

(c) *Developing list prices.* Price lists may be developed using one or more of the following sources:

\* \* \* \* \*

(d) *First time use for an item or service.* The first time the contracting officer uses list prices for an item or service, give prospective bidders an opportunity to review the proposed list. Also provide information on how GSA will use the list prices. This information may be provided in a draft solicitation.

(e) \* \* \*. Prices may be used from previous awards made using the weight factors method to develop price lists.

\* \* \* \* \*

(h) \* \* \*. If the Government's needs cannot be estimated, the solicitation may include past orders. \* \* \*

(i) \* \* \*

(6) If providing quantity estimates, state that the estimates are for information only and do not constitute guarantees or commitments to order items under the contract.

\* \* \* \* \*

(8) When the solicitation further groups unit prices by trade or business category, multiple percentages may be required.

\* \* \* \* \*

■ 14. Revise section 514.407-3 to read as follows:

**514.407-3 Other mistakes disclosed before award.**

Delegation of authority by head of the agency. Under FAR 14.407-3(e), contracting directors (see 502.101) are authorized, without power of redelegation, to make:

(a) The determinations regarding corrections and withdrawals under FAR 14.407-3(a), (b), and (c); and

(b) The corollary determinations not to permit withdrawal or correction under FAR 14.407-3(d).

■ 15. Revise section 514.407-4 to read as follows:

**514.407-4 Mistakes after award.**

The contracting director and assigned counsel are required to review and approve the contracting officer's determinations under FAR 14.407-4(b) and (c).

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 16. Revise the section heading, date of the provision and paragraphs (a) and (b) of section 552.214-70; and remove Alternate I.

■ The revised text reads as follows:

**552.214-70 "All or None" Bids.**

\* \* \* \* \*

**"ALL OR NONE" BIDS (Oct 2009)**

(a) The Government reserves the right to evaluate bids and make awards on an "all or none" basis as provided below.

(b) A bid submitted on an "all or none" or similar basis will be evaluated as follows: The lowest acceptable bid exclusive of the "all or none" bid will be selected with respect to each item (or group of items when the solicitation provides for aggregate awards) and the total cost of all items thus determined shall be compared with the total of the lowest acceptable "all or none" bid. Award will be made to result in the lowest total cost to the Government.

■ 17. Amend section 552.214-71 by revising the date of the clause, paragraph (a)(1), the introductory text of paragraph (a)(2), and paragraph (b) to read as follows:

**552.214-71 Progressive Awards and Monthly Quantity Allocations.**

\* \* \* \* \*

**PROGRESSIVE AWARDS AND MONTHLY QUANTITY ALLOCATIONS (Oct 2009)**

(a) *Monthly quantity allocation.*

(1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this solicitation. Bids shall indicate, in the spaces provided, the monthly quantity which the bidder is willing to furnish of any item or group of items involving the use of the same production facilities. In making monthly allocations, bidders are urged to group as many items as possible. Such groupings will make it possible for the Government to make fullest use of the production capabilities of each bidder.

(2) Bidders need not limit their monthly allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If a bid does not include monthly allocation quantities, it will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

\* \* \* \* \*

(b) *Progressive awards.* If the low responsive bid's monthly quantity allocation is less than the Government's estimated requirements, the Government may make progressive awards beginning with the low responsive bid and including each next low responsive bid to the extent necessary to meet the estimated requirements.

\* \* \* \* \*

■ 18. Amend section 552.214-72 by—  
■ a. Revising the date of the provision;  
■ b. Revising the "Note" in paragraph (b); and  
■ c. Adding paragraph (e).  
■ The revised and added text reads as follows:

**552.214-72 Bid Sample Requirements.**

\* \* \* \* \*

**BID SAMPLE REQUIREMENTS (Oct 2009)**

\* \* \* \* \*

(b) \* \* \*

NOTE: Bidders that propose to furnish an item or group of items from more than one manufacturer or production point must submit two samples from the production of each manufacturer or production point.

\* \* \* \* \*

(e) Contracting Officer insert address.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[FR Doc. E9-22209 Filed 9-16-09; 8:45 am]

BILLING CODE 6820-61-S

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 573 and 579**

[Docket No. NHTSA-2008-0169; Notice 2]

RIN 2127-AK28

**Early Warning Reporting Regulations**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This rule amends certain provisions of the early warning reporting (EWR) rule published pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and adds requirements for information identifying products involved in a recall under 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports*. This rule modifies the threshold for submitting quarterly EWR reports for light vehicle, bus, medium-heavy vehicle (excluding emergency vehicles), motorcycle and trailer manufacturers. It further requires manufacturers submitting EWR reports to submit product names that are consistent from reporting quarter to quarter and amends the definition of "other safety campaign." It also amends part 573 *Defect and Noncompliance Responsibility and Reports* to add requirements that tire manufacturers provide a range of tire identification numbers of recalled tires and manufacturers provide the country of origin of a component involved in a recall.

**DATES:** *Effective Date:* The effective date of this final rule is October 19, 2009.

*Compliance Date:* Compliance by bus manufacturers producing 100 or more but fewer than 500 buses annually is not required until September 13, 2010.

**ADDRESSES:** If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket

number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Fourth Floor, Washington, DC 20590. The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, contact Tina Morgan, Office of Defects Investigation, NHTSA (phone: 202–366–0699). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263). You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

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**I. Introduction**

In 2000, Congress enacted the Transportation Recall Enhancement,

Accountability, and Documentation (TREAD) Act. Public Law 106–414. Up until the TREAD Act's enactment, NHTSA relied primarily on analyses of complaints from consumers and technical service bulletins (TSBs) from manufacturers to identify safety defects in motor vehicles and equipment. Congress concluded that NHTSA did not have access to data that may provide an earlier warning of safety defects. Accordingly, the TREAD Act included requirements that NHTSA prescribe rules requiring motor vehicle and equipment manufacturers to submit to NHTSA communications relating to defective equipment, information about foreign safety recalls and establishing early warning reporting requirements.

Responding to the TREAD Act requirements in 2002, NHTSA issued rules requiring that motor vehicle and equipment manufacturers provide communications regarding defective equipment, information on foreign safety recalls and certain early warning data. 49 CFR part 579; *see* 67 FR 45822; 67 FR 63295. The rules require:

- Monthly reporting of manufacturer communications (*e.g.*, notices to distributors or vehicle owners, customer satisfaction campaign letters, *etc.*) concerning defective equipment or repair or replacement of equipment;
- Reporting (within five days of a determination to take such an action) of information concerning foreign safety recalls and other safety campaigns in foreign countries; and
- Quarterly reporting of early warning information: 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.

We use the term “Early Warning Reporting” (EWR) here to apply to the requirements in the third category above, which are found at 49 CFR part 579, subpart C. As described more fully in the Background section, below, the 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. All of the EWR information NHTSA receives is stored in a database called ARTEMIS (which stands for Advanced Retrieval, Tire, Equipment, and Motor Vehicle Information System), which also contains additional information (*e.g.*, recall details and complaints filed

directly by consumers) related to defects and investigations.

The Early Warning Division of the Office of Defects Investigation (ODI) reviews and analyzes a huge volume of manufacturer early warning data and documents. Using its traditional sources of information, such as complaints from vehicle owner questionnaires (VOQs) and manufacturers' own communications, and the additional information provided by EWR submissions, ODI investigates potential safety defects. These investigations often result in recalls. In 2008, for example, manufacturers recalled more than 8 million vehicles for defective conditions. The majority of the vehicles recalled were from recalls prompted by ODI investigations.

The TREAD Act requires that NHTSA periodically review its EWR rules. 49 U.S.C. 30166(m)(5). In previous EWR rulemakings, the agency indicated that we would begin a review of the EWR rule after two full years of reporting experience. *See* 67 FR 45822 (July 10, 2002) and 69 FR 3292 (January 23, 2004). When two full years of reporting concluded in 2006, NHTSA began its review of the EWR rule.

NHTSA evaluated the EWR rule in two phases. NHTSA completed phase one in 2007 and, after notice and comment, published a final rule on May 29, 2007. 72 FR 29435. The May 2007 final rule made three changes to the EWR rule. First, the agency eliminated the requirement to produce hard copies of a subset of field reports known as “product evaluation reports.” *See* 72 FR 29435, 29443. Second, the rule amended the definition of “fire” to more accurately capture fire related events. *Id.* Last, the agency limited the time that manufacturers must update missing vehicle identification number (VIN)/tire identification number (TIN) or a component in death or injury incidents to a period of no more than one year after NHTSA receives the initial report. 72 FR 29444.

On December 5, 2008, the agency issued a notice of proposed rulemaking containing the second part of our evaluation of the EWR rule. This final rule amends the EWR rule based upon that evaluation.

**II. Summary of the Final Rule**

The early warning reporting rule requires that certain manufacturers of motor vehicles and motor vehicle equipment submit information to NHTSA that could assist in the identification of safety-related defects. 49 CFR part 579, subpart C. The amount and frequency of reporting required of a

manufacturer is dependent upon its annual production volume.

Manufacturers of light vehicles, motorcycles, or trailers producing 500 or more units per year must submit quarterly reports. Manufacturers of light vehicles, motorcycles or trailers producing fewer than 500 units annually do not submit quarterly reports. Instead these smaller manufacturers are required to report to NHTSA when they receive a claim or notice identifying an incident that involves a death. 49 CFR 579.27.

Today's final rule raises the EWR quarterly reporting threshold for light vehicle manufacturers, motorcycle manufacturers and trailer manufacturers from 500 or more units to 5,000 or more units per year. Light vehicle, motorcycle and trailer manufacturers producing fewer than 5,000 units per year will now have to submit only information related to incidents involving fatalities.

Prior to today's rule, the EWR regulation required that medium-heavy vehicle and bus manufacturers producing 500 or more units per year submit EWR reports. Manufacturers whose production volume is below this threshold are required to submit information only on incidents involving a fatality. With two exceptions, today's final rule raises the EWR quarterly reporting threshold to an annual production of 5,000 or more vehicles. However, manufacturers of emergency vehicles producing 500 or more units per year must still file quarterly reports. For buses, the threshold is reduced to 100 or more buses produced annually.

Today's final rule also adds a new requirement requiring vehicle and equipment manufacturers to provide consistent naming conventions for their products from quarter to quarter.

Last, today's final rule amends two subsections of 49 CFR 573.6 to add language stating that tire manufacturers' recall reports include the tire identification number (TIN) of all tires within the scope of a recall and that all Part 573 Defect or Noncompliance Information Reports identify a recalled component's country of origin. Specifically, we are amending 49 CFR 573.6(c)(2)(iii) to require a range of TINs and 573.6(c)(2)(iv) to identify the recalled component's country of origin.

### III. 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. 67 FR 45822. This EWR regulation divides manufacturers of motor vehicles and motor vehicle equipment into two

groups with different reporting responsibilities. The first group consists of (a) larger vehicle manufacturers (manufacturers of 500 or more vehicles annually) producing light vehicles, medium-heavy vehicles and buses, trailers and/or motorcycles; (b) tire manufacturers producing over a certain number per tire line; and (c) all manufacturers of child restraints. The first group must submit comprehensive reports every calendar quarter. 49 CFR 579.21–26. The second group consists of smaller vehicle manufacturers (e.g., manufacturers of fewer than 500 vehicles annually) and all motor vehicle equipment manufacturers other than those in the first group. The second group has limited reporting responsibility. 49 CFR 579.27.

Manufacturers in the first group must submit comprehensive quarterly reports for each make and model for the calendar year of the report and nine previous model years. Tire and child restraint manufacturers must transmit comprehensive reports for the calendar year of the report and four previous production years. Each report is subdivided so that the information on each make and model is provided by specified vehicle systems and components. The vehicle systems or components involved vary depending upon the type of vehicle or equipment manufactured.<sup>1</sup>

In general (not all of these requirements apply to manufacturers of child restraints or tires), manufacturers that submit comprehensive reports must report information on:

<sup>1</sup> For instance, light vehicle manufacturers must provide reports on twenty 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.

In addition to the systems and components reported by light vehicle manufacturers, medium-heavy vehicle and bus manufacturers must report on the following systems or components: service brake system air, fuel system diesel, fuel system other and trailer hitch.

