



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, and 579

[Docket No. NHTSA – 2012-0068; Notice 6]

RIN 2127-AK72

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

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

ACTION: Final rule; responses to petitions for reconsideration; technical corrections.

SUMMARY: This responds to three (3) petitions for reconsideration to NHTSA's August 20, 2013 final rule adopting amendments to certain provisions of the early warning reporting (EWR) rule and regulations governing motor vehicle and equipment safety recalls. NHTSA received three (3) petitions for reconsideration that contained requests to alter or withdraw several adopted amendments. In addition, this document makes minor technical corrections to ensure all recall communications are received through NHTSA's online recalls portal and that all owner notification letters are sent to owners at the time the remedy is available.

DATES: The effective date for the amendment to 49 CFR 573.15, which requires larger vehicle manufacturers to supply Vehicle Identification Number (VIN) information electronically on their web sites and transmit those VINs to NHTSA's servers is August 20, 2014. The effective date for the amendments to 49 CFR 573.9, which requires all manufacturers to manage their safety recalls through a new online recalls portal, is also August 20, 2014.

The effective date of the adopted amendments to the EWR regulation in 49 CFR 579.21 and 579.22 is January 1, 2015.

FOR FURTHER INFORMATION CONTACT: For non-legal issues concerning safety recall provisions, contact Jennifer Timian, Chief, Recall Management Division, NHTSA, telephone 202-366-0209, email jennifer.timian@dot.gov. For non-legal issues concerning early warning provisions, contact Leo Yon, Safety Defects Engineer, Early Warning Reporting Division, NHTSA, telephone 202-366-7028, email leo.yon@dot.gov. For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA, telephone 202-366-1834.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Amendments Made to the Early Warning Rule and Foreign Defect Reporting

1. Vehicle Type and Fuel and/or Propulsion System Type

2. New Component Categories for Light Vehicles, Buses, Emergency Vehicles, and Medium-Heavy Vehicles

B. Amendments Made to Safety Recalls Reporting, Administration, and Execution

II. Petitions for Reconsideration Summary and Agency Response

A. Petitions Regarding the Early Warning Rule

1. Petitions for Reconsideration of the Effective Date for EWR Reporting.

2. Petition for Reconsideration to Use the Attribution “UN” For reporting Vehicle Type and Fuel/Propulsion Type is Unknown

B. Petitions Regarding Public Availability of Motor Vehicles Recall Information

- 1. Recall Completion Search Criteria**
- 2. Requirement to Report the Part 573 Date**
- 3. Requirement to Report the Defect or Noncompliance Description and Statement of Risk**
- 4. Requirement to Report the Date of Available Recall Information**
- 5. Request for Modification of Effective Date for the Manufacturer VIN Look-Up Tool and Interface with NHTSA**
- 6. Failures of Manufacturers to Provide VIN Look-up Services**
- 7. Timing of NHTSA's Workshops**

C. Petitions Related to Amendments to Part 573 and Part 577

- 1. Requirement for Recall Notification Envelope Label**
- 2. Requirement to Utilize NHTSA's Online Recalls Portal**
- 3. Requirement to Notify Owners within 60 Days**

III. Technical Corrections

A. Technical Correction for Submitting Recall Communications

B. Technical Correction for Quarterly Reporting

IV. Rulemaking Analyses and Notices

I. Background

A. Amendments to the Early Warning Rule and Foreign Defect Reporting

On August 20, 2013, NHTSA published a final rule amending certain provisions of the EWR regulations at 49 CFR Part 579 Subpart C "Reporting of Early Warning Information." 78 FR 51382. In summary, the new provisions:

- Require light vehicle manufacturers to specify the vehicle type and the fuel and/or propulsion system type in their quarterly EWR reports.

- Add new component categories for reporting on light vehicles: electronic stability control, forward collision avoidance, lane departure prevention, and backover prevention, foundation brakes, and automatic brake controls.
- Add one new component category for buses, emergency vehicles, and medium-heavy vehicle manufacturers: electronic stability control/roll stability control.
- Require motor vehicle manufacturers to report their annual substantially similar vehicle list (SSVL) via the Internet.

The final rule stated that these new provisions will be effective August 20, 2014.

1. Vehicle Type and Fuel and/or Propulsion System Type

The EWR regulation requires light vehicle manufacturers producing 5,000 or more vehicles annually to submit production information including the make, the model, the model year, the type, the platform and the number of vehicles produced. 49 CFR 579.21(a).

Manufacturers must provide the production as a cumulative total for the model year, unless production of the product has ceased. *Id.* While light vehicle manufacturers are required to provide the type of vehicle with their production, they are not required to provide the type of vehicle when they submit death and injury data pursuant to 49 CFR 579.21(b) or with aggregate data under 49 CFR 579.21(c). The final rule amended § 579.21(b) and (c) to require light vehicle manufacturers to provide the type of vehicle when they submit their death and injury data and aggregate data under those sections and amended the light vehicle reporting templates for the EWR death and injury and aggregate reports to reflect adding vehicle type.

In addition, the final rule amended the EWR regulation to add a requirement that light vehicle manufacturers identify the specific fuel or propulsion system used in their vehicles. 78

FR 51382, 51424-55. The new fuel and/or propulsion system types required to be reported under the final rule are: compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel-cell power (FCP); hybrid electric vehicle (HEV); hydrogen combustion power (HCP); plug-in hybrid (PHV); spark ignition fuel (SIF); and other (OTH).

