls, the manufacturer place the VIN of the owner’s vehicle affected by the safety defect or noncompliance, within the letter.

To further emphasize the importance of the communication, and to distinguish it from other commercial communications, we are proposing that the envelopes in which owner notification letters are mailed be stamped with the logos of the National Highway Traffic Safety Administration, www.nhtsa.gov, and the U.S. Department of Transportation along with a statement that the letter is an important safety recall notice issued in accordance with Federal Law.

Lastly, we are proposing to add a requirement for manufacturers to notify the agency in the event they file for bankruptcy. This is so we can better preserve our ability to consider and take those measures necessary to protect options for ensuring recalling manufacturers continue to honor obligations to provide free remedies to owners of unsafe vehicle and equipment products.

II. BACKGROUND

A. The Early Warning Reporting Rule

On July 10, 2002, NHTSA published a rule implementing the Early Warning Reporting provisions of the TREAD Act, 49 U.S.C. 30166(m). 67 FR 45822. This rule requires certain motor vehicle manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA that could be used to identify potential safety-related defects.

The EWR regulation divides manufacturers of motor vehicles and motor vehicle equipment into two groups with different reporting responsibilities for reporting information. The first group consists of: (a) larger vehicle manufacturers that meet certain production thresholds; (b) tire manufacturers that produce over a certain number per tire line; and (c) all manufacturers of child restraints. Light vehicle, motorcycle, trailer and medium-heavy vehicle manufacturers except buses and emergency vehicles that produced, imported, offered for sale, or sold 5,000 or more vehicles annually in the United States are required to report comprehensive reports every calendar quarter. Emergency vehicle manufacturers must report if they produced, imported, offered for sale, or sold 500 or more vehicles annually and bus manufacturers must report if they produced, imported or offered for sale, or sold 100 or more buses annually in the United States. Passenger car tire, light truck tire and motorcycle tire manufacturers that produced, imported, offered for sale, or sold 15,000 or more per tire line are also required to provide comprehensive quarterly reports. The first group must provide comprehensive reports every calendar quarter. 49 CFR 579.21-26. The second group consists of all other motor vehicles and motor vehicle equipment ((i.e., vehicle manufacturers that produce, import, or sell in the United States fewer than 5,000 light vehicles, medium-heavy vehicles (excluding emergency vehicles and buses), motorcycles, or trailers annually; fewer than 500 emergency vehicles annually; fewer than 100

buses annually; manufacturers of original motor vehicle equipment; and manufacturers of replacement motor vehicle equipment other than child restraint systems and tires). The second group has limited reporting responsibility.¹ 49 CFR 579.27.

Light vehicle, bus, emergency vehicle and medium-heavy vehicle manufacturers must provide information relating to:

- Production (the cumulative total of vehicles or items of equipment manufactured in the year).
- Incidents involving death or injury based on claims and notices received by the manufacturer.
- Claims relating to property damage received by the manufacturer.
- Consumer complaints (a communication by a consumer to the manufacturer that expresses dissatisfaction with the manufacturer's product or performance of its product or an alleged defect).
- Warranty claims paid by the manufacturer pursuant to a warranty program (in the tire industry these are warranty adjustment claims).
- Field reports (a report prepared by an employee or representative of the manufacturer concerning the failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment).

¹ In contrast to the comprehensive quarterly reports provided by manufacturers in the first group, the second group of manufacturers does not have to provide quarterly reports. These manufacturers only submit information about a death incident when they receive a claim or notice of a death.

For property damage claims, warranty claims, consumer complaints and field reports, light, bus, emergency vehicle and medium-heavy vehicle manufacturers submit information in the form of numerical tallies, by specified system and component. These data are referred to as aggregate data. Reports on deaths or injuries contain specified data elements. In addition, light, bus, emergency vehicle and medium-heavy vehicle manufacturers are required to submit copies of field reports, except for dealer and product evaluation reports.

On a quarterly basis, vehicle and equipment manufacturers meeting the production thresholds discussed above must provide comprehensive quarterly reports for each make and model for the calendar year of the report and nine previous model years for vehicles and four years for equipment. The vehicle systems or components on which manufacturers provide information vary depending upon the type of vehicle or equipment manufactured. Light vehicle manufacturers must provide reports on twenty (20) vehicle components or systems: steering, suspension, service brake, parking brake, engine and engine cooling system, fuel system, power train, electrical system, exterior lighting, visibility, air bags, seat belts, structure, latch, vehicle speed control, tires, wheels, seats, fire and rollover. Bus, emergency vehicles and medium-heavy vehicle manufacturers must provide reports on an additional four (4) vehicle components or systems: service brake air, fuel system diesel, fuel system other, and trailer hitch.²

B. The Foreign Defect Reporting Rule

On October 11, 2002, NHTSA published a rule implementing foreign motor vehicle and product defect reporting provisions of the TREAD Act, 49 U.S.C. 30166(1). 67 FR 63295, 63310; 49

² Manufacturers of motorcycles, trailers, child restraints and tires report on varying systems and components. See 49 CFR 579.23 – 26.

CFR 579, subpart B. The Foreign Defect Reporting rule requires certain motor vehicle manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA when a manufacturer or a foreign government determines that a safety recall or other safety campaign should be conducted in a foreign country for products that are identical or substantially similar to vehicles or items of equipment sold or offered for sale in the United States. To assist the agency's determination as to which vehicles are substantially similar, manufacturers must submit an annual list of substantially similar vehicles to NHTSA, which is due by November 1 of each year. Manufacturers may submit the vehicle list by mail, facsimile or by e-mail. NHTSA offers a Microsoft Excel template on its website <http://www.safercar.gov/> that manufacturers can download and use to upload their substantially similar lists directly to NHTSA's Artemis database. The majority of manufacturers submit their substantially similar list by uploading the template directly to the agency.

C. Defect and Noncompliance Information Reports (Part 573 Reports)

Pursuant to 49 U.S.C. 30118 and 30119, manufacturers are required to provide notice to the Secretary if the manufacturer determines that a motor vehicle or item of motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable motor vehicle safety standard. The regulation implementing this requirement is located at 49 CFR part 573 Defect and Noncompliance Responsibility and Reports, which, among other things, requires manufacturers to provide reports (commonly referred to as Defect or Noncompliance reports, as the case may be) to NHTSA on defects in motor vehicles and motor vehicle equipment and noncompliances with motor vehicle safety standards prescribed under 49 CFR part 571. An important element of the notice to NHTSA is the identification of the vehicle containing the defect or noncompliance. Manufacturers are required to identify passenger cars by the make,

line, model year, the dates of manufacture and other information as necessary to describe the vehicles. For all other vehicles, manufacturers are required to identify the vehicles by body style or type, dates of manufacture and any other information as necessary to describe the vehicle, such as the GVWR. Manufacturers are required to submit the total number of vehicles that potentially contain the defect or noncompliance. In addition, manufacturers are required to maintain lists of VINs of the vehicles involved in a recall as well as the remedy status for each vehicle to be included in a manufacturer's quarterly reporting; however, manufacturers are not presently required to submit VIN data to the agency when they submit a Part 573 Report.