Motorcycle manufacturers report on thirteen systems or components: steering, suspension, service brake system, engine and engine cooling system, fuel system, power train, electrical, exterior lighting, structure, vehicle speed control, tires, wheels and fire.

Trailer manufacturers report on twelve systems or components: suspension, service brake system-hydraulic, service brake system-air, parking brake, electrical system, exterior lighting, structure, latch, tires, wheels, trailer hitch and fire.

Child restraint and tire manufacturers report on fewer systems or components for the calendar year of the report and four previous model years. Child restraint manufacturers must report on four systems or components: buckle and restraint harness, seat shell, handle and base. Tire manufacturers must report on four systems or components: tread, sidewall, bead and other.

- 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.

- Warranty claims paid by the manufacturer pursuant to a warranty program (in the tire industry these are warranty adjustment claims).

- 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).

- 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).

The reporting information on property damage claims, warranty claims, consumer complaints and field reports is 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, manufacturers that submit comprehensive reports, other than tire manufacturers, are required to submit copies of non-dealer field reports.

In contrast to the comprehensive quarterly reports required of the first group, the second group does not have to provide quarterly reports. These manufacturers must only submit death incident information when they receive a claim or notice of a fatality.

#### B. Defect and Noncompliance Information Reports

Pursuant to 49 U.S.C. 30118 and 30119, a manufacturer is required to notify 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. 49 CFR part 573 *Defect and Noncompliance Responsibility and Reports* details the information required to be reported to NHTSA when a manufacturer determines that a defect or noncompliance with a Federal Motor Vehicle Safety Standard exists in a motor vehicle or item of motor vehicle equipment.

Section 573.6 specifies the information that manufacturers are required to submit to the agency. An important element of the notice to NHTSA is the identification of the component containing the defect or

noncompliance. Section 573.6(c)(2)(iii) requires manufacturers to identify items of motor vehicle equipment by the component's generic name (tires, child seating system, axles, *etc.*), part number, size and function if applicable, the inclusive dates (month and year) of manufacturer if available and any other necessary information describing the items. Section 573.6(c)(2)(iv) requires manufacturers to identify the manufacturer of the component that contains the defect or noncompliance if the component was manufactured by a manufacturer different from the reporting manufacturer. In such a case, the reporting manufacturer must identify the component and the component's manufacturer by name, business address, and business telephone number.

### C. Summary of the Proposed Rule

The December 5, 2008 NPRM proposed to raise the EWR quarterly reporting threshold for light vehicle manufacturers and trailer manufacturers from 500 to 5,000 or more vehicles per year. Those light vehicle and trailer manufacturers producing fewer than 5,000 units per year would submit information on incidents involving a death under section 579.27. We also proposed to eliminate the reporting threshold for bus manufacturers, which would require all bus manufacturers to provide comprehensive quarterly EWR reports. The proposal left the quarterly reporting threshold for medium-heavy vehicle manufacturers and motorcycles unchanged at 500 or more vehicles per year.

The NPRM also responded to the National Truck Equipment Association's (NTEA) petition for rulemaking. NTEA petitioned the agency to undertake a rulemaking to raise the threshold for all vehicle manufacturers from 500 to 5,000 units per year or, alternatively, sought to exempt final stage manufacturers from quarterly EWR reporting. The agency did not propose amendments as requested by NTEA, but requested comments on our decision to keep the threshold for quarterly EWR reports for medium-heavy vehicle manufacturers unchanged.

The agency proposed to add new provisions requiring vehicle and equipment manufacturers to use consistent quarter to quarter product naming conventions or provide NHTSA with timely notice of any changes, and to require light vehicle manufacturers to include the vehicle type in the aggregate portion of their quarterly EWR reports.

Additionally, we proposed to add electronic stability control as a component to the light vehicle reporting

category and require that manufacturers specify fuel and/or propulsion systems when providing model designations to capture new technologies in the light vehicle market.

Finally, we proposed to amend two subsections of section 573.6. Specifically, we proposed to amend 573.6(c)(2)(iii) to require tire manufacturers to report tire identification numbers (TINs) of recalled tires and 573.6(c)(2)(iv) to require manufacturers to identify the country of origin of a recalled component that is the subject of a recall. We also proposed to add language to section 573.9 to facilitate the submission of reports affected by the proposal to require TINs.

### D. Overview of Public Comments to the Proposed Rule

We received comments from several sources in response to the NPRM. Motor vehicle manufacturers and associated trade organizations commenting included the Alliance of Automobile Manufacturers (Alliance), Association of International Automobile Manufacturers (AIAM), Ford Motor Company (Ford), Truck Trailer Manufacturers Association (TTMA), Jayco, Inc. (Jayco), Big-Tex Trailer Manufacturing (Big-Tex), PJ Trailer Manufacturing (PJ Trailer), Motor & Equipment Manufacturers Association (MEMA), National Truck Equipment Associated (NTEA), Rubber Manufacturers Association (RMA), Recreation Vehicle Industry Association (RVIA), National Association of Trailer Manufacturers (NATM), National Marine Manufacturers Association (NMMA), and Carry-On Trailer Corporation (Carry-On). In general, the industry commenters supported the proposals to raise the reporting threshold for light vehicle manufacturers and trailer manufacturers. Some commenters requested a subset of their vehicle population, based upon either geography or size of their subsidiaries, be exempted from the light vehicle reporting category.

Some individual trailer manufacturers objected to raising the threshold from 500 units to 5,000 units annually. These manufacturers stated that by raising the threshold to 5,000 units per year would prevent the agency from receiving information from manufacturers of the heaviest, and, in their view, more dangerous trailers.

NTEA opposed the agency's decision to not raise the threshold for medium-heavy vehicles and buses. It stated that the burden on its members that are small multi-stage or final-stage vehicle manufacturers to collect and report

EWR information outweighs any safety benefits.

The Small Business Administration (SBA) submitted comments supporting the NPRM, but requested NHTSA reconsider raising the reporting threshold for buses, medium-heavy vehicles and motorcycles to 5,000 units per year to determine whether the burden reduction would be appropriate for these categories as well.

Most commenters acknowledged the problems associated with inconsistent model names, but opposed the addition of a category to the EWR reporting template indicating if a model was a new ("n") model or current model, ("h" for historical). These commenters suggested keeping a requirement for consistent model naming, but not adding the "n" or an "h" in the EWR reporting template.

Light vehicle industry commenters objected to the proposals to add new codes for electronic stability control (ESC) and fuel or propulsion systems because the changes to their data collection system and reporting templates would be costly and overly burdensome. These commenters requested that the agency hold a public meeting to review these proposed changes to the EWR reporting templates followed by an additional comment period.

Commenters addressing the proposed amendments to part 573 did not object to requiring tire manufacturers to submit TINs for recalled tires. On the proposal to add a country of origin reporting requirement, MEMA and the Alliance requested that the proposed country of origin requirement be changed such that the information would be provided at a time later than the initial report if that information was not available at the time. TTMA objected to the proposal and said reporting country of origin information, among other things, would be overly burdensome since motor vehicles are comprised of hundreds of parts from many vendors that may reside in the U.S., but whose manufacturing facilities may be overseas.

We also received comments from Safety Research & Strategies, Inc. (SRS) and Vehicle Services Consulting, Inc. (VSCI). While SRS did not oppose the proposed amendments in the NPRM related to Part 573, it commented that NHTSA should amend its process for tire recalls. VSCI recommended that the agency increase the threshold for EWR quarterly reports for motorcycles to 2,500 units, as a compromise between the burden on smaller motorcycle manufacturers and the potential safety benefit from motorcycle EWR data.

### *E. Differences Between the Proposed Rule and the Final Rule*

Today's final rule differs from the proposed rule in several respects. First, after review of the comments and further consideration, we have decided to raise or amend the thresholds for medium-heavy vehicles and buses and motorcycles. The NPRM proposed to keep the quarterly reporting threshold for medium-heavy vehicles and motorcycles at 500 or more vehicles per year and eliminate the threshold for buses. As explained below, the final rule raises the threshold for quarterly EWR reports on most classes of medium-heavy vehicles from 500 or more vehicles to 5,000 or more vehicles annually, with two exceptions. These exceptions are for emergency vehicles and buses. For emergency vehicles, the threshold remains unchanged at 500 or more vehicles per year. For buses, the final rule sets a threshold of 100 or more buses per year. In addition, the final rule raises the quarterly reporting threshold for motorcycles from 500 or more units to 5,000 or more units per year.

NHTSA has decided not to adopt at this time the proposals to change the light vehicle reporting template. Those proposals 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 in light vehicles and specify fuel and/or propulsion systems when providing model designations. Instead of proceeding to issue a final rule at this time, we have decided to issue a separate NPRM on these issues in the near future. Among other things, our December 2008 NPRM did not include a proposed template or definitions for the types of fuel and/or propulsion systems. We believe that an additional round of comments on the proposed template and fuel and/or propulsion system definitions will permit more meaningful comments and consideration of the proposed template and definitions.

## **IV. Discussion**

### *A. Statutory Background of Early Warning and Notification Requirements*

Under the early warning reporting provisions of the TREAD Act, NHTSA is required to issue a rule establishing reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the agency's ability to carry out the provisions of Chapter 301 of Title 49, United States Code, which is commonly referred to as the National Traffic and

Motor Vehicle Safety Act, as amended and recodified (Safety Act). 49 U.S.C. 30166(m)(1), (2). Under one subsection of the early warning provisions, NHTSA is to require reports of information in the manufacturers' possession to the extent that such information may assist in the identification of safety-related defects and which concern, *inter alia*, data on claims for deaths and aggregate statistical data on property damage. 49 U.S.C. 30166(m)(3)(A)(i); *see also* 49 U.S.C. 30166(m)(3)(C). Another subsection authorizes the agency to require manufacturers to report information that may assist in the identification of safety defects. 49 U.S.C. 30166(m)(3)(B). Specifically, the Secretary may, to the extent that such information may assist in the identification of safety-related defects in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request. This subsection conveys substantial authority and discretion to the agency. Most EWR data, with the exception of information on deaths and property damage claims, is reported under regulations authorized by this provision.

The agency's discretion is not unfettered. Under 49 U.S.C. 30166(m)(4)(D), the Secretary shall not impose requirements unduly burdensome to a manufacturer of a motor vehicle or motor vehicle equipment, taking into account the manufacturer's cost of complying with such requirements and the Secretary's ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.

The Safety Act also requires manufacturers of motor vehicles or items of motor vehicle equipment to notify NHTSA and owners and purchasers of the vehicle or equipment 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. 49 U.S.C. 30118(b) & (c). Manufacturers must provide notification pursuant to the procedures set forth in section 30119 of the Safety Act. Section 30119 sets forth the contents of the notification, which includes a clear description of the defect or noncompliance, the timing of the notification, means of providing notification and when a second notification is required. 49 U.S.C. 30119. Subsection (a) of section 30119

confers considerable authority and discretion to NHTSA, by rulemaking, to require additional information in manufacturers' notifications. *See* 49 U.S.C. 30119(a)(7).

### *B. Matters Considered in Setting Thresholds for Early Warning Reporting*

As part of our evaluation of the reporting thresholds for comprehensive reporting under the EWR rule and in this rulemaking, the agency is endeavoring to ensure that it collects a body of information that may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment. We are also considering the burden on manufacturers. In view of our authority, stated in the statute in broad terms, to require reporting of information to the extent that such information may assist in the identification of defects related to motor vehicle safety, we do not believe that it is necessary or appropriate to identify a prescriptive list of factors for delineating a reporting threshold. Nonetheless, based on our experience, the following considerations, among other things, have been identified as relevant to evaluating whether EWR information assists or would assist in the identification of safety-related defects:

- The number of manufacturers of a particular class of vehicles or equipment.
- The proportion of reporting manufacturers in a particular class of vehicles or equipment.
- The number of vehicles or equipment items at issue.
- Whether the vehicles carry large numbers of people.
- The safety risks attendant to a particular class of motor vehicles.
- The nature/amount of EWR data the manufacturers have reported or would report.
- Whether the EWR data have been useful or are likely to be useful in opening investigations into potential safety related defects and whether those investigations have resulted or may result in recalls.
- The effect that reduction and/or addition of EWR data would have on the quantity and quality of the data and ODI's ability to identify possible safety-related defects.
- ODI's ability to monitor a group of vehicles and identify possible defects without EWR data.
- The burden on manufacturers.
- The burden on NHTSA.