2. New Component Categories for Light Vehicles, Buses, Emergency Vehicles, and Medium-Heavy Vehicles

The EWR regulation requires light and medium-heavy vehicle manufacturers to report the required information by specific component categories. 49 CFR 579.21(b)(2), (c), (d) and 579.22(b), (c), (d). The final rule amended the EWR regulation to add component categories for Electronic Stability Control (ESC), Roll Stability Control (RSC), Forward Collision Avoidance (FCA), Lane Departure Prevention (LDP), and Backover Prevention technologies. NHTSA added component codes for ESC, FCA, LDP and Backover Prevention to the EWR reporting for light vehicles and ESC/RSC for buses, emergency vehicles, and medium and heavy vehicles. 78 FR 51382, 51424-55. The agency also amended the EWR rule to add definitions for these components. 78 FR 51382, 51423-24. The final rule also divided the current “service brake system” category for light vehicles into two new categories: “foundation braking systems and “automatic brake controls” and provided definitions for those new categories. Id.

B. Amendments to Safety Recalls Reporting, Administration, and Execution

The August 20, 2013 final rule implemented a number of measures in our effort to improve the information the agency receives from recalling manufacturers concerning the

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

We added certain items of information in a manufacturer's Part 573 Information Report. These additional items include: an identification and description of the risk associated with the safety defect or noncompliance with a FMVSS, and, as to motor vehicle equipment recalls, the brand name, model name, and model number, of the equipment recalled. 78 FR 51382, 51421.

Pursuant to Section 31301(a) of MAP-21 (P.L. 112-141), the final rule added a requirement that motor vehicle manufacturers that manufacture 25,000 or more light vehicles annually, or 5,000 or more motorcycles annually provide a VIN-based safety recalls search mechanism available to the public on the Internet. *Id.* The final rule required a conspicuous link to the manufacturer's safety recalls search mechanism on the main page of the manufacturer's United States' web page. Specifically, the safety recalls search function must: (1) be available to the public on the Internet; (2) be searchable by vehicle make and model and VIN; (3) be in a format that preserves consumer privacy; and (4) includes information about each recall that has not been completed for each vehicle. It must also meet the requirements of new section 49 CFR 573.15.

In addition to certain light vehicle manufacturers hosting a safety recalls search function on their websites (or through redirects from those websites to a third party's website), the agency will offer a similar function to the public through its website, www.safercar.gov. In order for NHTSA to offer the public a safety recalls search function specific to VINs, manufacturers must allow secure electronic transfer of manufacturer recall data, for one VIN at a time, to NHTSA's public web server(s). As part of the final rule, NHTSA required the secure electronic transfer of

the recall information and data required to be made publicly available by this section through a specific Application Programming Interface (API). See 78 FR 51382, 51422.

The final rule requires manufacturers to submit, through a secure, agency-owned and managed web-based interface or portal, www.safercar.gov, required Part 573 Information Reports and other recall-related reports, information, and associated documents. 78 FR 51382, 51421. In addition, manufacturers must supply new or missing Part 573.6 (b) Report Information within five working days of when the accuracy of the information has been confirmed. Id.

The final rule also amended certain provisions related to the notification letter manufacturers must send to owners and purchasers, under 49 CFR part 577, following the determination of the existence of a safety-related defect or noncompliance with a FMVSS. Pursuant to these amendments, the owner notification letters: 1) must be sent within 60 days of the manufacturer's safety defect or noncompliance notification to the agency; 2) must include the phrase "IMPORTANT SAFETY RECALL" in all capital letters and in an enlarged font at the top of those letters; and 3) include the statements "This notice applies to your vehicle (including the specific VIN)" and then followed by an opening statement: "This notice is sent to you in accordance with the National Traffic and Motor Vehicle Safety Act."

The final rule also required a specific label on the outside of the envelope forwarded to the owner or purchaser. See 78 FR 51422. The agency identified the label and provided a link to where the label was available for manufacturer use only.

Lastly, the final rule required that manufacturers notify the agency in the event they file for bankruptcy. Id. We required this so we can better preserve our ability to consider and take

those measures necessary to protect options for ensuring recalling manufacturers continue to honor obligations to provide free remedies to owners of unsafe vehicle and equipment products.

For further information and a thorough discussion of these amendments, the reader is referred to the final rule, 78 FR 51382, and the prior notice of proposed rulemaking 77 FR 55606, September 10, 2012.

II. Petitions for Reconsideration Summary and Agency Response

We received petitions for reconsideration from the Alliance of Automobile Manufacturers (the Alliance)¹, the Association of Global Automakers (Global)², and the Center for Auto Safety (CAS). We address the requests for reconsideration pertaining to the EWR rule first. Thereafter, we address the reconsideration requests related to amendments to the safety recall provisions.

A. Petitions Regarding the Early Warning Rule

The Alliance and Global filed petitions for reconsideration of two amendments made to the EWR.

1. Petitions for Reconsideration of the Effective Date for EWR Reporting.

Both petitioners seek clarification for the effective date of the new EWR requirements. The EWR rule requires manufacturers to submit EWR reports for each calendar quarter of the year and requires, in general, that manufacturers submit their reports within 60 days of the end of

¹ Members are: BMW group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen, and Volvo Cars.

² Members are: Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, McLaren, Nissan, Peugeot, Subaru, Suzuki, and Toyota.

the quarter. 49 CFR 579.28(b). The final rule provided for an effective date of August 20, 2014, which is within the middle of the third calendar quarter. The Alliance and Global commented that having an effective date in the middle of the third quarter creates confusion for manufacturers regarding the appropriate report to submit at the end of the third quarter, i.e., to use the pre-final rule templates and component codes or the amended templates and component codes. In subsequent conversations with the Alliance, it pointed out that its members would need several months of lead time to implement and test the new EWR templates to ensure that their reporting systems would capture the new component categories.