Most recently, in July 2012, Congress enacted the Moving Ahead for Progress in the 21st Century (MAP-21) Act, Pub. L. No. 112-141, 126 Stat 405 (July 6, 2012). This Act, among other things, requires the Secretary of Transportation to mandate that motor vehicle safety recall information be made available to the public on the Internet, be searchable by vehicle make and model and vehicle identification number (VIN), be in a format that preserves consumer privacy, and includes information about each recall that has not been completed for each vehicle. See MAP-21 Act at Section 31301. The Act provides that the Secretary may initiate a rulemaking to require each manufacturer to provide this information on a publicly accessible Internet website.

Id.

D. Scope of this Rulemaking

Today's proposed rule is limited in scope to the proposed amendments to the EWR requirements, the foreign defect reporting rule, and to the requirements associated with safety recalls reporting, administration, and execution as delineated in Parts 573 and 577 of Title 49 of the Code of

Federal Regulations. Apart from the proposed changes noted above in the summary section, NHTSA intends to leave the remaining current EWR, foreign defect reporting regulations, and safety recalls implementing regulations Parts 573 and 577 unchanged.

III. BENEFITS

Though benefits in terms of lives saved and injuries prevented are nearly impossible to quantify, the agency strongly believes that EWR provides valuable predictive and monitoring information that may assist in the identification of potential safety-related defects in motor vehicles and motor vehicle equipment.

The Early Warning Division of the Office of Defects Investigation (ODI) reviews and analyzes the documents and early warning data submitted by motor vehicle manufacturers and motor vehicle equipment manufacturers. ODI uses the information provided by EWR submissions, along with information provided by other sources, such as consumer complaints, manufacturers' communications, to investigate potential safety defects. Since 2004, EWR data have played a role in the opening of 150 Preliminary Evaluations (PEs) by ODI. Among those 150 PEs, 31 PEs have been opened based on EWR data, with the remaining 119 PEs supported—but not initiated—by EWR data.

Amending certain provisions of the early warning reporting rule and various provisions of the regulations governing the administration and execution of safety recalls and the reporting of information concerning the products and the completion of safety recall remedies on those subject to a safety recall will result in benefits to both the agency and the public. The public can be expected to receive important safety recall information in an even more expeditious manner. The public will be able to access information that will immediately inform if a particular vehicle is subject to safety recall and if the manufacturer's free remedy has been performed on the vehicle. The agency's efficient and accurate delivery of safety critical information to the public

is expected to decrease the numbers of defect or noncompliant vehicles on public roads, thereby further reducing the incidences of injuries or fatalities associated with those vehicles.

IV. COSTS

A. The Early Warning Reporting Rule

The agency is proposing to add requirements that light vehicle manufacturers specify the vehicle type and provide the fuel and/or propulsion system type for nine different fuel and/or propulsion system types in their quarterly EWR submissions. The agency also proposes to add new component categories of electronic stability control (ESC), forward collision avoidance, lane departure prevention, and backover prevention for light vehicle manufacturers, and stability control system for buses, emergency vehicles, and medium-heavy vehicle manufacturers.

NHTSA believes that the proposed requirement to provide type of vehicle when manufacturers submit their death and injury data and aggregate data would place a minimal burden on light vehicle manufacturers. NHTSA also proposes to amend the light vehicle reporting templates for the EWR death and injury and aggregate reports to reflect adding vehicle type. Light vehicle manufacturers should be able to readily identify the vehicle type from the VIN provided in the information that they receive. A manufacturer would need to add a field to its EWR database containing the light vehicle type and perform reprogramming of internal software systems. We seek comments on costs for the manufacturers to revise software systems to report vehicle type on EWR death and injury and aggregate data reports.

Adding fuel and/or propulsion system type, and four new components (ESC, FCA, LDP and backover prevention) to the vehicle EWR reporting is likely to create a one-time cost for manufacturers to revise their categorization and collection process and software systems to report the data on the amended template. We do not believe these costs will be substantial or pose an

undue burden. Manufacturers collect and analyze data on alternative fueled models, like any other model, to monitor quality control, safety problems and to make in-process improvements. In their data collections, manufacturers distinguish between fuel/propulsion systems within a model to conduct root cause analyses. The agency has proposed a relatively small number of fuel and/or propulsion system types: eight fuel and/or propulsion systems, and an “other” category (in which manufacturers may bin their vehicles), that should not require manufacturers to report on hundreds of different models. In addition, the agency has proposed to add a very small number of new component categories (four), which, we believe, will not cause an undue burden.

We estimate there will be a one-time cost for the manufacturers to revise their data categorization and collection process and software systems to report vehicle type, fuel and/or propulsion system type, and the four components: ESC, FCA, LDP and backover prevention on the amended templates. Once EWR systems are revised, additional on-going burdens should be negligible as manufacturers already have established EWR operations.

We estimate that the one-time cost incurred per manufacturer to revise the EWR collection and categorization process, databases and software systems to report the new categories on the amended template will include 2 weeks of a computer programmer’s time for vehicle type, one component, and fuel and/or propulsion system type, and 8 hours of a manager’s time for vehicle type, component and fuel and/or propulsion system type. Based on \$113 per hour for a computer programmer and \$166 per hour for a manager, we estimate the following cost for each of the 40 light vehicle manufacturers that submit EWR information: \$113 per hour/computer programmer

x 80 hours x 6 (vehicle type, 4 components and fuel and/or propulsion system type) = \$54,240; \$166 per hour/manager x 8 hours x 6 (vehicle type, 4 components and fuel and/or propulsion system type) = \$7,968. Thus, the estimated total cost for each of the 40 light vehicle manufacturers to revise the collection process, databases and software systems to add vehicle type, fuel and/or propulsion system type, and the ESC, FCA, LDP and backover prevention components to the amended EWR template amounts to: \$54,240 computer programming cost + \$7,968 managerial cost = \$62,208 per light vehicle manufacturer. This amounts to a total cost of \$2,488,320 for the 40 light vehicle manufacturers.

Based on the same costs per hour to revise the EWR template, we estimate the following cost for each of the 67 manufacturers of buses (29), emergency vehicles (8), and medium/heavy vehicles (30) that report EWR information, as follows: \$113 per hour/computer programmer x 80 hours x 1 stability control component = \$9,040; \$166 per hour/manager x 8 hours x 1 stability control component = \$1,328. Thus, the estimated total cost for each of the 67 manufacturers of buses, emergency vehicles and medium/heavy vehicles to revise the data categorization and collection process, databases and software systems to add the stability control component to the amended EWR template amounts to \$9,040 computer programming cost + \$1,328 managerial cost = \$10,368 per manufacturer. This amounts to a total cost of \$694,656 for the 67 manufacturers of buses, emergency vehicles, and medium/heavy vehicles.