We did not receive any comments addressing the appropriateness of these considerations, which were listed in the NPRM. Accordingly, we conclude that,

as appropriate, these matters may be considered in delineating a reporting threshold.

The general approach of the EWR program is to collect very large amounts of data on a wide range and volume of vehicles and, to a lesser degree, equipment, and then systematically review the data, with the goal of identifying potential safety problems that may be revealed by examining the data. These data along with other information collected by and available to the agency are considered in deciding whether to open investigations.

After conducting extensive reviews of the EWR data over the last several years, NHTSA has determined that today's final rule will reduce overall the number of manufacturers that must provide comprehensive EWR submissions. The amount and usefulness of data that will no longer be required to be submitted will not be significant to NHTSA in assisting in the identification of safety related defects.

### C. Light Vehicles

The current EWR regulation requires light vehicle manufacturers producing 500 or more vehicles per year to provide quarterly EWR reports to NHTSA. 49 CFR 579.21. Light vehicle manufacturers producing fewer than 500 vehicles are not required to provide quarterly reports, but must provide information related to a claim or notice alleging a death received by the manufacturer. 49 CFR 579.27.

The NPRM proposed amending 49 CFR 579.21 to raise the reporting threshold for light vehicle manufacturers from 500 to 5,000 or more vehicles produced per year. Under this approach, light vehicle manufacturers annually producing fewer than 5,000 vehicles would not provide quarterly reports containing comprehensive data, but would be required, under 49 CFR 579.27, to provide information related to a claim or notice alleging a death received by the manufacturer.

Our proposal to raise the light vehicle threshold was based in large part on our experience in collecting, reviewing and analyzing over four (4) years of EWR data. As we explained in the NPRM, the light vehicle EWR reporting sector consists of 62 manufacturers that submit an immense amount of EWR data to NHTSA every quarter. In the third quarter of 2008 alone, light vehicle manufacturers submitted EWR data with 2,700 property damage claims, 10.2 million warranty claims, 770,000 consumer complaints and 390,000 field

reports<sup>2</sup> based on 168 million light vehicles. Light vehicle manufacturers submitted approximately 20,000 copies of field reports detailed in the third quarter of 2008 and information on approximately 1,200 death and injury incidents.

Larger volume light vehicle manufacturers submit the overall majority of the EWR data in this reporting category. Conversely, manufacturers of 5,000 or fewer light vehicles do not submit much EWR information. It is common for these smaller volume manufacturers to submit zero (0) or (1) complaint, claim or field report for a specific model and model year. This limited amount of EWR data from the relatively smaller light vehicle manufacturers is of little, if any, assistance to ODI in detecting potential safety-related defects.

As noted in the NPRM, NHTSA employs several analytical methods to identify potential concerns. The agency uses statistical methodologies to discover outliers or trends, conducts manual reviews and analyses of EWR data, and evaluates other information, such as Vehicle Owner Questionnaires (VOQs), when evaluating EWR data. Review of EWR submissions from smaller volume light vehicle manufacturers has not been productive in identifying possible safety-related defects in light vehicles.

Manufacturers producing 5,000 or more vehicles per year have filed almost all of the safety recalls initiated in the last five (5) years. Between January 2003 and January 2008, there were a total of 646 light vehicle recalls. Ninety-three percent of these recalls involved manufacturers annually producing 5,000 or more vehicles. More significantly, none of the EWR data submitted by light vehicle manufacturers producing fewer than 5,000 vehicles per year has prompted an investigation leading to a recall. In fact, all of the ODI light vehicle investigations prompted by EWR data involved vehicles from manufacturers annually producing 5,000 or more light

<sup>2</sup> A field report is defined as a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to the manufacturer regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer and transported beyond the direct control of the manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include any document covered by the attorney-client privilege or the work product exclusion. See 49 CFR 579.4.

vehicles.<sup>3</sup> Moreover, in that same time period, only two recalls pertaining to manufacturers producing fewer than 5,000 light vehicles per year were influenced by ODI.<sup>4</sup>

Ford, the Alliance, AIAM, NTEA, SBA and VSCI all supported amending 49 CFR 579.21 to raise the light vehicle reporting threshold from 500 to 5,000 or more vehicles produced per year. We did not receive any comments opposing the proposal.

Accordingly, we are adopting the amendment as proposed. Even though 32 light vehicle manufacturers will no longer submit quarterly EWR data, NHTSA's ability to monitor vehicles made by these small volume manufacturers for potential safety concerns will remain intact. Small volume manufacturers will still be required to report fatality information pursuant to 49 CFR 579.27. NHTSA will also continue to receive the traditional screening information on these vehicles, such as VOQs and TSBs.

The Alliance and VSCI requested that small-volume subsidiaries of light vehicle manufacturers, *i.e.*, subsidiaries producing fewer than 5,000 vehicles, report as independent, small-volume manufacturers. The Alliance contends that EWR data from small-volume subsidiaries is not likely to lead to a defect investigation or recall. Both the Alliance and VSCI assert that requiring small-volume subsidiaries to report places a disproportionate burden on these entities that report independently from their larger parent when compared to independent small vehicle manufacturers. In addition, the Alliance and VSCI claim EWR data from these small subsidiaries produce no safety benefit. While the Alliance requested that small-volume subsidiaries be excluded from quarterly EWR reporting, VSCI recommended that small-volume subsidiaries submit quarterly reports if there is a "sponsorship relationship" between the two manufacturers.<sup>5</sup>

<sup>3</sup> Since the first quarter of EWR reporting, EWR light vehicle data have assisted or prompted 80 ODI investigations into potential safety defects in light vehicles, with the aggregate data or field reports (non-dealer) data sets most often providing the more useful information. Overall, these investigations led to 35 recalls involving more than 18 million units.

<sup>4</sup> These two recalls were NHTSA Recall No. 04V-589 and 06V-075, which involved vehicles about which ODI had information other than EWR data to prompt its investigations.

<sup>5</sup> VSCI recommends that "sponsorship relationship" be defined as:

A relationship between two manufacturers such that one vehicle manufacturer is deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer because the first manufacturer has a substantial role in the

We decline to adopt the Alliance's and VSCI's recommendations to exempt small-volume subsidiaries from filing quarterly EWR reports. We believe that data concerning the small-volume subsidiaries of large manufacturers is likely at times to produce useful information. In addition, the relationship between a small-volume subsidiary and its corporate parent are such that the subsidiary may rely on its parent for assistance in filing EWR reports.

Increasing globalization of the auto industry has increased engineering, component and design sharing as manufacturers attempt to meet competitive challenges. Sharing components with their parent corporations significantly increases the possibility that a subsidiary may share a potential safety concern with a parent. For example, the Volkswagen Group D1 platform is shared with the Bentley Continental GT and the Bentley Continental Flying Spur and BMW shares engines and other parts with Rolls Royce models. In our view, obtaining EWR data from small-volume subsidiaries is important for spotting potential safety concerns that may exist in both a subsidiary and a parent.<sup>6</sup> The agency believes that the benefit of the EWR data provided by these small-volume subsidiaries assists in the identification of potential safety-related defects and outweighs the minimal reporting burden.

However, the Alliance and VSCI claim that the burden to report for small-volume subsidiaries is greater on the parent than the costs imposed on small independents. The Alliance also claimed that the EWR requirements place small-volume subsidiaries, such as Bentley, Bugati, Lamborghini and Rolls Royce at a competitive disadvantage. Neither commenter, however, submitted any support for these assertions. Without support, these claims are unpersuasive. Small-volume subsidiaries often are supported by their parents in the form of technology sharing or other resources. Because such support is available to small-volume

development and manufacturing process of the second manufacturer's vehicle. Examples of factors that will be considered in determining the existence of a 'substantial role' include: A similarity of design between the cars produced by the two manufacturers; a sharing of engines, transmissions, platforms, interior systems, or production tooling; no payment for services or assistance provided to one manufacturer by the other; and shared import and/or sales distribution channels.

<sup>6</sup> Since 2004, small-volume subsidiaries referenced in the Alliance's comments have conducted fifteen (15) recalls and another model of a small-volume subsidiary was the subject of an agency investigation.

subsidiaries, we are not persuaded that these subsidiaries are unduly burdened by the EWR quarterly reporting requirement.

AIAM's comments requested NHTSA to exempt EWR data generated from vehicles in U.S. territories<sup>7</sup> as a "logical outgrowth" of the NPRM's light vehicle proposal. AIAM cited the TREAD Act provision prohibiting NHTSA from establishing unduly burdensome EWR requirements and requiring the agency to balance the costs of compliance against the usefulness of the data. See 49 U.S.C. 30166(m)(4)(D). According to AIAM, the cost to collect data from territories is extremely burdensome compared to the safety benefits of the data.

AIAM argues that several factors support its request for an exemption from reporting EWR data from U.S. territories. AIAM states there are relatively small numbers of vehicles sold in the U.S. territories (only one half to one percent of U.S. vehicle sales, according to AIAM), the amount of data collected is small, and the burden to collect the data is high because manufacturers typically rely upon manual entry to process EWR reporting from U.S. territories. AIAM claims that this imposes a disproportionate burden on manufacturers in relation to the small number of vehicles in the U.S. territories. Moreover, AIAM asserts that excluding U.S. territories from reporting should not significantly affect NHTSA's assessment of possible defect trends, since the vast majority of data for each model vehicle would continue to be reported and fatalities would still be reported. Thus, AIAM requests that NHTSA amend the first paragraph of 579.21 by adding: "With respect to paragraphs (a) and (c) of this section, inclusion of data from Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands is not required."

We decline to adopt AIAM's recommendation to exempt manufacturers from reporting EWR data collected in U.S. territories. First, we do not agree that AIAM's recommendation is a "logical outgrowth" of our proposal to raise the light vehicle threshold to 5,000 vehicles per year and, therefore, it is outside the scope of NPRM. The NPRM did not propose to create a new exemption excluding data from a geographic region from quarterly EWR reports. Rather, the NPRM proposed amending the existing threshold, which

<sup>7</sup> AIAM cites to 49 U.S.C. 30102(a)(10), which states: "State" means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa and the Virgin Islands.

is based upon whether a manufacturer's aggregate total of vehicles manufactured, sold, offered for sale, or imported in the United States reaches a certain volume. See 67 FR 45822 (July 10, 2002). We have never proposed to exempt data from territories from inclusion in a light vehicle manufacturer's quarterly EWR report once the manufacturer's aggregate total reaches the threshold. Accordingly, we decline to adopt AIAM's recommendation because it is outside the scope of the NPRM.

Even assuming that AIAM's recommendation was within the scope of the NPRM, we would not adopt it. We note that the TREAD Act amended the Safety Act to require manufacturers to report EWR data related to motor vehicle safety in motor vehicles and motor vehicle equipment in the *United States*. See 49 U.S.C. 30166(m)(3)(A) & (B). As AIAM has recognized, the Safety Act defines a "state" to include Puerto Rico, the Northern Mariana Islands, Guam, American Samoa and the Virgin Islands. See 49 U.S.C. 30102(a)(10).

Furthermore, we do not believe the burden to report EWR data on vehicles from the U.S. territories is excessive. Under the provision authorizing the EWR program, NHTSA cannot impose requirements that are unduly burdensome to a manufacturer. 49 U.S.C. 30166(m)(4)(D). When considering whether a requirement under the EWR regulation is unduly burdensome, NHTSA must take into account the manufacturer's costs of complying with the EWR requirements and NHTSA's ability to use the information in a meaningful manner to assist in the identification of safety-related defects. *Id.* AIAM did not submit any cost data to support its contention that obtaining vehicle data from the U.S. territories is unduly burdensome. Other than stating that its members manually process such data, it does not explain how the processing of this information is burdensome. AIAM acknowledges that the number of reportable EWR data points from territories is negligible. With such a small amount of EWR data to report, the cost to submit this information appears to be negligible. However, because a vehicle sold in the territories may manifest a defect found in the same model sold elsewhere in the United States, this information could be useful in detecting patterns related to the safety of that model.