The agency agrees that an effective date of August 20, 2014, creates confusion and does not provide clear instruction as to which template or component codes apply for third quarter reporting. We also agree that manufacturers need sufficient time to ensure that their amended EWR systems are capturing and reporting the information properly. The agency did not intend to begin using the new templates and component codes to report EWR data in the middle of the third quarter. Moreover, we do not want to create a situation where manufacturers have not completed their testing and implementation of their updated EWR reporting systems. Accordingly, we will amend the effective date to January 1, 2015, to clarify that manufacturers should use the new templates and component codes and minimize any undue burden to implement the amendments in a timely manner. Accordingly, these reports will be due no later than 60 days after the last day of the first quarter of 2015.

2. Petition for Reconsideration to Use the Attribution “UN” For reporting Vehicle Type and Fuel/Propulsion Type is Unknown

The Alliance also petitioned the agency to amend the regulatory text in 579.21(b)(2) and (c) to permit manufacturers to specify that the vehicle type or specific fuel or propulsion system associated with a specific claim or consumer complaint is unknown. The Alliance notes that while the preamble discussed the use of “UN” for unknown vehicle type the final rule did not add regulatory language addressing the use of the ‘UN’ (sic) code in §579.21. The Alliance requests NHTSA amend the text of §579.21(b)(2) and (c) to specify the use of ‘UN’ when the vehicle type and/or fuel/propulsion type is unknown.

As noted in the preambles to the final rule and the NPRM, the agency contemplated using the designation “UN” for vehicle type when the VIN of the vehicle is unavailable to determine the vehicle’s type. See 78 FR 51388 and 77 FR 55606, 55612, respectively. We recognize that there may be instances where a manufacturer receives a notice or claim of a death or injury, or receives a consumer complaint that meets minimum specificity³ to trigger reporting under EWR, but the VIN is not made available to the manufacturer. The make, model and model year are, therefore, available, but the manufacturer may not know whether the vehicle is two wheel drive or four wheel drive model to determine the appropriate type code. No commenter objected to the use of “UN” by manufacturers when the VIN is unavailable. In addition, in the preamble to the final rule, the agency responded to comments about how to report fuel and propulsion systems that are unknown by reporting “unknown.” See 78 FR 51389. Although in both these instances the agency discussed in the preamble how to report incidents when vehicle type and fuel/propulsion systems are unknown, we omitted to make the necessary amendments to the regulatory text. Accordingly, we will amend the regulatory text to be consistent with our previously stated intent. For consistency with the attributes permitted under the rule for

³ Minimal specificity for a vehicle means the make, model, and model year. 49 CFR 579.4.

reporting vehicle type, we will use the two-letter attribute “UN” for unknown vehicle type. For consistency with the attributes allowed for fuel and/or propulsion type in the August 20, 2013 final rule, we will use the three-letter attribute “UNK” when the fuel and/or propulsion type is not known.

B. Petitions Regarding Public Availability of Motor Vehicles Recall Information

The Alliance, Global and CAS submitted petitions for reconsideration related to 49 CFR 573.15, Public Availability of Motor Vehicles Recall Information.

1. Recall Completion Search Criteria

The Alliance commented that the newly added recall information look-up requirements contained in §573.15(b)(3) require manufacturers to offer recall search functionality by vehicle “make and model,” in addition to requiring the VIN. The Alliance noted that recall results applicable to a particular vehicle cannot be obtained by using only the vehicle’s make and model information. Further, the Alliance stated that “there is no way for a manufacturer to know whether a recall has been completed on a particular vehicle in the absence of the VIN.” The Alliance requested that NHTSA verify that manufacturers must only offer recall results based on a specific VIN.

We confirm that the manufacturers subject to the requirements of § 573.15 need only to provide search utility based on a VIN. We concur that a search function based on only vehicle make and model is not typically sufficient to identify whether a recall applies to a particular vehicle within a make and model, since most recalls only address a portion of any particular

make, model, and model year vehicle. In other words, it is rarely the case that a safety recall covers each and every vehicle manufactured within a particular make, model, and model year, and so any search function based on these minimal criteria is not capable of identifying whether a specific vehicle has an incomplete safety recall. The inability to identify a safety recall on a specific vehicle would not meet the intent behind MAP-21's requirement to provide recall information that has not been completed for each vehicle.⁴

A VIN sequence, however, identifies not only the make, model, and model year of the vehicle, but a host of additional information specific to a vehicle that manufacturers use to keep a record of what technology, among other things, that the vehicle contains. In the event of a safety recall, manufacturers use this information to pinpoint the specific vehicles affected and to then notify the affected owners based on vehicle registration data. The make, model, and model year elements are incorporated within the VIN sequence, such that a search using those elements is redundant to the VIN level search required by the statute. MAP-21's requirement that uncompleted safety recall information be made publicly available online and searchable by vehicle make and model and VIN is met through the submission of a VIN. Accordingly, in the agency's view, incomplete recall information that is made publicly available and searchable by means of a VIN meets the statutory intent of MAP-21 and the regulatory requirements of § 573.15.

2. Requirement to Report the Part 573 Date

⁴ Section 31301(a) requires that motor vehicle safety recall information—(1) be available to the public on the Internet; (2) be searchable by vehicle make and model and vehicle identification number; (3) be in a format that preserves consumer privacy; and (4) includes information about each recall that has not been completed for each vehicle. P.L. 112-114; 126 Stat. 405 (July 6, 2012).