The estimated cost to the agency and the summary of estimated costs to the manufacturers are as follows. The agency will incur costs to implement software modifications to the EWR database. The IT development hours incurred by the contractor to the agency for these changes is

estimated to be approximately 470 hours. Using an average hourly rate for labor cost of \$109 for IT labor, the total cost for the 470 hours incurred by the agency's contract labor amounts to \$51,230. We can summarize the estimated costs to manufacturers affected by the proposed amendments to the EWR rule, as follows. We estimate that the one-time cost for each of the 40 light vehicle manufacturers affected by the proposal, at \$62,208 per manufacturer; plus the one-time cost for each of the 67 manufacturers of buses (29), emergency vehicles (8), and medium/heavy vehicles (30), at \$10,368 per manufacturer, amounts to a total of \$3.18 million for all of these manufacturers to revise the collection and categorization processes, database, and software systems to report on the amended template. We seek comments and details on costs to revise the processes, database and software systems to meet these requirements proposed in the NPRM.

B. Foreign Defect Reporting: Electronic Submission of Substantially Similar Vehicle Lists

On October 11, 2002, NHTSA published a rule implementing the foreign motor vehicle and product defect reporting provisions of the TREAD Act, 49 CFR Subpart B. The Foreign Defect Rule requires motor vehicle manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA when a manufacturer or a foreign government determines that a safety recall or other safety campaign should be conducted in a foreign country for products that are identical or substantially similar to vehicles or items of equipment sold or offered for sale in the United States.

The agency also proposes to amend Foreign Defect Reporting, 49 CFR part 579, subpart B, to require that the annual list of substantially similar vehicles required by 579.11(e) be uploaded directly to the Artemis database. The agency prefers that manufacturers upload their annual list of substantially similar vehicles to Artemis because submissions by mail, facsimile, or e-mail cannot be uploaded to Artemis and are not readily searchable. We believe that the costs to manufacturers will be minimal to meet this requirement. We seek comments on the costs for manufacturers to submit their substantially similar vehicle list directly to the Artemis database through NHTSA's secure Internet server.

C. VIN Submission and Recall Remedy Completion Information for Safety Recalls

Currently, vehicle manufacturers must notify NHTSA and provide certain information when they decide to recall their vehicles to remedy a safety defect or noncompliance with FMVSS. One item of information that must be provided is an identification of the vehicles to be recalled by make, model, model year, and dates of manufacture. This information helps NHTSA and consumers to understand which vehicles are included within the scope of that recall. Although this information is helpful in giving a general description of the applicability of a given recall, it has proven to be of limited assistance to NHTSA and consumers in identifying which specific vehicles within the generalized description are covered by a recall campaign. Rather, the VIN of the vehicles is required to ascertain, with certainty, which vehicles meeting the generalized description are covered by the recall campaign, and which are not.

To meet the directive in the recently passed MAP-21 Act that safety recall information be available to the public on the Internet and that the information be, among other things, searchable

by VIN, we are proposing that certain larger volume vehicle manufacturers provide a list of VINs of all vehicles that potentially contain the defect or noncompliance. We propose to amend subsection 573.6(c)(3) to require that certain larger volume motor vehicle manufacturers (manufacturers of 25,000 or more light vehicles annually, and manufacturers of 5,000 or more motorcycles annually, manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States annually) submit the VIN of each vehicle that potentially contains a defect or noncompliance, and will be covered by a safety recall campaign. As with other information required to be submitted on vehicles being recalled, manufacturers would be required to submit this information when submitting a Part 573 Report, unless that information was not available at that time, in which case it would be owed under current requirements when it became available, or within five working days of when that VIN information becomes available. NHTSA would use this VIN information in a new recalls search product available through its website, www.safercar.gov, by which owners, consumers, prospective vehicle buyers, and any other interested persons could enter a discreet VIN and be immediately informed whether that vehicle is, or was, subject to a safety recall, and whether the vehicle had been remedied.

This new requirement for submission of VINs should be one that is easily met. Vehicle manufacturers already collect the VIN information in order to obtain the current name and address from state vehicle registration data in order to meet the statutory and regulatory requirement that they notify the current, registered owners of the vehicles subject to a recall campaign. Several manufacturers don't make VIN-based recall services easy to locate on their web pages and some manufacturers require website registration before this service can be

utilized. We believe that NHTSA should offer a “one stop shop” for safety recall information for vehicle consumers. We propose to require that manufacturers subject to VIN submission requirements also submit to NHTSA information relative to the current recall remedy status of each vehicle covered by a recall and to do so, on a daily basis in a table format and using a template, or form prescribed by NHTSA, through a secure server. In addition, we propose to require that manufacturers also provide the date the recall remedy was performed, where applicable, so that we can also provide that information to interested owners and consumers. We also propose an additional category to account for the period between the time a manufacturer has decided to conduct a recall and notified NHTSA, and the time it notifies owners of the availability of the free remedy. This pre-recall launch or “recall remedy not yet available” category would serve to avoid a situation where an owner is informed by our VIN look-up service that their vehicle is subject to a recall, but yet the owner is unable to obtain the free remedy. We propose that for VINs designated by the manufacturer as falling within the pre-recall launch period, our service confirm that the vehicle is subject to the manufacturer’s recall, so that an owner is not misinformed as to his vehicle’s inclusion, but that the free remedy campaign has not been launched as to his vehicle and to contact the manufacturer for further information.

The assumptions and costs to certain manufacturers subject to the proposed requirement for VIN list, for each recall campaign, are presented below. The Recalls Portal is a web-based application, available from NHTSA’s SaferCar.gov website, and is limited to authorized manufacturer representatives. The one-time cost to manufacturers for tool/software setup for each recall campaign includes the following tasks: file naming, database management, data

preparation, and software development. The one-time cost to develop the VIN list software configuration is estimated at \$6,600. Based on this cost, the one-time cost to configure the VIN list software, for the 29 manufacturers that we believe will report VINs, amounts to \$191,400. The one-time cost to set up daily VIN updates software is estimated at \$33,000. Based on this cost, the one-time cost to set up daily software for daily VIN updates, for the 29 manufacturers that we believe will report VINs, amounts to \$957,000. The one-time cost to set up daily VIN updates hardware is estimated at \$5,000. Using this cost, the one-time cost to set up daily VIN updates hardware, for the 29 manufacturers that we believe will report VINs, amounts to \$145,000. The one-time cost to manufacturers to provide historical VIN information is estimated at \$6,600. Assuming this one-time cost, we estimate a total cost of \$191,400 for manufacturers to provide historical VIN information. The total one-time cost for new VIN requirements and daily update for the 29 manufacturers is estimated at $\$191,400 + \$957,000 + \$145,000 + \$191,400 = \$1,484,800$.

Currently, all manufacturers are required to file quarterly reports to NHTSA on the progress of their recall campaigns. Since manufacturers subject to the proposed requirements will provide daily information from which the agency can draw recall information, the purpose of those quarterly reports would be obsolete as to those manufacturers' recalls. We propose that those manufacturers will be absolved from the quarterly reporting. The proposal to require VIN reporting does not apply to small volume manufacturers.

We believe that the requirements to submit VIN information and to provide daily updates would impose little to no additional burden on manufacturers. The information that we propose is already captured by manufacturers and submitted to NHTSA in part.