Moreover, AIAM does not address the costs of reporting specific types of EWR data. For example, the burden to report consumer complaints generated from consumers in U.S. territories appears to be small. Typically, manufacturers have

customer service centers that are operated either by the manufacturer in-house or outsourced to a third party. The majority of manufacturers have Internet websites available for consumer comments. Consumers can contact manufacturers by telephone or the Internet to request information or lodge a complaint. These points of contact are normally networked with a manufacturer's data system. Accordingly, we do not believe that the burden to report EWR data is unduly burdensome and AIAM offers nothing to the contrary.<sup>8</sup>

For the foregoing reasons, we decline to adopt the recommendations of AIAM, the Alliance and VSCI to exempt small-volume subsidiaries and reporting regarding activities in U.S. territories from EWR quarterly reporting.

#### D. Trailers

The EWR regulation requires trailer manufacturers producing 500 or more trailers per year to submit comprehensive EWR reports to NHTSA. 49 CFR 579.24. Trailer manufacturers annually producing fewer than 500 vehicles are not required to provide quarterly reports to NHTSA, but must provide information related to a claim or notice alleging a death received by the manufacturer. 49 CFR 579.27.

The NPRM proposed amending 49 CFR 579.24 to raise the reporting threshold for trailer manufacturers from its current level of 500 to 5,000 or more trailers per year. Under this approach, trailer manufacturers that producing fewer than 5,000 vehicles per year would not provide comprehensive reports to NHTSA, but would be required to provide fatality information under 49 CFR 579.27.

Our proposal to amend the trailer threshold was based on our experience in collecting, reviewing and analyzing EWR data over four (4) years. As we explained in the preamble to the NPRM, approximately 280 trailer manufacturers currently submit a large amount of data to NHTSA every quarter. See 73 FR 74101, 74107–08. For the third quarter of 2008, trailer manufacturers submitted approximately 130 property damage claims, 50,000 warranty claims, 8,000 consumer complaints and 450 field reports related to 15 million trailers. For scores of trailer manufacturers currently

producing 500 or more vehicles, but fewer than 5,000 vehicles, the proposed amendment would greatly reduce their reporting burden.<sup>9</sup>

As pointed out in the preamble to the NPRM, NHTSA does not believe establishing a threshold level of 5,000 trailers will meaningfully reduce EWR trailer data. Although raising the threshold for the trailer category to 5,000 relieves 219 trailer manufacturers from quarterly EWR reporting, our analysis indicates that manufacturers producing 5,000 or more trailers account for nearly 80% of all trailer production volume and 70% of the EWR aggregate trailer data. We do not believe that the reduction in manufacturers, production data or aggregate data will reduce our ability to identify potential defects. Manufacturers producing fewer than 5,000 trailers per year generally do not provide robust EWR data that assists in identifying potential defects. See 73 FR 74101, 74107–08.

In the preamble to the NPRM, we noted that quarterly EWR data from small-volume trailer manufacturers presented little information and is unlikely to lead a defect investigation. NHTSA's traditional screening tools, such as fleet contacts, technical service bulletins and VOQs have proven effective at identifying safety concerns in the smaller volume trailers and leading to defect investigations. *Id.* The NPRM noted that ODI influenced 421 trailer recalls from 2003 to 2008.<sup>10</sup>

Nine (9) commenters responded to our proposal to raise the trailer threshold. RVIA, TTMA, NTEA, NATM, NMMA and SBA all supported the proposed amendment to 49 CFR 579.24. Many of these commenters concurred that the amended threshold would reduce the burden of EWR reporting on small manufacturers without any material reduction to NHTSA's ability to identify potential safety-related defects.

<sup>9</sup> Trailer manufacturers that produce fewer than 5,000 trailers annually would be required to provide information related to a claim or notice alleging a death received by the manufacturer. 49 CFR 579.27.

<sup>10</sup> Jayco, a manufacturer of recreational vehicles and trailers, correctly pointed out that the statement in the NPRM regarding the number of influenced trailer recalls requires clarification. The NPRM failed to explain that we were unable to determine the production levels for a number of trailer manufacturers conducting recalls at the time of the recall. We could not determine an annual production level for the manufacturer for 140 recalls. Of the remaining recalls, nearly 160 were conducted by trailer manufacturers producing more than 5,000 trailers per year. There were also 121 trailer recalls conducted by trailer manufacturers producing fewer than 5,000 trailers per year. For the 121 trailer recalls conducted by trailer manufacturers producing fewer than 5,000 trailers, 43 of those recalls were influenced by ODI.

Big Tex Trailers Manufacturing, Inc. (Big Tex), Carry-On Trailer, Inc., and PJ Trailers Manufacturing, Inc., all manufacturers that annually produce more than 5,000 trailers, submitted comments opposing our proposal. They argue that raising the threshold would undermine NHTSA's ability to identify safety-related defects. These commenters assert that NHTSA's estimates on the number of trailer manufacturers producing fewer than 5,000 trailers are very low. These companies also claim and that raising the threshold will largely eliminate quarterly EWR reporting data for trailers with 20,000 GVWR or more (which allegedly pose a greater risk to safety than trailers less than 20,000 GVWR) even though the reporting burden is the same for large and small manufacturers. However, these three companies did not submit any data to support these claims.

Big Tex claims that there are "hundreds" of trailer manufacturers who are not reporting—either due to noncompliance with the EWR rule or because they produce fewer than 500 units per year. However, Big Tex did not submit any supporting information, such as trailer manufacturers subject to comprehensive EWR reporting that are not reporting. Our information indicates otherwise. NHTSA contacted over 2,300 trailer manufacturers, advised them of their EWR-reporting requirements and requested their annual production volume. Our results indicate that trailer manufacturers required to file EWR reports are doing so. Even if considerable numbers of manufacturers are not meeting their obligations, the comments do not address whether the quality and quantity of EWR data contained within the reports would provide sufficient information to assist in the identification of potential defects. Smaller trailer manufacturers often have little or no EWR data to report. Such reporting results in product lines with no reportable data or reports of small numbers of incidents from quarter to quarter that are not indicative of meaningful trends. The data gleaned from these reports are simply not helpful to NHTSA.

Big-Tex also argues that raising the threshold to 5,000 or more units per year will eliminate EWR reporting for a significant number of trailer manufacturers producing trailers over 20,000 GVWR, which Big-Tex contends pose the greatest risk to safety. Big Tex offers no basis supporting this alleged greater safety risk. Our experience indicates that trailers over 20,000 GVWR or over are generally maintained by fleets. If these trailers experience any down time, the fleet operator will lose

<sup>8</sup> We also believe that the data collected from U.S. territories will assist in the identification of safety-related defects. For instance, Puerto Rico has a population of slightly fewer than four million people, which is more than 24 states and the District of Columbia. Puerto Rico has over 2.6 million registered vehicles, which is more than twenty-one (21) states. In our view, losing such a large volume of vehicles will hinder our ability to identify potential safety issues.

potential revenue. Thus, these fleets have an economic incentive to regularly maintain and inspect their trailers. Moreover, fleet operators often communicate directly with manufacturers regarding maintenance and safety. As a result, heavier trailers do not necessarily pose a greater defect risk than other trailer types. Our experience with investigations of trailers over 20,000 GVWR does not support the premise that these trailers pose a greater defect risk.<sup>11</sup>

Big-Tex's claim that raising the reporting threshold to 5,000 or more trailers per year will cause a significant loss of EWR data for trailers over 20,000 GVWR is incorrect. Our evaluation shows that raising the threshold to 5,000 or more trailers annually will still result in receiving ninety-six (96) percent of the current production data being submitted to NHTSA from manufacturers producing trailers over 20,000 GVWR. Because the aggregate data in this vehicle category has not proven particularly useful, this reduction will not significantly reduce our ability to adequately identify potential safety-related defects in trailers over 20,000 GVWR.

Big-Tex also states that the reporting burdens for larger trailer manufacturers are similar to smaller manufacturers. Big-Tex provides no data to support this claim. NHTSA's analysis of EWR trailer data weighed the costs of reporting EWR data with the agency's ability to use it to identify potential safety defects. Our evaluation of trailer EWR data indicates that data from trailer manufacturers producing more than 5,000 trailers per year have more depth, tend to be consistent from quarter to quarter and are most likely to provide assistance in detecting defects. The same cannot be said for EWR data from trailer manufacturers producing fewer than 5,000 per year.

Accordingly, we are amending 49 CFR 579.22 to raise the reporting threshold for trailer manufacturers to 5,000 or more vehicles produced annually.

#### E. Buses

Medium-heavy vehicle and bus manufacturers producing 500 or more units per year currently submit quarterly EWR reports to NHTSA. 49 CFR 579.22. There are approximately 20 bus manufacturers submitting quarterly EWR reports to NHTSA. For the third quarter of 2008, bus manufacturers

submitted, approximately 6 property damage claims, 74,000 warranty claims, 1,000 consumer complaints and 2,700 field reports on 750,000 buses. They also submitted approximately 150 copies of field reports.

The preamble to the NPRM stated that there is a significant need to amend the threshold level of reporting for manufacturers of buses because buses—whether school buses, transit buses, or motor coaches—have unique characteristics. These vehicles carry more occupants than other vehicle types, which increases safety risks on a per-vehicle basis. Because of the potential for multiple fatalities and injuries from a single crash, there is greater urgency for identifying safety concerns at the earliest possible time. Our NPRM noted that several recent bus crashes reinforced the importance of creating a special EWR status for bus manufacturers similar to that of child restraint manufacturers. See 73 FR 74101, 74108.

Our proposal considered factors for different thresholds, such as the likelihood of capturing useful data and bus safety risks, balanced against data submission burdens and the agency's costs. Our experience with recalls by bus manufacturers producing fewer than 500 vehicles per year reinforced the need to expand early warning reporting. Further, the safety risk presented by bus defects outweighs the costs of start-up and on-going reporting of EWR data. *Id.*

NTEA and SBA both commented on our proposal to eliminate the reporting threshold for manufacturers of buses. Both opposed the proposal. We did not receive any comments from manufacturers of buses. SBA noted that NHTSA's reference to bus crashes does not address whether EWR reporting would have prevented those crashes. It recommended that NHTSA reassess changing the EWR bus reporting threshold, and determine whether the burden reduction analysis stated for the light vehicle and trailer categories would be appropriate for buses. NTEA recognized the greater safety concern for buses, but urged NHTSA to revise its proposal to include a low, small-volume threshold. NTEA asserts that NHTSA's proposal is too broad, creating large burdens for small manufacturers and capturing manufacturers not intended to report under the EWR rule as bus manufacturers. Specifically, NTEA argues that a company building one bus would be required to file quarterly reports, which would be a significant burden. Furthermore, NTEA states that the agency's definition of a bus (a motor vehicle with motive power, except a trailer, designed for carrying more than

10 persons, see 49 CFR 579.4(b)) is so broad that the proposal would require all kinds of manufacturers, including manufacturers of limousines with very low production levels, to submit quarterly EWR reports. As a result, NTEA believes, the proposal sweeps up hundreds of smaller manufacturers. NTEA contends that the agency's estimate that only seventeen bus manufacturers would become obligated to make quarterly EWR reports is very low. But NTEA did not submit names of bus manufacturers that would be required to report if the reporting threshold were lowered.

NHTSA estimated that seventeen manufacturers would be required to submit quarterly EWR reports if it eliminated the bus threshold. The agency stated that most of these manufacturers produce hundreds of buses per year, but were below the existing reporting threshold. However, as NTEA points out, the proposed elimination of the EWR bus reporting threshold captures many manufacturers that have an annual production of 100 or fewer buses. Our proposal intended to capture additional manufacturers of school buses, transit buses and motor coaches, not very small manufacturers of limousines and similar vehicles.

The distinguishing characteristic of buses is that they transport numerous people, and a single bus crash may result in many injuries and fatalities. The bus crashes we referenced, as SBA pointed out, were not singled out to suggest that EWR data would have prevented those particular bus crashes. Their purpose was simply to illustrate that bus crashes can result in multiple deaths and injuries. Because of this characteristic, we believe that there is a strong safety interest in improving our ability to identify potential defects in buses. This benefit outweighs the burden on reporting for these additional bus manufacturers.