The Alliance petitioned NHTSA to remove the requirement for manufacturers to provide the Part 573 report date with recall results in their VIN look-up tools. See 49 CFR 573.15(b)(8). The Alliance contends this requirement was never proposed in the Notice of Proposed Rulemaking (NPRM) and the date is of minimal value to consumers. Also, the Alliance claims these dates are not typically found within a manufacturer's recall database. The Alliance requests that this requirement be deleted from Subsection (b)(8) of § 573.15.

We disagree that the Part 573 date is of minimal value to consumers. We believe the Part 573 date provides an important contextual reference to vehicle owners and prospective purchasers. This particular date is important as it marks the beginning of the safety recall process. NHTSA chose this particular date as it would inform an owner as to how long their vehicle has been subject to an important safety recall. We think it is reasonable that when advising consumers of an uncompleted safety recall that they also be made aware of how long the recall campaign has been open. It may provide consumers with added incentive to take the appropriate steps to have the vehicle remedied. While this data may or may not be located in a manufacturer's recall database, we understand it will require minimal effort to add these dates to a database, where needed.

Also, NHTSA is willing to assist any manufacturer with a list of Part 573 report dates applicable to their past safety recalls, should a manufacturer not already have these dates recorded electronically. Part 573 report dates, as well as other pertinent recall information, are located in an electronic database file found on NHTSA's safercar.gov website. This information is, therefore, accessible and a manufacturer may use it to supplement its own data files if incomplete.

The agency's original proposal contemplated providing recall information to a consumer to determine if his or her vehicle is subject to a recall and whether a recall has been launched. A subset of this information is the date the manufacturer submitted its notice to NHTSA. 77 FR 55619. We also stated in the preamble that any alternative manufacturer hosted website (as an alternative to NHTSA hosting a recall look-up tool) would need to post the same information as on NHTSA's website. 77 FR 55622. The preamble also noted that after reviewing comments the agency reserved the flexibility to develop and adopt the alternative approach to a NHTSA hosted recall look-up tool based upon logical outgrowths of the proposal and comments received. In our view, for the reasons stated above, this requirement is a logical outgrowth of our alternative proposal to require manufacturers to host VIN look-up tools on their own websites, subject to certain performance based criteria. Accordingly, we decline to accept the request to remove this requirement.

3. Requirement to Report the Defect or Noncompliance Description and Statement of Risk

The Alliance petitioned NHTSA to change the regulatory text of 49 CFR 573.15(b)(8) regarding a description of the safety defect or noncompliance, and the safety risk, in a manufacturer's VIN look-up tool. Specifically, the Alliance requested that the phrase "manufacturer's information report" be modified to read "manufacturer's information report or owner notification letter." The group explained that the language used in a manufacturer's Part 573 report is often technical in nature, as opposed to the more concise and plain language used in owner notification letters.

The Alliance also petitioned that the same modification be made to the description of the safety risk that is also required by 49 CFR 573.15(b)(8). Currently, paragraph (b)(8) requires manufacturers to provide a description of the risk to safety “in the terms required by parts 573 and 577.” A suggested change from the Alliance would have paragraph (b)(8) read, “manufacturer’s information report or owner notification letter.”

Section 573.15(b)(8) requires manufacturers to provide “a brief description of the safety defect or noncompliance identified in the manufacturer’s information report filed pursuant to this Part,” and to “describe the risk to safety consistent with the manufacturer’s description given in the terms required by parts 573 and 577.” 49 CFR 573.15(b)(8). By using the language “brief description,” the agency intended to ensure that safety defect and noncompliance descriptions incorporated into each manufacturer’s online search tool would be succinct and clear to the public. We agree, however, that it is common for Part 573 reports to contain more technical detail and use engineering and industry or trade terminology that may not be used or understood outside of the automotive industry.

Accordingly, we will grant the Alliance’s petition and amend the relevant text of Part 573.15(b)(8) to read, “provide a brief description of the safety defect or noncompliance, including the risk to safety, identified in the manufacturer’s information report or owner notification letter filed pursuant to this part.”

4. Requirement to Report the Date of Available Recall Information

The Alliance requested clarification regarding the information required by 49 CFR 573.15(b)(10). Currently, § 573.15(b)(10) requires a manufacturer’s recall look-up tool to “[s]tate the earliest date for which recall completion information is available, either on the search

page or on the results page, and provide information for all owner notification campaigns after that date.” By way of context and background, the preceding paragraph, (b)(9), requires each manufacturer to provide online search capability of at least 15 years’ worth of recall completion data. See 49 CFR 573.15(b)(9). The purpose of paragraph (b)(10) is to inform online users of how far back the manufacturer’s recall look-up tool reaches. For example, a manufacturer may choose to comply with the minimum time period specified in paragraph (b)(9) that provides for an online search capability for recalls dating back fifteen (15) years. In that case, under paragraph (b)(10), the manufacturer would inform the customer that the recall search tool provides recall data for the last 15 years and provide all incomplete safety recalls from that point forward for the specific vehicle. On the other hand, if a manufacturer’s recall look-up tool reaches back 50 years, it would specify as much.

Regardless of whether a particular manufacturer chooses to offer 15 years or 50 years’ worth of search capability, or somewhere in between, paragraph (b)(10) requires the manufacturer to inform users either on the search page where the VIN is entered or on the results page (or on both) of how far back its search engine will search. This is so a user can quickly and easily understand any time limitations with respect to the results they receive. For example, by informing a user of how far back the manufacturer’s search engine will go, users of that manufacturer’s VIN search tool will be informed that safety recalls of an older vintage (15 years or more, manufacturer-dependent) will not be detected by the search engine. They will have the information that will tell them not to rely on the search to produce a trustworthy response as to their vehicle, particularly if the vehicle is older or a vintage product. And, of course, a manufacturer could also advise to contact it or a local dealer for more complete information.