The assumptions and costs to the agency for the development of the Recalls Portal are presented below. IT development labor incurred by the contractor to the agency for the Manufacturer Recalls Portal (this includes developing the account dashboard, 5 Defect and Noncompliance forms, online notifications, password management, and data transfer) is estimated to be approximately 470 hours. IT development labor incurred by the contractor to the agency for the Manufacturer Data Capture (this includes receiving VIN updates from manufacturers, automated processing, and validation of VIN updates, templates and other forms) is estimated to be approximately 456 hours. The agency's contractor IT development hours for Data Validation and Notification (includes validation of uploaded forms/templates and notification of errors and validation to the manufacturers and to the agency) are estimated at 398 hours. The agency's contractor IT hours for developing Monitoring and Reporting (includes monitoring data for specific thresholds, patterns, and conditions, and standard reporting of the daily, monthly, and quarterly recalls campaign-related data) is estimated at 320 hours. The agency estimates 494 hours for contractor IT development for Integrated Recalls Application (includes enhancements to the Recalls application). The agency estimates contractor IT labor of 152 hours for development of Public Recalls Portal (VIN search application on the Public website for consumers). The agency's total contractor IT development hours incurred for the tasks involved in the above functional areas are 2,290 hours.

Using a labor cost range of \$70 per hour to \$105 per hour for IT labor for the above tasks, the total cost for 2,290 hours incurred by the agency's contractor labor amounts to \$224,470. The agency's internal cost for IT infrastructure development for the above tasks is estimated at \$69,647. In summary, the total project cost to the agency for the Recalls Portal is estimated at $\$224,470 + \$69,647 = \$294,117$.

D. Added Requirements for Information Required to be Submitted in a Part 573 Defect and Noncompliance Information Reports

NHTSA is proposing to amend the agency's regulation 49 Part 573 Defect or Noncompliance Responsibility and Reports, which requires that manufacturers must notify NHTSA if the manufacturer decides or the agency determines that a noncompliance or safety-related defect exists in a motor vehicle or item of motor vehicle equipment. Manufacturers are currently required to submit certain details concerning the safety defect (or noncompliance, as the case may be), the affected products, the proposed schedule for notifying owners and dealers, in addition to a host of other recalls-related details, in their Part 573 reports. There are additional details that the agency needs to better understand and process safety recalls. Therefore, we are proposing to add the following 2 requirements: 1) an identification and description of the risk associated with the safety defect or noncompliance with FMVSS, and, 2) for equipment recalls, the make, model name, and model number, as it was identified at the time of purchase. We are also proposing that manufacturers be prohibited from including disclaimers in their Part 573 information reports. We do not anticipate that these 2 new requirements will impose any cost burden on manufacturers.

Currently, manufacturers have the option under section 573.9 to submit recalls-related information as an attachment to an email message to the agency. This information includes Part 573 reports, and amendments and updates, copies of recall communications, and quarterly reports reflecting progress of a recall campaign. As technology has improved, we are proposing to amend section 573.9 to require manufacturers to provide this information through a web portal managed by the agency similar to what manufacturers are already doing pursuant to EWR requirements. Five forms will be available at the agency's site for manufacturers of vehicles, equipment, tires, child restraints, and vehicle alterers. We will provide a VIN template, similar to that for the section 573.7 Quarterly Reports, for submission of VIN lists and recall remedy status for each vehicle on a VIN list. For equipment recalls and vehicle recalls by smaller manufacturers that are not subject to the proposed VIN reporting requirements, this form will coordinate with current requirements of section 573.7 Quarterly Reports.

We believe that the proposed requirements for the online submission of all recall documents would be a minimal burden. Manufacturers typically produce their Part 573 reports by entering the needed data into a computer word processor, emailing and/or printing and mailing their report. NHTSA's new online recalls portal will simply replace the manufacturer's data entry method and delivery with a standardized online form.

E. Additional Changes in Part 573 Defect and Noncompliance Information Reports

We are proposing additional changes in three respects: 1) that information not available at the time of submission of the initial report be provided within five working days; 2) submit to the agency an amended Part 573 report within five days when the manufacturer has new

information; and, 3) the manufacturer review the quarterly report under Part 573 for accuracy, and supplement it if necessary. We believe that these proposed requirements would be a minimal burden to manufacturers.

F. Amendments to Defect and Noncompliance Notification Requirements Under Part 577

We are proposing to require, under Part 577.7, that manufacturers notify owners and purchasers no later than 60 days from when they first decide a safety defect or noncompliance exists, and if the free remedy not be available at the time of notification, the manufacturers issue a second notification to owners and purchasers once the remedy is available and stamp the letter urgent. We estimate the costs to the manufacturer associated with notifying owners and purchasers of recalls as follows. We estimate a cost of \$1.50 to vehicle manufacturers for the cost for printing, mailing, and the cost vehicle manufacturers may pay to third-party vendors to acquire the names and addresses of the current registered owners from state and territory departments of motor vehicles. We reviewed recent recall figures and determined that an estimated 20 million letters are mailed each year, totaling \$30,000,000 (\$1.50 per letter x 20,000,000). The changes to Part 577 requiring a manufacturer to notify their affected customer within 60 days would add an additional \$7,500,000 (calculated as following: 20,000,000 letters x .25 requiring interim owner notifications = 5,000,000 letters; 5,000,000 letters x \$1.50 = \$7,500,000).

G. Notify NHTSA in the Event of a Bankruptcy Petition

We propose that manufacturers notify the agency in the event of a bankruptcy. We believe that this will be a minimal burden on manufacturers since this proposed requirement is already in effect in the CAFE regulation.

H. Summary of Costs

Table 1, below, shows the one-time cost to manufacturers to make the proposed requirements.

Table 1. One-time Cost to Manufacturers
(Costs in 2010 Dollars)

| Cost Item | Applies per | Cost per | Total Industry Cost |
|--|---|----------|---------------------|
| First Year | | | |
| Amend EWR information | Light vehicle manufacturers (40) | \$62,208 | \$2,488,320 |
| Amend EWR information | Bus/emergency vehicle/medium heavy truck manufacturers (67) | \$10,368 | \$694,656 |
| Total EWR one-time cost | | | \$3,265,920 |
| Set up daily VIN updates software | Larger volume manufacturers* (29) | \$33,000 | \$957,000 |
| Set up daily VIN updates hardware | Larger volume manufacturers* (29) | \$5,000 | \$145,000 |
| Provide historical VIN information | Larger volume manufacturers* (29) | \$6,600 | \$191,400 |
| VIN list template cost | Larger volume manufacturers* (29) | \$6,600 | \$191,400 |
| Total one-time cost for VIN requirements | | | \$1,484,800 |
| Total first year cost for EWR and VIN amendments | | | \$4,750,720 |

*Manufacturers of 25,000 or more light vehicles annually, and manufacturers of 5,000 or more motorcycles annually.

We estimate that the total first year cost to the manufacturers, adding the cost for the EWR (\$3.18 million) and the cost for the proposed Part 573 changes (\$1.48 million) is \$4.66 million.

We estimate that the increased cost to manufacturers for notifying owners and purchasers of recalls is \$7.5 million. We request comments on these cost estimates.

V. REGULATORY FLEXIBILITY ACT AND UNFUNDED MANDATES REFORM ACT ANALYSIS

A. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. §601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions in the United States.