Bus manufacturers producing fewer than 500 buses per year conduct a significant number of recalls every year. Since 2003, there have been approximately 39 recalls involving 8,000 buses by bus manufacturers producing fewer than 500 buses annually. Because of passenger density, defect related safety risks could affect tens of thousands of passengers per year. Moreover, NHTSA's traditional data collection methods are not as robust for buses as compared to light vehicles and other vehicles. For example, vehicle owner complaints, which are a vital source of information on light vehicles, are rare for buses. Given the potential harm from just one bus crash, NHTSA concludes that

<sup>11</sup> For example, in 2008, trailer manufacturers conducted a total of 116 recalls, with 99 of the recalls involving trailers less than 26,000 GVWR. Of the 116 recalls, ODI influenced 85 recalls, with 75 of those influenced recalls involving trailers less than 26,000 GVWR.

reducing the threshold for reporting by bus manufacturers to permit identification of potential defects is appropriate.

Consideration of comments from SBA and NTEA led NHTSA to re-examine the EWR reporting threshold for buses including the utility of the data produced. At the outset, we recognize that very small volume manufacturers would not submit EWR data robust enough to permit expeditious identification of potential defects. Therefore, data from manufacturers producing few buses will not be required to report. However, due to the strong safety concerns with regard to buses, expanded reporting is necessary. We believe that an appropriate reporting threshold is 100 buses per year. Of the seventeen bus manufacturers identified in the NPRM as producing fewer than 500 buses per year, fifteen produce 100 or more buses annually.

In addition, NHTSA analyzes EWR data submitted by bus and medium-heavy vehicle manufacturers on a quarterly basis. In this analysis, agency staff rank potential issues by vehicle make and model. Data from each quarter identify dozens of makes and models of buses and medium-heavy vehicles that require further evaluation by ODI. In the last six quarterly evaluations, NHTSA has preliminarily identified fifteen bus models from seven different manufacturers for further evaluation.

The NPRM estimated that the costs for each additional bus manufacturer would include a one-time start-up cost of approximately \$3,500 and an annual reporting cost of approximately \$13,000. See 73 FR 74101, 74109. SBA requested that we reconsider the burden reporting imposes on small business bus manufacturers. That agency did not submit any cost data or estimates for us to consider. Indeed, none of the commenters submitted cost information to assist in our determination of the cost of quarterly reporting for small businesses manufacturing buses. Considering the potential safety consequences and the considerable potential value EWR data may have in helping prevent bus crashes, fires or related injuries, the compliance costs are not unduly burdensome. As discussed further in section VI.B, below, ten (10) of the fifteen bus manufacturers that produce 100 or more buses annually are considered small businesses according to criteria used for analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* For the reasons explained in that section, we do not believe that this burden will be a significant economic impact on these bus manufacturers. In

our view, setting the EWR reporting threshold to require EWR quarterly reports from bus manufacturers producing 100 or more buses per year strikes the correct balance between the interests of smaller manufacturers and public safety.

Based upon the foregoing, we are amending 49 CFR 579.22 to lower the current reporting threshold for bus manufacturers from 500 or more buses annually to 100 or more buses per year. We are also amending 49 CFR 579.22 to distinguish buses from other medium-heavy vehicles so manufacturers producing both buses and medium-heavy vehicles do not aggregate production of all their products for EWR reporting purposes. Thus, a manufacturer that produces both buses and other medium heavy vehicles does not have to also submit quarterly EWR reports for its medium-heavy vehicles until its annual production of those vehicles reaches the medium-heavy reporting threshold.

#### F. Medium-Heavy Vehicles

Medium-heavy vehicle and bus manufacturers annually producing 500 or more units have been required to submit quarterly EWR reports to NHTSA. 49 CFR 579.22. The vehicles in this category include emergency vehicles, recreational vehicles, trucks, tractors or others.<sup>12</sup> 49 CFR 579.4(c). For medium-heavy vehicles (other than buses), we proposed to keep the quarterly reporting threshold at 500 or more vehicles produced per year.

The NPRM noted that approximately 65 emergency vehicle, recreational vehicle, truck, and tractor manufacturers were submitting quarterly EWR reports to NHTSA. See 73 FR 74101, 74109–10. For the third quarter of 2008, these manufacturers submitted approximately 125 property damage claims, 480,000 warranty claims, 14,000 consumer complaints and 34,000 field reports on 6 million vehicles. *Id.* These vehicle manufacturers report data on approximately 300,000 potential products-components (the number of distinct models reported by these manufacturers multiplied by the number of components in EWR). In addition to the large amount of aggregate data submitted for the third quarter of 2008, these manufacturers reported approximately 40 death and

injury incidents and provided 2,000 copies of non-dealer field reports.

The December 5, 2008 NPRM indicated that we would leave the EWR reporting threshold for medium-heavy manufacturers (excluding buses) unchanged due to a combination of factors, such as the proportion of manufacturers that would no longer have to report, the proportion of vehicles that would no longer be subject to reporting and the effect that the reduction of EWR data would have on ODI's ability to detect potential safety defects. *Id.*

SBA and NTEA both commented on our proposal to keep the medium-heavy reporting threshold at 500 or more vehicles. Both objected to keeping the threshold unchanged. SBA recommended that NHTSA reassess the benefits and burdens of medium-heavy vehicle EWR reporting and determine if burden reduction would be appropriate. Similarly, NTEA requested that the agency reassess its proposal and afford small volume medium-heavy manufacturers the same regulatory relief as the small volume manufacturers of light vehicles and trailers. NTEA noted that several of the recalls referenced by NHTSA in the preamble would not have been affected by an increase to the medium-heavy vehicle reporting threshold. NTEA also pointed out increasing the reporting threshold for the medium-heavy category to 5,000 or more vehicles would cause a loss of six percent of the aggregate data and thirteen percent of production data. NTEA argued that this analysis of medium-heavy vehicles could be further refined depending upon the type of medium-heavy vehicle. In NTEA's view, these analyses would likely show that raising the threshold would have little effect for certain vehicle types.

Our NPRM analysis focused on the number of manufacturers, by vehicle type, that would no longer have to report at certain threshold levels, the amount of EWR data lost by raising the threshold, the effect of data reduction on our ability to identify possible defects that might be safety related and our ability to monitor medium-heavy vehicles without EWR data. Examination of varying threshold levels (1,000, 2,500 and 5,000) revealed that manufacturers in certain vehicle types would no longer submit comprehensive EWR reports. The largest reduction of manufacturers would occur in the emergency vehicle category (50 percent, 75 percent and 75 percent, respectively). Similarly, we found that the greatest percentage loss of aggregate data from the threshold changes would be within the emergency vehicle category (45

<sup>12</sup> For medium-heavy vehicle and bus category, vehicle type means: Truck, tractor, transit bus, school bus, coach, recreational vehicle, emergency vehicle or other. 49 CFR 579.4(c). While buses are included within this category, they have been addressed previously in section E of this notice and are not included in the following discussion.

percent, 100 percent and 100 percent, respectively). The NPRM cited prior recalls that, in our view, illustrated a need to continue to obtain EWR data from small volume manufacturers in order to receive timely information.<sup>13</sup>

In light of the SBA and NTEA comments, we have reviewed relevant information, including the loss of EWR data that would occur if the threshold were raised. Raising the threshold for medium-heavy vehicles, even slightly, would foreclose EWR reporting by significant numbers of emergency vehicle manufacturers.

In our view, emergency vehicle reports are important for safety. For purposes of EWR, these vehicles include ambulances and fire trucks. This has been reflected historically in EWR reports wherein manufacturers' reports on emergency vehicles (a type of vehicle in EWR reporting) have included ambulances and fire trucks. These vehicles have characteristics that are distinguishable from other medium-heavy vehicles. They operate under high stress conditions, transport emergency personnel, and carry individuals in need of urgent medical care.

Raising the EWR quarterly reporting threshold from 500 or more would severely impact the EWR program's ability to monitor emergency vehicles. At a threshold level of 1,000 or more vehicles, 50 percent of all emergency vehicle manufacturers would no longer report EWR data, presenting a loss of 47 percent of production and 45 percent of aggregate data. At a threshold level of 2,500 or more vehicles, 75 percent of all emergency vehicle manufacturers would no longer report EWR data, a loss of 73 percent of production and all of the aggregate data currently in ARTEMIS. The elimination of such a significant amount of emergency vehicle production and EWR data would severely impact the ability of NHTSA to identify potential defect trends in these vehicles.

Recent use of EWR medium-heavy vehicle data illustrates the negative impact stemming from significant losses of emergency vehicle EWR data. NHTSA analyzes the medium and heavy vehicle EWR data each quarter. The highest ranked vehicles—those with an

increasing claim trend or a claims spike—present potential defect issues. For vehicles ranked the highest, NHTSA reviews other available information, such as VOQs, TSBs, and existing recalls, to further assess any potential defect risk. In the last six quarters, six different makes and models of emergency vehicles were identified within the highest ranked vehicles. Each of these vehicles was made by a manufacturer annually producing fewer than 2,500 vehicles. Finally, we note there have been 65 recalls of emergency vehicles in the last ten years, with more than half of those recalls conducted by manufacturers producing fewer than 5,000 vehicles annually. Therefore, raising the EWR reporting threshold for emergency vehicles would impair the identification of potential defects in these specialty vehicles.

NHTSA also revisited its analyses of the appropriate threshold for other medium-heavy vehicle types. The agency has decided to raise the threshold for these vehicle types: Recreational vehicle, truck, tractor and other. Raising the EWR reporting threshold for these medium-heavy vehicle types would not have a detrimental effect on identifying possible defects. Using the EWR data from the third quarter of 2008, raising the threshold 500 to 1,000 or more for recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles) per year would result in a small loss of production data and aggregate data (one percent and six tenths of one percent, respectively). Raising the reporting threshold to 2,500 or more for recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles) results in a four percent loss of production data and a three percent loss of aggregate data. Increasing the reporting threshold to 5,000 or more for recreational vehicle, truck, tractor and other (excluding buses and emergency vehicles) results in a loss of ten percent of the production volume and a six percent loss of the aggregate data. In our view, raising the threshold to 5,000 or more would not significantly impair identification of potential safety-related defects in recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles).

Indeed, recent reviews of EWR medium-heavy vehicle data from recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles) indicate that the majority of

the vehicles with the highest ranking for further review are produced by manufacturers building more than 5,000 or more vehicles per year. Even though this method is normalized for production, 95 percent of the vehicles reviewed were from manufacturers that produced 5,000 or more units per year. Further, EWR data from manufacturers producing fewer than 5,000 recreational vehicle, truck, tractor and other medium-heavy vehicles (excluding buses and emergency vehicles) have not prompted an investigation or recall. To date, the EWR data for medium-heavy truck manufacturers annually producing more than 5,000 vehicles has prompted or influenced ten (10) investigations, several informal inquiries, eight (8) recalls and one (1) owner notification program.

Based upon the foregoing, we are amending 49 CFR 579.22 to raise the medium-heavy vehicle (other than buses and emergency vehicles) EWR comprehensive reporting threshold from its current level of 500 to 5,000 or more vehicles produced per year. For emergency vehicles, we have decided to maintain the reporting threshold at its current level of 500 or more vehicles per year. Consistent with our approach towards bus manufacturers, we are amending 49 CFR 579.22 to treat emergency vehicles and other medium-heavy vehicles separately so that manufacturers producing both emergency vehicles and other medium-heavy vehicles, such as recreational vehicles, trucks or tractors, do not aggregate production for EWR reporting purposes. Thus, a manufacturer that produces both emergency vehicles and other medium heavy vehicles does not have to also submit quarterly EWR reports for its non-emergency vehicles unless its annual production of those vehicles reaches 5,000 or more.