5. Request for Modification of Effective Date for the Manufacturer Recall Look-Up Tool and Interface with NHTSA

Pursuant to the final rule, certain large volume light vehicle and motorcycle manufacturers have until August 20, 2014, to provide publicly accessible vehicle safety recall completion information on their websites (or through redirects from those websites to a third party's website). They also have until August 20, 2014, to ensure, through adherence with technical specifications NHTSA sets, the secure electronic transfer of that recall completion information to NHTSA for its use in upgrading its current safety recalls search function housed on www.safercar.gov to allow for VIN-based searching. The Alliance and Global Automakers petitioned NHTSA to change the effective date of these requirements from August 20, 2014, to one year from the date the NHTSA establishes and shares with covered manufacturers the technical specification for the NHTSA-manufacturer safety recall completion information interface.

In support of the petition for extension, the Alliance said that “some/many” manufacturers do not have a web-based API that provides all the information that NHTSA would require. It said the interface will need to be designed and built, but cannot be designed and built until the requirements are available to the manufacturers. According to the Alliance, these interfaces could take up to nine (9) months to build and then three (3) months of testing might be required, and said this is a comparable period of time for testing that was performed for NHTSA's Artemis system.

Global echoed a similar sentiment in their petition. That group said that some manufacturers, particularly the smaller ones, are likely to rely on third-party vendors to provide the VIN look-up tool required, and that they would need to develop the tool from the “ground

up,” rather than making minor modifications to a current system. Ground up development will require significant time and money and, according to Global’s understanding, the third-party vendors that may be retained are not able to provide estimates of costs and time to those manufacturers without the technical specification from NHTSA.

We have considered the Alliance’s and Global’s arguments, but do not believe a change in the effective date is necessary. First, as to the manufacturers’ safety recall completion look-up tools to be placed on their respective websites (or links to a tool on a third party site), and that do not concern an exchange of information between NHTSA and the manufacturer, all performance requirements were set forth in the final rule. Manufacturers have time to build out their systems to meet the recall look-up tool’s requirements. Neither the Alliance nor Global argues that the requirements are so vague or unlimited that their member companies are unable to comply or start building or modifying the tools. Moreover, neither presents any details as to why it would take manufacturers with existing recall look-up tools longer than the year provided by the agency. Also, by August 20, 2014, every manufacturer will have had up to one year that the Alliance said its members would need to comply.

Turning to the requirements concerning the exchange of recall completion information with NHTSA, it is true that the agency did not publish the technical specification enumerating the specific, technical directions for a manufacturer to support and send completion information to our website at the time of the final rule. As we stated in the final rule, the agency would publish technical specifications after we published the final rule. Those specifications were published in December 2013. As noted above, however, we did enumerate each item of information a manufacturer would need to produce – whether on its website or to NHTSA. We also supplied more than sufficient technical detail as to how the transfer of information would

need to occur so that a manufacturer (or its vendor) could reasonably initiate design and production of a system, even if from the ground up.

In our view, the enumerated information in the final rule about the exchange of information between NHTSA and manufacturers laid the foundation for which manufacturers could begin working towards meeting the August 20, 2014 deadline. While technical information was not provided in the final rule, certain information was not critical for a manufacturer to begin the process and work towards the deadline. Much of this information is information that we could not produce publicly. For example, we did not provide the location of the uniform resource identifier (URI) where an exchange of information with a manufacturer would occur. Nor did we define the identification and key combinations that NHTSA and a particular manufacturer would use to authenticate systems and ensure secure transfer of information. We do not believe manufacturers require these sorts of administrative details that relate strictly to the mechanics of transfer and not to the substance of the information itself – which was defined in the August 2013 Final Rule – an entire year in advance. Manufacturers were given and/or allowed access to the technical specification in December 2013, giving them almost nine months lead time. Also, a public workshop was held in January 2014 to discuss the technical requirements of the recalls information exchange. This workshop allowed manufacturers' staff to better understand the technical requirements, ask questions, and exchange ideas with NHTSA staff. In response to the workshop, NHTSA published updated technical specifications in March 2014. NHTSA continues to work closely with manufacturers to ensure systems are ready by the August 2014 deadline. Indeed, a number of the Alliance's members are actively engaged in testing exchanges with NHTSA at this time. Accordingly, we are denying the petitions to extend the effective date for the VIN look-up tool.

6. Failures of Manufacturers to Provide VIN Look-up Services

Global Automakers commented that a manufacturer's electronic reporting system or public website can experience temporary malfunctions, as with any electronic system. It noted that these disruptions could occur for any number of reasons, despite all reasonable efforts by a manufacturer to prevent a disruption. Accordingly, Global requested that we state affirmatively that such temporary system malfunctions that prevent compliance with our reporting or public information requirements will not be subject to civil penalties, provided that manufacturers take reasonable steps to minimize the occurrence of such events and respond expeditiously to any system malfunctions.

We understand the concern, but do not believe it is necessary to make an affirmative statement that temporary system malfunctions will not be subject civil penalties. As in the past, we intend to responsibly exercise our enforcement discretion concerning instances of manufacturer failures to comply and to conduct investigations, as necessary, to determine the facts of a particular situation. We plan to use the facts and circumstances of each matter to guide a decision whether to pursue an enforcement action, including one for penalties.