Chapter 5 U.S.C. § 603 requires agencies to prepare and make available for public comment an initial and a final regulatory flexibility analysis (RFA) describing the impact of proposed and final rules on small entities if the agency decides that the rule may have a significant economic impact on a substantial number of small entities. Each RFA must contain:

- (1) A description of the reasons why action by the agency is being considered;
- (2) A succinct statement of the objectives of, and legal basis for, a proposal or final rule;
- (3) A description of and, where feasible, an estimate of the number of small entities to which the proposal or final rule will apply;
- (4) A description of the projected reporting, record keeping and other compliance requirements of a proposal or final rule including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- (5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposal or final rule;

(6) Each final regulatory flexibility analysis shall also contain a description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the final rule on small entities.

1. Description of the reasons why action by the agency is being considered

NHTSA is proposing amendments to certain provisions of the early warning reporting rule, changes to the foreign defect reporting rule, and changes to the recalls reporting and notification requirements, for a number of reasons. The proposed actions will assist both NHTSA and the public in identifying potential safety-related problems in motor vehicles and motor vehicle equipment. Through this identification accrues the associated benefit of reducing the risk and incident of injuries or fatalities attendant with these problems.

Under the EWR, NHTSA collects data on numerous systems and components in a wide range and volume of vehicles, which the agency then reviews, leading to the identification of a number of potential safety problems, and resulting in agency decision-making on whether to open an investigation. This proposal seeks to correct an inconsistency in the EWR where light vehicle manufacturers submit vehicle type as part of production reports, but do not report vehicle types in either their death and injury reports or their aggregate reports. In addition, NHTSA is considering action in the NPRM to amend the current EWR regulation to add requirements that light vehicle manufacturers specify fuel/propulsion system in their quarterly EWR submissions. The motor vehicle industry is introducing and producing vehicles with new propulsion systems. This amendment will permit NHTSA to discern with greater specificity, safety concerns and trends regarding vehicle make, model, and fuel/propulsion systems. As vehicle technology is

advancing, the agency proposes in the NPRM to add new component categories of stability control for manufacturers of light vehicles, buses, emergency vehicles and medium-heavy vehicles, and forward collision avoidance, lane departure prevention, and backover prevention for light vehicle manufacturers, and to amend the corresponding EWR templates.

NHTSA is also proposing in the NPRM to require that vehicle manufacturers electronically upload their substantially similar vehicle list under 49 CFR part 579, subpart B, directly to NHTSA's Artemis database. NHTSA is proposing this to ensure that the agency can readily search all such submitted lists.

As to the regulations governing safety recalls, the recently passed MAP-21 Act requires the Secretary of Transportation to require vehicle safety recall information be made available to the public on an accessible Internet website and that this information, among other things, be searchable by VIN. We are proposing to require manufacturers of 25,000 or more light vehicles annually, and manufacturers of 5,000 motorcycles annually, to submit the VIN for vehicles affected by a safety recall to NHTSA, and to submit recall remedy completion information on those vehicles that is updated at least once daily by those manufacturers. In addition to present reporting requirements concerning safety recalls, we are proposing to require manufacturers to identify and describe the risk associated with the safety defect or noncompliance with a FMVSS, and, as to motor vehicle equipment recalls, the brand name, model name, and model number, of the equipment recalled. We are proposing to prohibit manufacturers from including disclaimers in their defect and noncompliance reports if the disclaimers state or imply there is no safety defect or noncompliance. We are also proposing changes to add or make more specific current

requirements for manufacturers to keep NHTSA informed of changes and updates in information provided in the defect and noncompliance information reports they supply.

We are proposing to require manufacturers to submit through a secure, agency-owned and managed web-based application, all recall-related reports, information, and associated documents. Further, we are proposing various changes to the content and formatting of owner notification letters and their envelopes in an effort to improve recalls completion.

Lastly, we are proposing to add a requirement for manufacturers to notify the agency in the event they file for bankruptcy.

The agency believes that the changes presented above will assist the agency in analyzing and investigating potential safety-related defects. These changes will improve the information the agency receives from recalling manufacturers concerning the motor vehicles and equipment they are recalling, as well as the plans for remedying those products. These changes will have the simultaneous benefit of improving the information NHTSA can disseminate to affected public, as well as maximizing the efficiency of delivery of that information.

Requiring production of VIN information and daily updates of recalls completion will allow the agency to create a recalls look-up tool that will better inform vehicle owners of outstanding recalls on their vehicles. Armed with this information, owners can have their vehicles remedied, thereby increasing recalls completion rates, and reducing the risks posed by unremedied vehicles containing possible safety defects or that fail to meet minimum safety standards.

The agency believes specifying a time frame within which a manufacturer must provide the information required in a Part 573 Report that is not available at first submission, but is required to be submitted once available, will assist in the agency's effort to ensure it is receiving important safety recall information quickly. In our experience, the requirement that a manufacturer produce information "once available" is being construed differently among manufacturers and this leads to the agency receiving information in many cases in a less than prompt manner. We believe adding specificity to the requirement to supplement that information unavailable at the time of a Part 573 Report's filing will clarify a manufacturer's obligations and yield prompt filings.

The requirement to review a Part 573 Report at the time of preparation of the first quarterly report in order to identify any changes or additions needed to that report stems from our concern that employees that do the reporting on behalf of the manufacturer may not always have the updated or corrected information as soon as it is known or decided, and that there may be delay within the manufacturer's organization in getting that information to those employees. We believe that, even if the employees who report have access to or receive new information immediately, there is always the chance those employees will fail to report. The purpose of the affirmative review requirement is to ensure that manufacturers have reported changes and additions to the information in the 573 Reports as required. The first quarterly report's period of development was selected as the time for that active review because it is an existing relevant activity to which active review could appropriately be attached.

2. Objectives of, and legal basis for, the proposal or final rule

The objectives of the proposed rule are presented in the Background section of the Preliminary Regulatory Evaluation. Under 49 U.S.C. 322(a), the Secretary of Transportation (the “Secretary”) has authority to prescribe regulations to carry out the duties and powers of the Secretary. One of the duties of the Secretary is to administer the National Traffic and Motor Vehicle Safety Act, as amended (49 U.S.C. 30101 et seq.). The Secretary has delegated the responsibility for carrying out the National Traffic and Motor Vehicle Safety Act to NHTSA, see § 49 U.S.C. 105 and 322, delegation of authority at 49 CFR 1.50.

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act required NHTSA to establish regulations on Early Warning Reporting. On July 10, 2002, NHTSA published a rule implementing the Early Warning Reporting provisions of the TREAD Act, 49 U.S.C. 30166(m). 67 FR 45822. This rule requires certain motor vehicle manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA that could be used to identify potential safety-related defects. The TREAD Act requires NHTSA periodically to review the EWR rule. 49 U.S.C. 30166(m)(5). NHTSA is adopting this rule under the authority of 49 U.S.C. 322 and 30166; delegation of authority can be found at 49 CFR 1.50 and 49 CFR 501.8.