#### G. Motorcycles

The EWR regulation requires motorcycle manufacturers annually producing 500 or more units to submit quarterly EWR reports to NHTSA. 49 CFR 579.23. The December 2008 NPRM proposed leaving the existing EWR motorcycle reporting threshold unchanged. We based this decision on a combination of factors, including the proportion of manufacturers impacted by any change, the proportion of motorcycles that would no longer be included in reports due to a threshold change, the effect reducing EWR data would have on our ability to identify possible safety-related defects, and the safety risks attendant to

<sup>13</sup> NTEA commented that the recalls we referenced were not related to medium-heavy vehicles that produce fewer than 5,000 vehicles. After further review, it appears that Recall number 03V-035 should have been 04V-035, which involve recreational vehicles. Recall number 03V-465 appears to be a mistake. It involves only recreational trailers and not any recreational vehicles. The remaining recalls all involve manufacturers of medium-heavy vehicles that produce fewer than 5,000 vehicles annually. See 73 FR 74109-10.

motorcycles.<sup>14</sup> See 73 FR 74101, 74110–11.

The SBA and VSCI both commented on our proposal. NHTSA did not receive comments from any other individuals or entities on this issue. Both the SBA and VSCI suggested changing the motorcycle threshold. SBA recommended that NHTSA reassess the benefits and burdens of EWR reporting. Similarly, VSCI contended that there is a threshold above 500 which addresses safety issues noted in NHTSA's proposal and reduces burdens on small-volume motorcycle manufacturers.

SBA's and VSCI's comments led the agency to re-examine whether raising the motorcycle EWR reporting threshold would be detrimental to identification of possible defects. As NHTSA gains additional EWR experience, we have continued to refine our analytical processes and reviews of motorcycle EWR data. We have decided to raise the threshold for motorcycles from 500 to 5,000 or more units per year. Raising this threshold will not impair NHTSA's ability to identify possible motorcycle safety defects.

Twenty-three motorcycle manufacturers presently provide EWR quarterly reports to NHTSA. In the third quarter of 2008, these twenty-three manufacturers submitted approximately two property damage claims, 104,000 warranty claims, 4,000 consumer complaints and 15,000 field reports for nearly seven million vehicles. These motorcycle manufacturers report data on approximately 37,000 potential products-components. Analyzing EWR data received in the 3rd quarter of 2008, shows that raising the motorcycle reporting threshold from 500 to 1,000 would reduce reported production and aggregate data by one-tenth of one percent and four-hundredths of one percent, respectively. A reporting threshold of 2,500 motorcycles or more would lower the production and aggregate data by one percent. Increasing the motorcycle reporting threshold to 5,000 or more would cause less than three percent of the production volume and seven percent of the aggregate data to not be reported. Raising the threshold to 5,000 or more units annually would relieve eight small motorcycle manufacturers from providing quarterly EWR reports. In our view, raising the threshold to 5,000 or

more units per year would not impact NHTSA's identification of potential safety-defects in motorcycles.

Based on a review of quarterly EWR motorcycle data, EWR data from manufacturers producing 5,000 or more motorcycles annually appear to provide more assistance in identifying potential issues than manufacturers producing fewer than 5,000 motorcycles per year. To date, EWR data from manufacturers producing 5,000 or more motorcycles per year has prompted or influenced five (5) investigations, several informal inquires and four (4) recalls. In contrast, EWR data from manufacturers producing fewer than 5,000 motorcycles have not prompted an investigation or recall. Overall, significantly more recalls are conducted by large-volume motorcycle manufacturers. Motorcycle manufacturers have conducted 277 recalls since 2003; over 80% of these recalls involved motorcycles from manufacturers annually producing 5,000 or more motorcycles.

Based upon the foregoing, we are amending 49 CFR 579.23 to raise the EWR comprehensive reporting threshold from 500 to 5,000 or more motorcycles annually. Manufacturers producing fewer than 5,000 motorcycles per year will be required to submit information on fatalities pursuant to 49 CFR 579.27.

#### *H. Response to the National Truck Equipment Association Petition for Rulemaking*

In April 2006, the National Truck Equipment Association (NTEA) petitioned the agency to amend the EWR rule to raise the EWR comprehensive reporting threshold for all vehicles 500 to 5,000 vehicles annually, including final-stage manufacturers, or, alternatively, permit final-stage manufacturers, regardless of their annual production, to report on a limited basis under 49 CFR part 579.27.

NHTSA proposed denying NTEA's petition in the December 2008 NPRM. See 73 FR 74101, 74113. NTEA did not comment specifically about our proposed denial. Instead, NTEA chose to comment on specific vehicle types such as buses and other medium-heavy vehicles, as noted above in sections IV.E and IV.F.

Although this final rule does not create the separate category for final-stage manufacturers sought by NTEA, it amends the reporting threshold applicable to the majority of final-stage manufacturers producing light vehicles, trailers and medium-heavy vehicles. As explained in sections IV.E and IV.F above, today's final rule treats buses and emergency vehicles differently—those

vehicles have a lower reporting threshold than the other medium-heavy vehicles. Accordingly, the requirement to submit comprehensive EWR reports varies depending on the type of vehicles produced. Final-stage manufacturers annually producing 5,000 or more light vehicles, trailers or medium-heavy vehicles, other than buses or emergency vehicles, are required to submit quarterly EWR data. Moreover, NTEA's comments recognized a need to treat those vehicle types differently than others. Therefore, based upon the foregoing, NTEA's petition is denied.

#### *I. Data Consistency*

Manufacturers are required to follow certain filing naming conventions when submitting their quarterly EWR reports. 49 CFR 579.29(a). The naming conventions do not specify a format for providing the model names. Manufacturers are under no obligation to provide the same make, model<sup>15</sup> and model year<sup>16</sup> name from quarter to quarter, although the overwhelming majority of manufacturers do so.

The NPRM identified our difficulties in analyzing EWR data due to inconsistent model naming across different EWR quarters. See 73 FR 74101, 74113–14. To prevent future inconsistencies, we proposed amending 49 CFR 579.29 to require manufacturers to provide identical make, model and model year information for products or to timely notify NHTSA of changes in these data. Our proposal did not intend to preclude manufacturers from changing or creating another name when a “new” product (e.g., a new model and/or model year) is reported. The amendment sought to require that a product's make, model, and model year are consistent from the first time it is given throughout subsequent reports. We noted that if this proposal were adopted, we planned on implementing a screening process to ensure data integrity and to reject quarterly submissions with inconsistent product names.

<sup>15</sup> “Model” means a name that a manufacturer of motor vehicles applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type. For equipment other than child restraint systems, it means the name that the manufacturer uses to designate it. For child restraint systems, it means the name that the manufacturer uses to identify child restraint systems with the same seat shell, buckle, base (if so equipped) and restraint system. 49 CFR 579.4.

<sup>16</sup> “Model year” means the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured. If the manufacturer has not assigned a model year, it means the calendar year in which the vehicle was manufactured. 49 CFR 579.4.

<sup>14</sup> We also observed that motorcycle fatality and injury trends have risen over the past several years. While we remain concerned about these increasing trends, closer examination reveals that factors such as alcohol use and a declining use of motorcycle helmets played an integral role in these trends. See Traffic Safety Facts 2007 Data Motorcycles, DOT HS 810 990.

Our intention to reject quarterly reports raised the issue of how a manufacturer notifies NHTSA that it plans to report a new model. We proposed amending the EWR reporting template to add a new field so manufacturers could indicate the introduction of a new make, model and model year vehicle. A manufacturer would populate the field with an "n" for a make, model, model year vehicle with a new model name in its EWR submission for the quarter that the new model debuts. Otherwise, manufacturers would provide an "h" to indicate that the make, model, model year is not new, but a historical product.

We received comments from the Alliance, Ford and TTMA on this issue. The Alliance and Ford agreed with the need for consistent model naming, while TTMA opposed our proposal. The Alliance, however, urged the agency not to revise the reporting templates by adding an additional field for entering an 'n' for a 'new' model or an 'h' for a 'historical' model." The Alliance believes that revising the current templates would impose substantial costs and burdens upon the manufacturers. TTMA is concerned that the designations "h" and "n" would be prone to data entry errors.

We have decided to adopt the amendment to 49 CFR 579.27 as proposed, with a minor revision. Based upon the comments and our further reassessment of our data capabilities, we will not require manufacturers to advise the agency of a new or historical product. Our data system has the capability to cross-check the make, model and model year in new EWR reports with the make, model and model year of EWR reports on record. After performing this cross-check, NHTSA will be able to identify which model names are "new" and which are "historical" and identify inconsistent model names. If a manufacturer submits a quarterly EWR report with a model name that is not consistent with a model name previously submitted, the system will automatically reject the report. On the other hand, if the quarterly EWR report includes a new model, our system will accept the quarterly EWR report.<sup>17</sup> Therefore, modification of the

template and use of an "n" or "h" designation is unnecessary.

Based on the foregoing, we are amending 49 CFR 579.27(a) to require model naming consistency without adopting changes to the EWR reporting template.

#### *J. Correction to the Definition of Other Safety Campaign*

The NPRM noted that an inconsistency in the definitions of "other safety campaign" and "customer satisfaction campaign" in 49 CFR 579.4. The inconsistency resulted from a misplaced closed parenthetical in the definition of "other safety campaign." In both terms, the parentheses are meant to clarify that the definition excludes certain materials distributed by a manufacturer that are unrelated to a defect. The parentheses in the definition of "customer satisfaction campaign" are located immediately preceding the term "excluding" and immediately after the term "first sale." The definition of "customer satisfaction campaign" states in pertinent part: "Customer satisfaction campaign \* \* \* means any communication by a manufacturer \* \* \* relating to repair, replacement, or modification of a vehicle \* \* \* the manner in which a vehicle or child restraint system is to be maintained or operated (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment." In the definition of "other safety campaign," the closed parenthetical in the definition is not immediately following the term "first sale" as intended, but immediately after the word "equipment." Thus, the definition of "other safety campaign" currently reads in pertinent part: "Other safety campaign means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions \* \* \* that relate to safety (excluding promotional and marketing materials,

entries. Thus, ARTEMIS will accept new model names that are submitted in an EWR report if the model year is equal to or fewer than 2 years from the report year. This can be expressed by the formula: (Model year (MY) = Reporting year (RY), MY = RY+1, or MY = RY+2). However, if the model year of the "new" model is less than the report year or greater than 3 years, the submission will be rejected because of an inconsistent model name. ARTEMIS identifies historical model names by cross-checking each EWR submission with prior EWR submissions to match identical model names and model years.

customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale; or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment)." To correct this inconsistency, we proposed that the closed parenthesis in the definition of "other safety campaign" should be moved to immediately after the term "of first sale" to be consistent with the definition of "customer satisfaction campaign." We did not receive any comments opposing the proposed change. Accordingly, the amendment to the definition of "other safety campaign" is adopted as proposed.

#### *K. Lead Time*

NHTSA proposed a one (1) calendar year lead time for manufacturers to adopt to the proposed changes to the EWR regulation. The amendments proposed requiring sufficient lead time included requiring quarterly EWR reports from all bus manufacturers, consistent product naming, reporting light vehicle types, reporting additional light vehicle components and requiring fuel and/or propulsion identification. For the amendments proposing to raise the EWR reporting thresholds for light vehicles and trailers, we proposed 30 day effective dates.

We received comments from the Alliance, AIAM and TTMA, on our proposed lead time, but those comments were, in large part, responsive to the proposals that would require manufacturers to change their IT systems and the EWR templates for reporting. Those proposals are not being adopted in today's final rule. Other than TTMA, which agreed with our proposed lead times, we did not receive any comments on our proposed lead time for amendments to the EWR reporting thresholds.

Because bus manufacturers will need time to install systems or modify existing systems to meet the amendments adopted in this final rule, the effective date of the reporting requirement for bus manufacturers producing 100 or more buses per year but not currently required to report comprehensive data will be one year from today's date. Accordingly, for these bus manufacturers, the first quarterly EWR reports that must be filed are for the quarter in which this requirement becomes effective. For all other amendments adopted by today's final rule, the effective date will be 30 days from today's date.