7. Timing of NHTSA's Workshops

In the final rule, we committed to hosting workshops for both the recalls portal and the VIN-based safety recalls search tool to be housed on our website www.safercar.gov. For the latter, we indicated we anticipated hosting a workshop in early 2014. The Alliance requested we schedule the workshops as soon as possible and before the end of 2013.

We considered this request and scheduled the workshop to discuss the technical specification for the VIN-based safety recalls search tool for January 2014. Notice of this meeting was provided in a Federal Register Notice published December 26, 2013 (78 FR 248).

As to the recalls portal, we remain committed to hosting workshops and to providing advance notice of them. On May 27, 2014, we published a notice in the Federal Register announcing multiple training workshops to be held July 28, 2014, through August 8, 2014. Participants must register in advance and registration instructions are provided in the notice. 79 FR 30234. These workshops will offer robust, instructor-led remote training, as opposed to in-person training that may require considerable travel and expense for many. The recalls portal workshops will be more training-based, as opposed to design-based, and so there is not an immediate need for the industry workshops or their scheduling.

C. Petitions Related to Amendments to Part 573 and Part 577

1. Requirement for Recall Notification Envelope Label

As part of the final rule, we amended the text of 49 CFR 577.5(a) to require that the envelope in which a manufacturer notifies owners and purchasers of a safety recall have imprinted on the front a label, one by three inches in size. 78 FR 51422. We specified in the regulatory text that the label would be available at a specific address and secure location on our website. NHTSA stated that in the event of a change or an update to the label, NHTSA would provide notice through the online Recall Portal. 78 FR 51409. The Alliance disagrees with this approach and contends that NHTSA must specify all the content and formatting for the label within the regulatory text of part 577 itself, or as an Appendix or Figure incorporated within part

577. In its view, changes or updates to the label would not be possible without providing notice and comment on the revisions, as well as modifying the regulatory text of part 577 accordingly.

After further consideration, we agree with the Alliance regarding an opportunity for notice and comment should we decide to amend the label. Accordingly, we are today incorporating an image of the required label, together with the specific color, text, and formatting requirements, into the regulatory text by adding new § 577.14. While the label will remain available to manufacturers for at least the near term online through the safercar.gov website, we are today removing the regulatory text specifying its online location. A specific online location is no longer necessary in view of the change to regulatory text and may become a housekeeping burden as online content changes and progresses over time.

2. Requirement to Utilize NHTSA's Online Recalls Portal

In NHTSA's NPRM, we proposed the creation of a new, online recalls portal where a manufacturer would submit its information required under part 573. 77 FR 55638. Included with our proposal were examples of part 573 report form templates through which manufacturers would provide the required notification to NHTSA and supply information that is required pursuant to federal regulation, either in the first notification or in a subsequent report.

Our proposal was well received, with most commenters supporting the submission of part 573 information through an online portal. The Alliance agreed that electronic submission of part 573 information using standardized forms would better help NHTSA administer safety recalls. In addition, manufacturers submitted a number of constructive suggestions regarding the content and formatting of the form templates. We also received comments requesting that the agency make clear the difference between fields that were required to be completed, and those that were

not required. In the final rule, we implemented a number of suggestions, including clearly indicating the required fields. We agreed that we would use an asterisk to denote mandatory information within a part 573 form, and attached an Appendix demonstrating this change. 78 FR 51404.

While not raised in its comments to the NPRM, the Alliance now petitions that NHTSA must include the templates themselves within the text of part 573 (or as an Appendix or Figure incorporated therein). It contends that the templates could be changed without opportunity for notice and comment. The Alliance argues that the agency is obligated to specify the mandatory elements of the template in the regulatory text (or as Appendix or Figure) and cannot change those mandatory elements without amending the regulatory text after notice and comment. It asserts this is a requirement of the Administrative Procedure Act (APA), as well as mandated by the Paperwork Reduction Act (PRA) that require OMB approval of any form, printed or online.

We note that this argument was not raised during the notice and comment period for this rulemaking. The idea of an online notification to NHTSA and reporting of information required pursuant to part 573 through the use of a template was detailed at length in the NPRM, together with proposed forms for several vehicle types and items of motor vehicle equipment. We received multiple industry comments supporting this approach and commenters provided constructive advice on how to improve the concept. As the Alliance acknowledges in its petition, it concurred with this approach.

In general, we agree that an agency must specify the mandatory elements of information to be provided to the agency (here, information required to be submitted in a Defect or Noncompliance Report pursuant to part 573), and must do so in regulatory text. We also agree that pursuant to the APA any changes to those mandatory elements must be made through notice

and comment rulemaking. We also understand our PRA obligations require that we must submit for OMB's review and approval an analysis of the burdens associated with any new reporting requirements or changes to existing requirements.

We do not agree, however, that the agency is obligated to incorporate the templates into the regulatory text of part 573 when the information that is noted as "required" in the templates is merely reflective of information required to be submitted by the regulatory text of part 573. With respect to the templates, they are the mechanisms for a manufacturer to deliver the information required under part 573 to NHTSA, and nothing more. The delivery mechanism is no different than a letter or even an e-mail from a manufacturer submitting a part 573 report. The information that is required to be reported does not change based on the vehicle for delivery. We note that we marked elements of the reporting templates as "required" in response to comments requesting that the agency differentiate between the elements that are required under Part 573 from those that are voluntary. We also note that some commenters requested that the agency provide greater flexibility with the templates to include voluntary information.

If we were to adopt the Alliance's view and make the template part of the regulatory text, we would arguably need to conduct a rulemaking and seek notice and comment on every adjustment to the form, no matter its relationship to content or format in order to bring to current the visual depiction. We do not agree that the APA is so restrictive.