On October 11, 2002, NHTSA published a rule implementing the foreign motor vehicle and product defect reporting provisions of the TREAD Act, 49 U.S.C. 30166(1). 67 FR 63295,

63310; 49 CFR 579 subpart B. The Foreign Defect Reporting rule requires motor vehicle manufacturers and motor vehicle equipment manufacturers to report information and submit documents to NHTSA when a manufacturer or a foreign government determines that a safety recall or other safety campaign should be conducted in a foreign country for products that are identical or substantially similar to vehicles or items of equipment sold or offered for sale in the United States. 49 U.S.C. 30166(1)(1) & (2).

For the amendments to Part 573, Defect and Noncompliance Reporting, NHTSA is adopting this rule under the authority of 49 U.S.C. 30101, 30102, 30103, 30116-30121, and 30166; delegation of authority can be found at 49 CFR 1.50 and 49 CFR 501.8. Also, authority for the new requirements as to recalled vehicle VIN submissions can be found in the Moving Ahead for Progress in the 21st Century (MAP-21) Act, Pub. L. No. 112-141, 126 Stat 405 (July 6, 2012).

3. Description and estimate of the number of small entities to which the proposal or final rule will apply

The proposals in the rulemaking pertaining to the EWR rule, the foreign defect reporting rule, and recalls reporting and notification, apply to manufacturers of light vehicles, buses, emergency vehicles, medium-heavy vehicles, motorcycles, trailers, tires, and motor vehicle equipment.

Please see the Introduction and Background sections of the Preliminary Regulatory Evaluation for the specific manufacturer categories that apply to the various proposals in the NPRM.

Business entities are defined as small businesses using the North American Industry Classification System (NAICS) code, for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm. For establishments primarily engaged in manufacturing or assembling automobiles and light and medium/heavy duty trucks, buses, new tires, or motor vehicle body manufacturing, (NAICS code 336211) the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing the safety systems for which reporting will be required, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, re-tread tires, alterers, second-stage manufacturers, and other motor vehicle equipment, the firm must have less than 500 employees to be classified as a small business. In determining the number of employees, all employees from the parent company and its subsidiaries are considered and compared to the 1,000 employee threshold. Many of the bus companies are owned by other larger companies.

There are 40 light vehicle manufacturers that report EWR information to NHTSA, and are used in the cost section of the PRE. We believe there are an additional nine domestic small volume light vehicle manufacturers producing automobiles that can be classified as small businesses which are listed below, in addition to a number of small business van conversion companies. The nine identified domestic small businesses, as well as the additional small businesses, do not have to report to NHTSA unless they receive a claim or notice of a death incident, and therefore they are not included in the cost section of the PRE. Table 2 provides information about the nine

small volume domestic light vehicle manufacturers. All are small manufacturers having less than 1,000 employees.

Table 2
Small Vehicle Manufacturers
(2010 Dollars)

| Manufacturer | Employees | Estimated Sales | Sale Price Range | Est. Revenues* |
|-------------------------------------|-----------|-----------------|-----------------------------------|-----------------|
| Carbon Motor ¹ | NA | NA | NA | NA |
| CODA ² | 150 | NA | \$44,900** | NA |
| Fisker Automotive Inc. ³ | NA | 15,000 | \$80,000 | \$1,200,000,000 |
| Mosler Automotive | 25 | 20 | \$189,000 | \$3,780,000 |
| Panoz Auto Development Company | 50 | 150 | \$90,000 to \$125,000 | \$16,125,000 |
| Saleen | 170 | 1,000 16*** | \$39,000 to \$59,000 \$585,000 | \$144,355,000 |
| Shelby American, Inc. ⁴ | 44 | 60 | \$42,000 to \$135,000 | \$5,310,000 |
| Standard Taxi ⁵ | 35 | 80 | \$25,000 | \$2,000,000 |
| Tesla Motors, Inc. | 250 | 2,000 | \$50,000 to \$100,000 | \$150,000,000 |

1. Designs, manufactures, and sells law enforcement patrol vehicles.
2. Designs, manufactures, and sells electric vehicles. Vehicle launch expected to start on December 2011.
3. A joint venture of Quantum Fuel Systems Technologies Worldwide, Inc., and Fisker Coachbuild, LLC. The company is just starting. These are planned sales.
4. A division of Carroll Shelby International, Inc.
5. A subsidiary of Vehicle Production Group, LLC (VPG). VPG has 35 employees.

* Assuming an average sales price from the sales price range.

** Before the \$8,000 federal tax credit and state incentives.

*** Ford Mustang Conversions.

There are 30 manufacturers of medium/heavy trucks that report EWR information to NHTSA and are included in the cost section. We believe there are very few manufacturers of heavy trucks in the United States which can be considered small businesses. The heavy truck industry is highly concentrated with large manufacturers, including Daimler Trucks North America (Freightliner, Western Star), Navistar International, Mack Trucks Inc., PACCAR (Peterbilt and Kenworth) and Volvo Trucks North America, accounting for more than 99 percent of the annual production. We believe that the remaining trucks (less than 1 percent) were finished by final stage manufacturers. With production volume of less than 1 percent annually, these remaining heavy truck manufacturers are most likely small businesses.

There are many more manufacturers of medium trucks that take the basic engine and chassis from a large manufacturer and add different bodies (dump truck, garbage truck, tow truck, fire truck, etc.). The National Truck Equipment Association shows 517 members that are manufacturers, most of which are finishers of medium trucks and most of which are small businesses. A significant number of medium-heavy truck manufacturers are not required to submit quarterly EWR reports.

NHTSA believes there are approximately 28 emergency vehicle manufacturers in the United States. Eight of these manufacturers report EWR information to NHTSA and are used in the PRE cost section. Of the 28 emergency vehicle manufacturers, 10 can be classified as small businesses, with fewer than 1,000 employees, and are not included in the cost section of the PRE but must submit information about a death incident when they receive a claim or notice of a

death. There is a lot of movement in the emergency vehicle industry where smaller companies are becoming subsidiaries of, or are merging with, larger companies.

NHTSA believes there are approximately 37 bus manufacturers in the United States. Of these, 29 bus manufacturers currently report EWR information to the agency, and are used in the PRE cost section. Two of the 29 bus manufacturers that submit EWR reports can be classified as a small business, with fewer than 1,000 employees. An additional eight bus manufacturers which can be classified as small businesses do not report EWR information to us except for claims or notices of a death. These 10 small volume bus manufacturers are listed in Table 3, below.

Table 3
Small Volume Bus Manufacturers

| |
|---|
| Advanced Bus Industries |
| Ebus Inc. |
| Enova Systems |
| Gillig Corporation |
| Krystal Koach Inc. ^a |
| Liberty Bus |
| Sunliner Coach Group, LLC ^b |
| TMC Group, Inc. |
| Transportation Collaborative, Inc. ^c |
| Van-Con, Inc. |

^a Krystal Koach Inc. is owned by Krystal Enterprises; \$175M revenue; 800 employees.

^b Sunliner's parent holding company is Stallion Bus Industries, LLC, which is the distribution arm of the organization.

^cTransportation Collaborative, Inc. employs 140.