<sup>17</sup> We will configure ARTEMIS to identify new, historical and inconsistent model designations based upon the reporting year and model year. ARTEMIS will classify models as "new" when the reporting year and model year are within specific parameters. These parameters are generally based upon when manufacturers introduce their new models. Most manufacturers introduce new models in the third quarter of the prior calendar year of the designated model year (for instance, most 2010 models are introduced in September 2009). Some models are introduced earlier as early model year

*L. Amendments to Information Required To Be Submitted in a Part 573 Defect or Noncompliance Information Report*

Under the Safety Act, manufacturers must notify the agency if either the manufacturer decides or the agency determines that a safety-related defect or noncompliance with a Federal Motor Vehicle Safety Standard exists in a motor vehicle or item of motor vehicle equipment. See 49 U.S.C. 30118 and 30119. NHTSA has significant discretion to specify the contents of this notice. 49 U.S.C. 30119(a)(7). NHTSA's regulation governing content of defect or noncompliance notices submitted to NHTSA is located at 49 CFR part 573, Defect and Noncompliance Responsibility and Reports. Among other things, Part 573 delineates the information to be contained in the notification to NHTSA in section 573.6.

The December 2008 NPRM identified two additional types of information that, if provided in a Part 573 Defect or Noncompliance Information Report, would further assist the agency and the public to identify vehicle components or motor vehicle equipment involved in a recall. One proposal would amend subsection 573.6(c)(2)(iii) to require that tire manufacturers submit a list of unique Tire Identification Numbers (TINs) or a range of TINs corresponding to recalled tires. The NPRM also proposed amending 573.6(c)(2)(iv) to require manufacturers to identify the country of origin of a recalled component. To implement the proposed amendment for TIN data, we proposed changing section 573.9 to allow TINs to be submitted as an attachment to an e-mail or by upload to NHTSA's ARTEMIS database. These are discussed in more detail below.

1. Amendment to Subsection 573.6(c)(2)(iii)

Subsection 573.6(c)(2)(iii) requires the manufacturer of a defective item of motor vehicle equipment to identify the item containing the defect and give other identifying information. Specifically, subsection 573.6(c)(2)(iii) requires manufacturers to identify the equipment by the generic name of the component (tires, child seating systems, axles, etc.), part number, size and function if applicable, the inclusive dates (month and year) of manufacture if available and any other information necessary to describe the items.

In tire recalls, tire manufacturers generally provide the brand name, model name, size of the recalled tire, and the applicable build dates. Build dates provide limited assistance to consumers seeking to determine if a tire

is subject to a recall because there is no "build date" on a tire. Rather, the tire build date (actually, the week in which a tire was made) is encoded within the Tire Identification Number (TIN) molded on the tire sidewall. Accordingly, we proposed amending 49 CFR 573.6(c)(2)(iii) to require tire manufacturers to submit a list of all unique TINs for defective tires. If providing all unique TINs would prove too costly, we proposed that tire manufacturers could provide a range of TINs.

Two commenters addressed this proposal. RMA and Safety Research & Strategies, Inc. (SRS) expressed support for requiring manufacturers to identify the TINs, or range of TINs, in Part 573 reports. RMA noted that requiring manufacturers to provide a complete listing of TINs and/or a range of TINs in 573 reports is not a significant burden and that many manufacturers already do so. We confirmed RMA's statement. Many tire manufacturers do provide the range of TINs for recalled tires in their Part 573 reports. RMA requested that NHTSA allow manufacturers the flexibility to provide TIN information as either a complete list or a range, depending on the nature of the recall at hand.

We have considered the comments and are adopting the requirement that TIN information be provided in the 573 report for a tire recall. We have also decided to require that manufacturers provide this information as a range. A range of TINs will be easier for the agency to process and integrate into its data systems and offers fewer opportunities for errors.

2. Amendment to Section 49 CFR 573.9

In order to facilitate the submission of TINs with a manufacturer's Part 573 Report, we proposed amending section 573.9 to provide for the submission of unique TINs in an electronic format that can be e-mailed or submitted through the Internet. Because today's final rule requires a range of TINs, we have decided against amending section 573.9. Our proposal amending section 573.9 would have facilitated the submission of unique TINs, which could consist of many thousands of individual TINs, depending on the size of the tire recall. Providing a range of TINs does not present the same challenges as submitting or processing a large database of unique TINs. A range can be submitted within a Part 573 Report. Accordingly, we have decided not to adopt the proposal amending section 573.9.

3. Amendments to Subsection 573.6(c)(2)(iv)

NHTSA also proposed amending subsection 573.6(c)(2)(iv). That subsection concerns the identification of the manufacturer that supplies the defective or noncompliant component to the manufacturer reporting the defect to NHTSA. It requires the reporting manufacturer to identify the component and the manufacturer of the component by name, address and telephone number. 49 CFR 573.6(c)(2)(iv). If the reporting manufacturer does not know the identity of the manufacturer of the component, it must identify the entity from which it was obtained. *Id.*

Increasing globalization of the motor vehicle industry has made identifying the country of origin of recalled components more difficult. Information provided in a Part 573 Report may only identify a distributor's location and not reveal the location of manufacture. It is important for the agency to know where a recalled component is fabricated or assembled so NHTSA can monitor imported products.

Therefore, we proposed amending subsection 573.6(c)(2)(iv) to require reporting manufacturers to provide a non-compliant or defective component's country of origin. The country of origin for this purpose is where assembly or manufacture is completed. Accordingly, we proposed amending subsection 573.6(c)(2)(iv) to add the phrase "and its country of origin (*i.e.*, final place of manufacture or assembly)" immediately following "shall identify the component."

We received several comments on this proposal. TTMA objected to the proposal as overly burdensome. The organization states that motor vehicles are comprised of hundreds of parts from many vendors that may reside in the U.S., but whose manufacturing facilities may be overseas. It notes that a reporting manufacturer may not be aware a component was imported. TTMA added that a recalling manufacturer is responsible for corrective action and a part's country of origin is irrelevant.

NHTSA does not agree with the TTMA's assessment. While some motor vehicles are comprised of parts supplied by many different vendors with overseas and domestic production facilities, a vehicle manufacturer can discern, or should, in the agency's view, be able to discern, where the component was completed. It is not unreasonable for vehicle manufacturers to know and then report where the components of their products are made. A vehicle manufacturer's responsibility for taking

corrective action for the defect or noncompliance (49 U.S.C. 30102(b)(1)(F), (G)) does not limit the manufacturer's reporting obligation. As indicated in the NPRM, the agency is using this information to better understand the origin of defective and noncompliant components, so we can appropriately focus enforcement efforts.

Both the Motor & Equipment Manufacturers Association (MEMA) and the Alliance commented that they did not have objections to the country of origin requirement. Both trade associations, however, commented they were concerned that manufacturers may not be able to meet the short timeframe for submitting that information. The NPRM proposed adding the country of origin requirement to subsection 573.6(c)(2)(iv) since, at present, that subsection requires manufacturers to supply the name and address of the component's manufacturer where the recall concerns a defective or noncompliant component produced by another manufacturer. Subsection (c)(2), however, requires information to be provided when a defect or noncompliance report is first filed. *See* 49 CFR 573.6(b). Defect and noncompliance reports must be filed within five (5) working days after a manufacturer a defect or noncompliance determination. *Id.*

MEMA suggested that the requirement be revised to indicate that country of origin information must be provided "if available" at the time the initial report is filed. It further suggested that if the information is not available at the time of first filing, manufacturers should be allowed to provide that information in a supplemental 573 report. *Id.*

The Alliance asked that manufacturers have the option to indicate the country of origin is unknown when the 573 report is filed. It noted that this is similar to a clause in 573.6(c)(2)(iv) permitting manufacturers that do not know the identity of the manufacturer of a recalled component to identify the vendor of the component instead. However, the Alliance's proposal would not require manufacturers to ultimately identify the country of origin.

We are modifying the proposal such that manufacturers do not need to submit the country of origin in their initial Part 573 Reports, but must supplement their Part 573 Reports once they obtain country of origin information. Manufacturers may need more than five (5) working days to ascertain the country of origin of a component. Nonetheless, manufacturers need to undertake all reasonable efforts to obtain this information and provide

it to the agency in an expeditious manner. We are rejecting the Alliance's suggested change to permit a manufacturer to indicate a lack of knowledge because we believe country of origin information to be important at identifying and getting to the source of the problem. We do not believe allowing manufacturers to simply indicate their lack of knowledge regarding country of origin—without any expectation that they do anything further—will be useful.

Accordingly, we are amending 49 CFR 573.6(c)(2)(iv) to require reporting manufacturers to identify a recalled component's country of origin (i.e., final place of manufacture or assembly), and the manufacturer and/or assembler of the component by name, business address, and business telephone number. If the reporting manufacturer does not know the country of origin of the component, it must provide that information once it becomes available.

#### V. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

#### VI. Rulemaking Analyses and Notices

##### A. Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impacts of the rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not considered significant. Therefore, this document was not reviewed under Executive Order 12866.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Today's EWR amendments affect 314 manufacturers (32 light vehicle manufacturers, 219 trailer manufacturers, 11 motorcycle manufacturers, 37 medium-heavy vehicle manufacturers and 15 bus manufacturers). The rule would relieve reporting burdens currently imposed on some light vehicle, medium-heavy vehicle, motorcycle and trailer manufacturers and impose modest new burdens on the bus manufacturers. In order to determine if any of these manufacturers are small entities under the RFA, NHTSA reviewed the North American Industry Classification System (NAICS) codes. Under those criteria, manufacturers of light vehicles, medium and heavy trucks, buses, or motor vehicle bodies are classified as a small business if they have fewer than 1,000 employees. For trailer and motorcycle manufacturers, the company must have fewer than 500 employees to be considered a small business. All employees from the parent company and its subsidiaries are considered when determining the number of employees.

Based on our application of these criteria (for details of our analysis, see our Final Regulatory Evaluation in the docket of this rulemaking), NHTSA has concluded that the majority of the light vehicle manufacturers and almost all of the 219 trailer manufacturers that would be relieved of quarterly reports by this rule (except for instances of fatalities) are small businesses. In addition, we believe that the majority of the 11 motorcycle and 37 medium-heavy vehicle manufacturers are small businesses.

For the bus category, 20 bus manufacturers currently submit quarterly EWR reports to NHTSA. We estimate that an additional 15 bus manufacturers will be required to submit quarterly EWR reports under today's final rule. Based on our review of publicly available information, we estimate that 10 of those 15 bus manufacturers are small businesses having fewer than 1,000 employees. In our view, 10 small businesses out of a total of 15 entities (66.7 percent) constitute a substantial number.

To determine whether the final rule would have a significant economic impact on the small bus companies, we look at our estimated cost of the proposal (an annual reporting cost of \$16,256 per average company and a one time start-up cost of \$3,500 per company) and compare that to the revenues of the company (which would include the parent company and its subsidiaries). The smallest bus company that is not a subsidiary of a larger company appears to be Ebus, Inc., with 45 employees. Ebus, Inc. reportedly has sales revenues of approximately \$600,000. The cost of this rulemaking per company divided by Ebus, Inc. revenue is approximately 2.7 percent, which the agency does not consider to be a significant economic impact.

For the light vehicle, medium-heavy vehicle, motorcycle and trailer manufacturers affected by this final rule, we estimate a cost savings. Even though we do not have revenue estimates for these manufacturers, these cost savings are not economically significant.

The defect and noncompliance amendments to Part 573 are also not anticipated to have a significant economic impact on a substantial number of small businesses. The changes to the tire reporting requirements of the tire identification number affect tire manufacturers. We are unaware of any tire manufacturers that are considered small businesses. Even if there were small tire manufacturers, the cost per recall of reporting the range of TINs of \$1,126 would not have a significant economic impact on them. The country of origin requirements potentially affect small businesses, however, the annual economic impact to determine the country of origin of its product in question is small and the impact on any one business is also small. Of the average 650 motor vehicle safety recalls per year, we estimate that the company will need to investigate the country of origin of its products in 10 percent of the recalls. Out of the 65 recalls affected per year, only a few would be conducted by small businesses, and at

an estimated cost of \$590 each, the economic impact is not significant.

In sum, while today's EWR amendments affect a substantial number of small businesses (potentially 32 light vehicle manufacturers, 37 medium/heavy vehicle manufacturers, 10 bus manufacturers, 219 trailer manufacturers and 11 motorcycle manufacturers), the agency believes that the final rule will not have a significant economic impact on those entities. In addition, the amendments to Part 573 will not have a significant economic impact on a substantial number of small businesses. Accordingly, I certify that this final rule would not have a significant economic impact on a substantial number of small entities.