With respect to OMB approval, the PRA is concerned about the burden placed upon the third party by collections of information. The definition of "collection of information" includes any form or format including electronic form. In the NPRM and final rule, NHTSA adequately addressed the information collection for the required templates. 77 FR 55635. OMB has issued a valid control number of 2127-0004.

Accordingly, we are denying the Alliance's petition. We understand, however, the Alliance's concern that dramatic changes to the templates may require manufacturers to change processes and incur costs. Outside of ministerial changes to the templates, NHTSA will not make wholesale changes to the templates without manufacturer input.

3. Requirement to Notify Owners within 60 Days

The Center for Auto Safety (CAS) petitioned the agency to modify the regulatory text concerning new changes to owner notifications. In the final rule, NHTSA amended 49 CFR 577.7 to require manufacturers to notify affected owners within sixty (60) days of notifying NHTSA of the defect or noncompliance. By amending this text, the phrase "within a reasonable time" was removed. The CAS notes that the omission of this phrase means that manufacturers might not be timely with their second owner notification in cases where only an interim notification was sent to owners within sixty (60) days. The Center believes this omission could "encourage foot dragging in the issuance of second 577 notices announcing availability of the remedy."

We agree with the petitioner that the phrase "within a reasonable time" should be included in § 577.7, as it was included originally. We will amend § 577.7 to add this language so that notifications announcing the availability of the recall remedy are sent in a timely fashion.

III. Technical Corrections

Many aspects of the August 20, 2013 final rule amended the safety recall requirements found in parts 573 and 577. In making those amendments, we omitted amending related

procedural provisions. The following two technical corrections will be made to ensure continuity between the existing regulation text and the newly introduced requirements.

A. Technical Correction for Submitting Recall Communications

As discussed above, the final rule requires that manufacturers submit all recall reports through a new, online website. See 49 CFR 573.9. However, we omitted to amend the language in § 573.6(c)(10) (submission of copies of notices bulletins and other communications related to the defect or noncompliance) to be consistent with the requirement to submit through the recall portal under § 573.9. In order to clarify that all documents required by § 573.6 must be submitted through the new recalls portal, we are amending § 573.6(c)(10) to ensure that all recall documentation be submitted through NHTSA’s new recalls portal.

B. Technical Correction for Quarterly Reporting

The August 2013 final rule established a 60-day timeframe, beginning from the date NHTSA is notified, for manufacturers to notify owners of a safety recall on their vehicle, even in cases where the remedy is not yet available. In finalizing this notification requirement, however, we overlooked an adjustment to the quarterly completion reporting requirement to make clear that recall completion reports were expected to start in the quarter that the manufacturer starts its remedy campaign, and not when it first notifies owners about the defect or noncompliance. As noted in the NPRM and our final rule, these two actions often do not occur simultaneously. In many cases, a manufacturer may experience parts delays or other circumstances which delay a prompt launch of its free remedy campaign.

Currently, § 573.7 requires manufacturers to start quarterly reporting on recalls “beginning with the quarter in which the campaign was initiated (i.e., the date of initial mailing of the defect or noncompliance notification to owners) or corrective action has been completed on all defective or noncomplying vehicles or items of replacement equipment involved in the campaign, whichever occurs first.” With the new requirement to notify consumers within 60 days of the filing of a part 573 report, even if a remedy is unavailable, the language in § 573.7 is inconsistent with the new notification requirement. Because the purpose of completion reporting is, of course, to monitor and assess the success of a manufacturer’s recall campaign, it’s logical to start that reporting and assessment only once the manufacturer has launched its remedy campaign.

Accordingly, we will correct § 573.7 to clarify that quarterly reporting begins with the quarter in which the remedy program is first made available to owners.

IV. Rulemaking Analyses and Notices

This rule responding to petitions for reconsideration makes several minor changes to the regulatory text of 49 CFR parts 573, 577 and 579, and does not increase the regulatory burden of manufacturers. The agency has discussed the relevant requirements of the Vehicle Safety Act, Executive Order 12866, Executive Order 13563, the Department of Transportation's regulatory policies and procedures, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Unfunded Mandates Reform Act, Executive Order 12988 (Civil Justice Reform), the Paperwork Reduction Act, Executive Order 13045, Executive Order 13609, and the National Environmental

Policy Act in the August 2013 final rule cited above. Those discussions are not affected by these changes.

Privacy Act

Please note that any one is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, 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), or you may visit [http:// www.dot.gov/privacy.html](http://www.dot.gov/privacy.html).

Regulatory Text

In consideration of the foregoing, NHTSA requests that 49 CFR parts 573, 577, and 579 be amended 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, Pub. L. 112-141, 126 Stat. 405; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

2. Revise § 573.6(c)(10) to read as follows:

§ 573.6 Defect and noncompliance information reports.

* * * * *

(c) * * *

(10) A representative copy of all notices, bulletins, and other communications that relate directly to the defect or noncompliance and are sent to more than one manufacturer, distributor, dealer or purchaser. These copies shall be submitted to NHTSA's Recall Management Division (NVS-215) (RMD), not later than 5 days after they are initially sent to manufacturers, distributors, dealers, or purchasers. Submission shall be made pursuant to §573.9 of this part.

* * * * *

3. Revise § 573.7(a) to read as follows:

§ 573.7 Quarterly reports.