Information on three other small bus manufacturers considered are as follows:

1. Giradin Minibus is a Canadian company and is not included.
2. Millenium Transit Services, LLC was formed in 2003 to take over former Nova Bus manufacturing plant. Millenium suspended production on February 26, 2008.
3. U.S. Bus discontinued operations and sold its assets to Trans Tech Bus, a division of Transportation Collaborative, Inc.

Currently, 21 motorcycle manufacturers report EWR information to the agency. NHTSA believes there are more than an estimated 200 motorcycle manufacturers, including custom and factory bike builders, in the United States which can be classified as small businesses.

Motorcycle manufacturers and builders include manufacturers of cruisers and touring motorcycles, sport bikes, dual purpose motorcycles, electric motorcycles, unique bikes, and builders of custom bikes and choppers.

NHTSA believes there are 29 manufacturers of child restraint systems, none of which we believe can be classified as small businesses with fewer than 500 employees. All child restraint manufacturers are required to report quarterly data. There is no separate NAICS code for child restraints. Possible categories include: a) To qualify as a small business in the “Motor Vehicle Seating and Interior Trim” category (NAICS 336360), the firm must have fewer than 500 employees; b) In the “All Other Motor Vehicle Parts Manufacturing” category (NAICS 336399), the firm must have 750 employees; c) In the “All Other Transportation Equipment Manufacturing” category (NAICS 336999), the firm must have 500 employees. We believe child restraints fit better into category a) or c). Thus, we will continue to use 500 employees as the limit. Table 4 shows these 29 child restraint system manufacturers.

Table 4
Child Restraint Manufacturers

| |
|----------------------------------|
| Child Restraint Manufacturers |
| Graco Children's Products, Inc. |
| Evenflo Company, Inc. |
| Dorel Juvenile Group |
| Team-Tex America, Inc. |
| Mercedes-Benz USA, LLC |
| Volvo Cars of N.A., LLC |
| Porsche Cars North America, Inc. |
| Angel Guard Products, Inc. |
| Britax Child Safety, Inc. |
| Peg Perego Usa, Inc. |
| Snug Seat, Inc. |
| Safe Traffic System, Inc. |
| Baby Trend, Inc. |
| Learning Curve Brands, Inc. |
| Recaro Gmbh & Co. Kg |
| E-Z On Products Inc. of Florida |
| Chicco Usa, Inc. |
| Combi Usa, Inc. |
| Immi |
| Orbit Baby, Inc. |
| Ferno-Washington, Inc. |
| Q Straint |
| Sunshine Kids Juvenile Products |
| Teutonia Usa, LLC |
| Regal Lager |
| Aprica USA LLC |
| Clek Inc. |
| Harmony Juvenile Products |
| Summer Infant Inc. |

There are an estimated 38 tire manufacturers in the United States, very few of which we believe are small businesses. The industry is highly concentrated, with four major companies (including one U.S.-headquartered company) accounting for more than 75 percent of revenue. Original equipment tires, the vast majority of which are made in the United States, are sold to vehicle manufacturers. U.S. production of tires is expected to recover following an increase in motor vehicle sales; however, increased automation in tire manufacturing is leading to a reduction of production plants and decreased employment. Approximately 300 million tires are produced in the U.S. annually, the demand of which is driven by sales of new vehicles and the need for replacement tires. The replacement tire industry which involves retail sales to consumers has increasingly shifted from domestic manufacturing to offshore production in Asia, and in particular, China.

Currently, there are 68 trailer manufacturers that submit EWR information to the agency. The trailer manufacturing industry is fragmented, and NHTSA believes that there are hundreds of trailer manufacturers that can be classified as small businesses. Table 5 presents the top 27 trailer manufacturers in the United States, some of which are small manufacturers.

Table 5
2009 North American Truck Trailer Output

| Rank | Company Name | 2009 Trailers | 2008 Trailers |
|------|---|---------------|---------------|
| 1 | Utility Trailer Manufacturing Refrigerated vans 12,428, Dry-freight vans 3,246 Platforms and curtainsiders 870 | 16,544 | 22,890 |
| 2 | Great Dane Limited Partnership | 15,000 | 28,500 |
| 3 | Wabash National Corporation Dry-freight vans 9,547, Refrigerated vans 1,813, Platforms 844, Dump trailers 48, Non-trailer: converter dollies 354 | 12,800 | 33,300 |
| 4 | Hyundai Translead Dry-freight vans 3,775, Refrigerated vans 941 | 4,716 | 6,540 |
| 5 | Timpte Inc. | 2,825 | 3,600 |
| 6 | Wilson Trailer Company | 2,750 | 3,500 |
| 7 | Stoughton Trailers | 2,600 | 5,482 |
| 8 | Heil Trailer International | 2,300 | 4,020 |
| 9 | Fontaine Trailer Company | 2,125 | 3,315 |
| 10 | MANAC | 2,000 | 4,150 |
| 11 | Vanguard National Trailer Corporation | 1,715 | 4,346 |
| 12 | Polar Tank Trailer | 1,190 | 2,209 |
| 13 | Talbert Manufacturing | 1,170 | 1,239 |
| 14 | Walker Group Holdings Tank trailers: 1,100, Non-trailer: 800 tank trucks | 1,100 | 2,200 |
| 15 | Strick Corporation | 1,099 | 3,574 |
| 16 | Trail King Industries | 1,025 | 3,289 |
| 17 | Doepker Industries Ltd. | 920 | 1,200 |
| 18 | MAC Trailer Manufacturing | 904 | 2,191 |
| 19 | Pitts Enterprises | 893 | 1,417 |
| 20 | Kidron | 878 | 1,060 |
| 21 | Kentucky Trailer | 690 | 1,069 |
| 22 | Road Systems | 640 | 1,870 |
| 23 | East Manufacturing Company | 570 | 1,235 |
| 24 | Western Trailer | 512 | 694 |
| 25 | Tremcar | 468 | 842 |
| 26 | Reitnouer Inc. | 435 | 1,504 |
| 27 | Beall Corporation Tank trailers: 389, Non-trailer: 194 truck bodies | 389 | 946 |
| | Total | 78,258 | 146,182 |

Source: Trailer Body Builders, March 1, 2010.

Small business impacts

The Early Warning Rule affects manufacturers of light vehicles, buses, emergency vehicles, and medium-heavy vehicles. The proposal to amend 49 CFR 579.21(b) and (c) to require that manufacturers provide vehicle type when they submit their death and injury data and aggregate data under would place a minimal burden on light vehicle manufacturers. Light vehicle manufacturers should be able to identify the vehicle type from the VIN provided in the information they receive. A manufacturer would have to add a field to its EWR database containing the vehicle type and perform reprogramming of software. The proposed requirement to add fuel and/or propulsion system type and four new components (stability control, FCA, LDP and backover prevention) to the vehicle EWR reporting is likely to create a one-time cost for manufacturers to revise their EWR databases and software systems; however, we do not believe that these costs will be substantial or pose an undue burden. We believe that the requirements, which involve reporting and recordkeeping, will not amount to a substantial economic burden, as discussed in the Cost section of the Preliminary Regulatory Evaluation. We can assume that, for light vehicle manufacturer reporting, since the threshold for reporting is 5,000 units, and the average price of light vehicles is about \$27,000, this would amount to an estimated \$135 million in revenue. The one-time cost per light vehicle manufacturer for the proposed EWR requirements is estimated at $\$62,000/\$135 \text{ million} = .046$ percent of revenue which is not a significant economic impact. For the medium-heavy vehicle category, we can make the same formulaic assumptions, with the average price of a medium/heavy vehicle at least \$50,000 and the reporting threshold of 5,000, amounting to an estimated \$250 million revenue per manufacturer. The one-time cost per medium/heavy vehicle manufacturer for the proposed EWR requirements

is estimated at $\$10,000/\$250 \text{ million} = .004$ percent, which we believe is not a significant part of their revenue.