#### C. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The changes adopted in this document only affect a rule that regulates the manufacturers of motor vehicles and motor vehicle equipment, which does not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

#### D. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 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 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 for

the year 2007 results in \$130 million ( $119.682 \div 92.106 = 1.30$ ). This final rule would not result in expenditures by State, local or tribal governments of more than \$130 million annually. The final rule would result in an annual savings of approximately \$4.45 million. The Final Rule promulgating the EWR regulation did not have unfunded mandates implications. 67 FR 49263 (July 30, 2002).

#### E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform" <sup>18</sup> the agency has considered whether this proposed rule would have any retroactive effect. We conclude that it would not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

#### F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. The collection of information associated with Part 579 is titled "Reporting of Information and Documents About Potential Defects" and has been assigned OMB Control Number 2127-0616. At present, OMB is reviewing NHTSA's request for an extension of approval to collect this information. Based on Part 579 as presently written, NHTSA has estimated that the collection of information will result in 2,355 responses, with a total of 82,391 burden hours on affected manufacturers.

Today's final rule will reduce the reporting burden on manufacturers associated with Part 579. NHTSA believes that the changes adopted by today's final rule will result in a reduction of 34,570 burden hours on those reporting. The reduction in burden hours was calculated by separating the type of reports that manufacturers are required to submit under EWR into two groups, A and B. Regardless of industry type, Group A reports include reports that all manufacturers are required to submit under EWR, if they meet the specific industry reporting threshold. Group B reports are reports that not all manufacturers are required to submit even if they meet the specific industry threshold. Our calculation follows:

<sup>18</sup> See 61 FR 4729 (February 7, 1996).

**Group A Reports**

[In hours]

	At present (hours)	NPRM (hours)	Change (hours)
Claims and notices of injury/fatality .....	508.9	507.98	- 0.92
Property damage .....	1200.6	1195.1	- 5.5
Field reports .....	12,691.5	12,637.83	- 53.67
Foreign Death claims .....	18	17.75	0.25
<b>Total change .....</b>			<b>- 60</b>

*Bus Manufacturers*—NHTSA estimates that bus manufacturers will file one additional claim and notice of injury/fatality reports a year, which will require 5 minutes to process. The agency estimates there will be no additional reports on property damage. Furthermore, an estimated 8 additional manufacturer field reports will be filed, for a total of 40 minutes. We estimate there will be no additional foreign death claim reports. NHTSA estimates there will be an additional 9 reports or 0.75 burden hours on bus manufacturers.

In sum, for Group A reports, NHTSA estimates that today's final rule results in a total reduction of 59.25 burden hours a year (0.75 additional burden hours minus 60 hours of reduced burden on manufacturers).

**Group B Reports**

Group B reports consist of warranty claims, consumer complaints, and dealer field reports. Under the final rule, the number of manufacturers reporting on light vehicles will be reduced from 62 to 30 (a reduction of 32 manufacturers), which results in 678.9 less burden hours. The number of bus manufacturers reporting will increase from 20 to 35 (an addition of 15 manufacturers), which results in an increase of 198.9 burden hours. The number of trailer manufacturers will decrease from 280 to 61 (a reduction of 219 trailer manufacturers), which results in 580.8 fewer burden hours. The number of motorcycle manufacturers will decrease from 23 to 12 (a reduction of 11 motorcycle manufacturers), which results in 58.4 fewer burden hours. In addition, the number of medium/heavy vehicle manufacturers will be reduced from 66 to 29 (a reduction of 37 manufacturers), which results in 490.7 fewer burden hours.

Thus, NHTSA estimates there will be a reduction of 1,609 burden hours on vehicle manufacturers for Group B reports.

**Computer Maintenance Burden Hours**

In addition to processing time, several industry types will see a reduction in

their computer maintenance burden. As a result of the amendments adopted in today's final rule, 30 fewer light vehicle manufacturers will report quarterly EWR reports, which results in 11,104 fewer computer maintenance burden hours (32 × 347 burden hours per manufacturer). In addition, there will be 37 fewer medium/heavy vehicle manufacturers reporting, resulting in 3,200.5 fewer computer maintenance burden hours (37 × 86.5 burden hours per manufacturer). Further reductions will be seen in the motorcycle industry. There will be 11 fewer motorcycle manufacturers reporting, resulting in 951.5 fewer computer maintenance burden hours (11 × 86.5 burden hours per manufacturer). Also, there will be 219 fewer trailer manufacturers reporting, which results in 18,943.5 fewer computer maintenance burden hours (219 × 86.5 burden hours per manufacturer). There will be 15 more bus manufacturers submitting quarterly EWR reports, or 15 × 86.52 burden hours per manufacturer, for a total increase of +1,297.8 more burden hours on bus manufacturers. Thus, under today's final rule, there will be an overall reduction of 32,902 burden hours on industry resulting from computer maintenance.

**TOTAL BURDEN HOURS ON INDUSTRY FOR EWR AMENDMENTS IN THE FINAL RULE**

	Burden hours
Group A Reports .....	- 59
Group B Reports .....	- 1,609
Computer Maintenance Reports .....	- 32,902
<b>Total .....</b>	<b>- 34,570</b>

Based on the foregoing, NHTSA believes industry will incur 34,570 fewer burden hours a year in EWR reporting to NHTSA.

Part 573's information collection is assigned OMB Control Number 2127-0004, and was recently approved on October 9, 2008. At the time of approval, NHTSA estimated the

requirements of Part 573 necessitate 21,370 burden hours per year.

The revisions to Part 573 as a result of this final rule do not change the scope of those manufacturers' obligation to notify NHTSA of a defect or noncompliance. Also, the new requirement to provide a TIN range for tire recalls does not affect the burden hours associated with Part 573's information collection.<sup>19</sup>

The new component country of origin requirement added to Part 573, however, may potentially have a slight impact on the burden hours associated with Part 573's information collection. Under the current information collection, we estimate that 650 recalls, on average, are processed a year. We estimate that possibly ten percent of the recalls processed each year will require the reporting manufacturer to obtain the country of origin. Accordingly, we calculate that the new component country of origin requirement may result in an additional 33 (rounded up from 32.5) burden hours (650 recalls × 10 percent ÷ 2).

In summary, this rulemaking reduces the burden on industry by over 34,000 burden hours.

*G. Executive Order 13045*

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

<sup>19</sup> As noted in the preamble, many tire manufacturers provide the range of TINs for recalled tires in their Part 573 reports. The requirement of providing a TIN range for recalled tires will not increase the burden hours for the collection because, whether they reported it or not in the past, manufacturers must determine a TIN range in order to identify the recall population.

Today's final rule is not economically significant.

*H. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in or about April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*I. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. In the NPRM, we requested comment regarding our application of the principles of plain language in the proposal. We did not receive any comments on this issue.

*J. Data Quality Act*

Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106-554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that Federal agencies disseminate to the public. As noted in the EWR final rule (67 FR 45822), NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. The changes adopted by today's final rule would alleviate some of the burden for manufacturers to provide EWR reports by reducing the reporting requirement on light vehicle manufacturers and trailer manufacturers. Where the final rule is requiring additional reporting by manufacturers, the new requirement will serve to improve the quality of the data NHTSA receives under the EWR rule, enabling the agency to be more efficient and productive in proactively searching for potential safety concerns as mandated through the TREAD Act.

**List of Subjects in 49 CFR Parts 573 and 579**

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR parts 573 and 579 as set forth below:

**PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS**

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

**Authority:** 49 U.S.C. 30102, 30103, 30116-30121, 30166; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

■ 2. Amend § 573.6 by revising paragraphs (c) (2) (iii) and (iv) to read as follows:

**§ 573.6 Defect and noncompliance information report.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) In the case of items of motor vehicle equipment, the identification shall be by the generic name of the component (tires, child seating systems, axles, *etc.*), part number (for tires, a range of tire identification numbers, as required by 49 CFR 574.5), size and function if applicable, the inclusive dates (month and year) of manufacture if available and any other information necessary to describe the items.

(iv) In the case of motor vehicles or items of motor vehicle equipment in which the component that contains the defect or noncompliance was manufactured by a different manufacturer from the reporting manufacturer, the reporting manufacturer shall identify the component and, if known, the component's country of origin (*i.e.* final place of manufacture or assembly), the manufacturer and/or assembler of the component by name, business address, and business telephone number. If the reporting manufacturer does not know the identity of the manufacturer of the component, it shall identify the entity from which it was obtained. If at the time of submission of the initial report, the reporting manufacturer does not know the country of origin of the component, the manufacturer shall ascertain the country of origin and submit a supplemental report with that information once it becomes available.

\* \* \* \* \*

**PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS**

■ 3. The authority citation for part 579 continues to read as follows:

**Authority:** 49 U.S.C. 30102-103, 30112, 30117-121, 30166-167; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

**Subpart A—General**

■ 4. Amend § 579.4 by revising the definition of "Other safety campaign" in paragraph (c) to read as follows:

**§ 579.4 Terminology.**

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

*Other safety campaign* means an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

\* \* \* \* \*

**Subpart C—Reporting of Early Warning Information**

■ 5. Amend § 579.21 by revising the section heading and by revising the first sentence of the introductory text to read as follows:

**§ 579.21 Reporting requirements for manufacturers of 5,000 or more light vehicles annually.**

For each reporting period, a manufacturer whose aggregate number of light vehicles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during each of the prior two calendar years is 5,000 or more shall submit the information described in this section. \* \* \*

\* \* \* \* \*

■ 6. Amend § 579.22 by  
 ■ a. Revising the section heading;  
 ■ b. Revising the introductory text; and  
 ■ c. Revising the introductory text to paragraph (b) to read as follows:

**§ 579.22 Reporting requirements for manufacturers of 100 or more buses, manufacturers of 500 or more emergency vehicles and manufacturers of 5,000 or more medium-heavy vehicles (other than buses and emergency vehicles) annually.**

For each reporting period, a manufacturer whose aggregate number of buses manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce,

or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 100 or more shall submit the information described in this section. For each reporting period, a manufacturer whose aggregate number of emergency vehicles (ambulances and fire trucks) manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. For each reporting period, a manufacturer whose aggregate number of medium-heavy vehicles (a sum that does not include buses or emergency vehicles) manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 5,000 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and model year of bus, emergency vehicle and/or medium-heavy vehicle manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(b) *Information on incidents involving death or injury.* For all buses, emergency vehicles and medium heavy vehicles manufactured during a model

year covered by the reporting period and the nine model years prior to the earliest model year in the reporting period:

\* \* \* \* \*

■ 7. Amend § 579.23 by revising the section heading and by revising the first sentence of the introductory text to read as follows:

**§ 579.23 Reporting requirements for manufacturers of 5,000 or more motorcycles annually.**

For each reporting period, a manufacturer whose aggregate number of motorcycles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 5,000 or more shall submit the information described in this section.

\* \* \* \* \*

■ 8. Amend § 579.24 by revising the section heading and by revising the first sentence of the introductory text to read as follows:

**§ 579.24 Reporting requirements for manufacturers of 5,000 or more trailers annually.**

For each reporting period, a manufacturer whose aggregate number of trailers manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 5,000 or more shall

submit the information described in this section.

\* \* \* \* \*

■ 9. Amend § 579.27 by revising the section heading to read as follows:

**§ 579.27 Reporting requirements for manufacturers of fewer than 100 buses annually, for manufacturers of fewer than 500 emergency vehicles annually, for manufacturers of fewer than 5,000 light vehicles, medium-heavy vehicles (other than buses and emergency vehicles), motorcycles or trailers annually, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.**

\* \* \* \* \*

■ 10. Amend § 579.29 by adding paragraph (a)(3) to read as follows:

**§ 579.29 Manner of reporting.**

(a) \* \* \*

(3) For each report required under paragraphs (a) through (c) of §§ 579.21 through 579.26 of this part and submitted in the manner provided in paragraph (a)(1) of this section, a manufacturer must state the make, model and model year of each motor vehicle or item of motor vehicle equipment in terms that are identical to the statement of the make, model, model year of each motor vehicle or item of motor vehicle equipment provided in the manufacturer's previous report.

\* \* \* \* \*

Issued on: September 11, 2009.

**Ronald L. Medford,**  
*Acting Deputy Administrator.*  
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