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FILED ELECTRONICALLY

David Kelly, Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Ave., SE
West Building, Fourth Floor
Washington, DC 20590

Re: Docket No. NHTSA 2008-0169; Notice 1; COMMENT REGARDING PROPOSED CHANGES TO EWR REGULATIONS

Dear Mr. Kelly:

Vehicle Services Consulting, Inc. (VSCI)¹, files these comments as regards the December 5, 2008 proposed changes to Part 579, Early Warning Reporting regulations, as published at 73 Fed. Reg. 74101.

DISCUSSION

In the December 5, 2008 notice, NHTSA proposed amendments to certain provisions of the Early Warning Reporting (EWR) regulations. Among other things, the proposed rule would raise the company size threshold for submitting full EWR reports for light vehicle manufacturers from 500 USA sales per year to 5000 USA sales per year.

Light Duty Vehicles

The current EWR regulation requires manufacturers of light vehicles to submit quarterly reports if they produce 500 or more vehicles annually for sale in the USA. This 500 limit is the regulation's "full reporting threshold". Manufacturers of light vehicles that produce fewer than

¹ Vehicle Services Consulting, Inc. assists numerous small volume vehicle manufacturers with US certification-related matters.

500 vehicles annually for sale in the USA do not submit quarterly reports. These manufacturers are required to submit a report to NHTSA when they receive a claim or notice identifying an incident that involves a death. 49 CFR 579.27.

VSCI fully supports the proposed rule's language raising the EWR full reporting threshold for light vehicle manufacturers from 500 or more units per year sold in the USA to 5,000 or more units per year sold in the USA.

Motorcycles

The current EWR regulation requires motorcycle manufacturers that produce 500 or more units annually for sale in the USA to submit quarterly EWR reports. 49 CFR 579.23. In its December 2008 NPRM, NHTSA decided to leave the current full reporting threshold for motorcycle manufacturers unchanged and not to raise the limit to 5,000 USA sales per year.

The agency's decision to leave the threshold unchanged was based upon a combination of factors, including the proportion of manufacturers that would no longer have to report; the proportion of motorcycles that would no longer be subject to reporting; the effect that the reduction of EWR data would have on ODI's ability to determine when to open investigations and identify possible safety-related defects; and the safety risks attendant to motorcycles.

VSCI requests that NHTSA consider a compromise: raising the motorcycle full reporting threshold to 2500 USA sales per year. Moreover, if, in NHTSA's opinion, the 2500 threshold were to produce similar problems as those that NHTSA identified with the 5000 threshold, then NHTSA should consider a 1500 threshold. The point being that there does exist a threshold above 500 at which the public safety issues noted by NHTSA could be served and yet the reporting burden on some small volume motorcycle manufacturers could be reduced.

Determining the Threshold Reporting Limit: Aggregation

In a letter dated July 21 2003 to Jason Cavallo, NHTSA stated that: "Under the EWR regulation, the definition of "manufacturer" at 49 CFR 579.4(c) includes parents, subsidiaries, and affiliates. For purposes of determining whether the production of vehicles meets or exceeds the 500 vehicles per year threshold in Section 579.21 *et seq.*, the production of the divisions, parent, subsidiaries and affiliates must be aggregated."

This rule imposes an undue burden on some small volume manufacturers that are owned by (i.e. are subsidiaries of) larger manufacturers (those producing more than 5000 vehicles per year for the US market). When these subsidiary SVMs sell fewer than 5000 cars a year in the US and keep data independently of their parent, having to file full quarterly EWR reports presents a significant burden without meaningful safety benefits.

VSCI therefore requests:

1. that a new section 579.7 be added to read as follows:

579.7 Aggregating production for purposes of determining small volume thresholds

Notwithstanding any other provision of this Part 579, the vehicle production of one manufacturer shall be aggregated with another manufacturer when determining the number of vehicles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States only if there is a sponsorship relationship between the two manufacturers.

2. that a new definition be added to 579.4 as follows:

“*Sponsorship relationship*” means 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 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.

Sponsorship is a concept that NHTSA enunciated over 20 years ago and has been applied by the agency in addressing aggregation issues regarding phase-ins and exemptions. With the above amendments:

- the number of additional manufacturers that would no longer have to file full EWR reports would be *de minimus*;
- the number of additional vehicles that would no longer be subject to full reporting would be *de minimus*; and
- the effect that the reduction of EWR data would have on ODI's ability to determine when to open investigations and identify possible safety-related defects would be *de minimus*;
- the additional vehicles no longer subject to full reporting would not be carrying large numbers of people; and
- NHTSA would be able to devote time and resources to examining EWR data that is more likely to involve safety issues.

CONCLUSIONS

1. NHTSA should raise the EWR full reporting threshold for light vehicle manufacturers from 500 or more units per year sold in the USA to 5,000 or more units per year sold in the USA
2. NHTSA should raise the EWR full reporting threshold for motorcycle manufacturers from 500 or more units per year sold in the USA to 2,500 or more units sold in the USA per year, or to such other level above 500 and below 2500 that would reasonably reduce the burden on small volume manufacturers and still properly address the safety concerns of the agency.

3. NHTSA should make the requested addition to 49 CFR 579.4, definitions, and add a new section 579.7 in order to avoid aggregation of SVM production for threshold determination in certain cases, as described above.

Respectfully submitted,

Lance Tunick