The Foreign Defect Reporting Rule, 49 CFR part 579, subpart B, requires motor vehicle and motor vehicle equipment manufacturers to report information and submit documents to NHTSA when a manufacturer or a foreign government determines that a safety recall or other safety campaign should be conducted in a foreign country for products that are identical or substantially similar to vehicles or items of equipment sold or offered for sale in the United States. The proposed amendment to the foreign defect reporting regulations, 49 CFR Part 579, requires that motor vehicle manufacturers upload the annual list of substantially similar vehicles directly to the NHTSA Artemis database, instead of submitting the information by mail, facsimile, or email. We do not believe that this requirement will result in a significant economic impact on a substantial number of small businesses, since most businesses have the technological capability to perform this function. However, there may be some small businesses that may not have the technological capability, and we requested comments on cost and burden for these businesses. In addition, there are a very small number of exports from small businesses; therefore, we believe that foreign defect reporting would be minimal.

We are proposing amendments to safety recall reporting information. We propose that certain larger volume manufacturers (manufacturers of 25,000 light vehicles annually, and manufacturers of 5,000 motorcycles annually) submit VINs for vehicles affected by a safety recall, and that they submit recall remedy completion information on those vehicles that is updated at least once daily. For the proposed requirements for information to be submitted in a

Part 573 Defect and Noncompliance Information Report, the one-time cost to manufacturers for tool/software setup is as follows. The one-time cost to set up daily VIN updates software is estimated at \$33,000. Based on this cost, the one-time cost to set up daily VIN updates software, for the 29 manufacturers that we believe will report VINS, amounts to \$957,000. The one-time cost to set up daily VIN updates hardware is estimated at \$5,000. Using this cost, the one-time cost to set up daily VIN updates hardware, for the 29 manufacturers that we believe will report VINS, amounts to \$145,000. The one-time cost to manufacturers to provide historical VIN information is estimated at \$6,600. Assuming this one-time cost, we estimate that the total cost for 29 manufacturers to create the VIN list template amounts to \$191,400. The total one-time cost for VIN tool/software setup for the 29 manufacturers is estimated at \$1,484,800. However, this proposed amendment only applies to light vehicle manufacturers who produce 25,000 or more vehicles annually and motorcycle manufacturers who produce 5,000 or more motorcycles annually. Thus, all the light vehicle manufacturers and most of the motorcycle manufacturers that would be required to submit VIN list for recalls are considered large manufacturers.

We are also proposing to amend Part 573 to require manufacturer to provide this information through an on-line web based portal. The cost and burden for this proposed amendment to the small manufacturers for Part 573 Reports, Quarterly Reports and recall documents are expected to be minimal. All activity regarding recalls can be performed by small manufacturers on the Recalls Portal using their secure account on a Web Browser.

We are proposing to amend this regulation to require an identification and description of the risk associated with the safety defect or noncompliance with a FMVSS, and, as to motor vehicle

equipment recalls, the brand name, model name, and model number, of the equipment recalled. Also, manufacturers would be prohibited from including disclaimers in their defect and noncompliance report if the disclaimers state or imply there is no safety defect or noncompliance.

We are proposing to require that manufacturers provide additional information regarding the safety defect or noncompliance. We proposed three additional changes to Part 573: 1) require that information not available at submission of the initial report be provided within five working days of when it becomes available, 2) require manufacturers to submit to NHTSA an amended Part 573 Report within five working days if and when the manufacturer has new information that updates or corrects the information that was previously reported, and 3) require that when the first quarterly report under Part 573 is being prepared, the manufacturer review its Part 573 Report for completeness and accuracy and supplement or amend it as necessary to comply. We believe that these three additional requirements would affect small businesses. However, we believe that they involve minor updates and reviews, and the cost involved would be insignificant and would not be unduly burdensome on small businesses.

We are proposing to require, under Part 577.7, that manufacturers notify owners and purchasers no later than 60 days from when they first decide a safety defect or noncompliance exists, and if the free remedy not be available at the time of notification, the manufacturers issue a second notification to owners and purchasers once the remedy is available and stamp the letter urgent. The changes to Part 577 requiring a manufacturer to notify their affected customer within 60 days would add an additional \$7,500,000 (calculated as following: 20,000,000 letters x .25

requiring interim owner notifications = 5,000,000 letters; 5,000,000 letters x \$1.50 = \$7,500,000). This proposed amendment would affect small businesses; however, most of the small businesses would produce a smaller volume of vehicles than larger manufacturers and thus have smaller number of owners re-notification letters to issue.

The agency believes that the proposed amendments rule will affect small businesses, as discussed above; however, we believe that the proposals will **not** have a **significant economic impact** on a **substantial number of small businesses**.

4. Description of the projected reporting, record keeping and other compliance requirements for small entities

This rule contains new reporting requirements for manufacturers of manufacturers of light vehicles, buses, emergency vehicles, and medium-heavy vehicle manufacturers, including motorcycles and trailers, and motor vehicle equipment manufacturers including tire manufacturers, and child restraint manufacturers. These reporting, record keeping and other compliance requirements are discussed in the background and cost sections of the Preliminary Regulatory Evaluation.

The proposed amendments to the Early Warning Reporting rule involve changes in light vehicle, bus, emergency vehicle and medium-heavy truck manufacturers' quarterly EWR submissions and reporting templates, and in death and injury reports. We do not believe that the proposed changes will impact small businesses based on SBA's criteria.

The proposed amendments to the Foreign Defect Reporting Rule, 49 CFR part 579, subpart B, to require that motor vehicle manufacturers upload the annual list of substantially similar vehicles directly to the NHTSA Artemis database is not likely to affect a substantial number of small businesses since very few small businesses export vehicles. We believe that the information to comply with these proposed amendments should be readily available to manufacturers.

The proposed amendments to information submitted in a Part 573 Defect or Noncompliance Information Report would affect all motor vehicle and motor vehicle equipment manufacturers. However, we believe that this requirement would not significantly affect small entities, as the requirement would involve minor updates and reviews.

5. Duplication with other Federal rules

There are no relevant Federal regulations that duplicate, overlap, or conflict with the rule.

6. Description of any significant alternatives to the rule

There are no significant alternatives to the rule.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product

price deflator estimates for the year 20011 results in \$139 million ($113.5 \div 81.606 = 1.39$). The assessment may be included in conjunction with other assessments, as it is here.

This final rule would not result in expenditures by State, local or tribal governments of more than \$139 million annually.