(a) Each manufacturer who is conducting a defect or noncompliance notification campaign to manufacturers, distributors, dealers, or owners shall submit to NHTSA a report in accordance with paragraphs (b), (c), and (d) of this section. Unless otherwise directed by the NHTSA, the information specified in paragraphs (b)(1) through (5) of this section shall be included in the quarterly report, with respect to each notification campaign, for each of six consecutive quarters beginning with the quarter in which the campaign was initiated (i.e., the date the manufacturer notifies its purchasers of the availability of a remedy) or corrective action has been completed on all defective or noncomplying vehicles or items of replacement equipment involved in the campaign, whichever occurs first.

* * * * *

4. Revise § 573.15(b)(8) to read as follows:

§ 573.15 Public availability of motor vehicle recall information.

* * * * *

(b) * * *

(8) Where the search results in identification of a recall that has not been completed, state the recall campaign number NHTSA assigned to the matter; state the date the defect or noncompliance was reported pursuant to Part 573; provide a brief description of the safety defect or noncompliance, including the risk to safety, identified in the manufacturer's information report or owner notification letter filed pursuant to this part; and describe the remedy program;

* * * * *

PART 577 -- DEFECT AND NONCOMPLIANCE NOTIFICATION

5. The authority citation for part 577 continues to read as follow:

Authority: 49 U.S.C. 30102, 30103, 30116-121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

6. Revise § 577.5(a) to read as follows:

§ 577.5 Notification pursuant to a manufacturer's decision.

(a) When a manufacturer of motor vehicles or replacement equipment determines that any motor vehicle or item of replacement equipment produced by the manufacturer contains a defect that relates to motor vehicle safety, or fails to conform to an applicable Federal motor vehicle safety standard, or the manufacturer files a defect or noncompliance information report under 49 CFR part 573, the manufacturer shall provide notification in accordance with § 577.7(a), unless the manufacturer is exempted by the Administrator (pursuant to 49 U.S.C. 30118(d) or 30120(h)) from giving such notification. The notification shall contain the information specified in this section. The information required by paragraphs (b) and (c) of this

section shall be presented in the form and order specified. The information required by paragraphs (d) through (h) of this section may be presented in any order. Except as authorized by the Administrator, the manufacturer shall submit a copy of its proposed owner notification letter, including any provisions or attachments related to reimbursement, to NHTSA's Recall Management Division (NVS-215) no fewer than five (5) Federal Government business days before it intends to begin mailing it to owners. The manufacturer shall mark the outside of each envelope in which it sends an owner notification letter with a notation that includes the phrase "SAFETY RECALL NOTICE," all in capital letters and in a type that is larger than that used in the address section, and is also distinguishable from the other type in a manner other than size. It shall also imprint on the outside of this envelope a label in accordance with § 577.14. Except where the format of the envelope has been previously approved by NHTSA's Recall Management Division (NVS-215), each manufacturer must submit the envelope format it intends to use to that division at least five (5) Federal Government business days before mailing the notification to owners. Submission of envelopes and proposed owner notification letters shall be made by the means identified in 49 CFR 573.9. Notification sent to an owner whose address is in the Commonwealth of Puerto Rico shall be written in both English and Spanish.

* * * * *

7. Amend § 577.7(a)(1) by revising the second sentence to read as follows:

§ 577.7 Time and manner of notification.

(a) * * *

(1) * * * In the event that the remedy for the defect or noncompliance is not available at the time of notification, the manufacturer shall issue a second notification within a

reasonable time and in accordance with the requirements of this part once that remedy is available. * * *

* * * * *

8. Add § 577.14 to read as follows:

§ 577.14 Labeling for owner notification letter envelope.

(a) *Purpose and scope* - The purpose of this section is to supply vehicle and equipment manufacturers, including manufacturers of tires and child safety seats, with the label required to be shown on the envelopes of safety recall notification letters mailed to owners pursuant to § 577.5. This label shall not be used for any purpose other than compliance with § 577.5 by any entity outside of the Department of Transportation.

(b) *Required label information and format.* (1) The label depicted in this section must be printed on the front of the safety recall owner notification envelope. The content, format, and sequence of this label are depicted in Figure 1 of this section. A Spanish version of this label, for owners located in the Commonwealth of Puerto Rico or the Canal Zone, can be found in Figure 2 of this section.

(2) The text “IMPORTANT SAFETY RECALL INFORMATION” must be printed in capital letters, have a minimum font size of 10 point, and be printed in white text on a red background. Also, this text must be centered horizontally and located near the top of the label. The text “Issued in Accordance With Federal Law” must have a minimum font size of 10 point, be printed in black text on a white background, and be located directly beneath the preceding text, also centered horizontally within the label.

(3) The logo of the U.S. Department of Transportation must be located at the bottom, left-hand corner of the label. The logo of the National Highway Traffic Safety Administration must be located at the bottom, right-hand corner of the label. Each logo should be printed in black color with a white background.

(c) *Required label size* - The label depicted in this paragraph must be 1 inch in height and 3 inches in length.

Figure 1 to Sec. 577.14
Sample Safety Recall Information Label



Figure 2 to Sec. 577.14
Sample Safety Recall Information Label, Spanish Version



PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

9. 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 1.95 and 49 CFR 501.8.

10. Amend § 579.4(c) by adding, in alphabetical order, the following definition of “Fuel and/or propulsion system type” to read as follows:

§579.4 Terminology

* * * * *

(c) * * *

Fuel and/or propulsion system type means the variety of fuel and/or propulsion systems used in a motor vehicle, as follows: compressed natural gas (CNG); compression ignition fuel (CIF); electric battery power (EBP); fuel-cell power (FCP); hybrid electric vehicle (HEV); hydrogen combustion power (HCP); plug-in hybrid (PHV); spark ignition fuel (SIF); other (OTH), and unknown (UNK).

* * * * *

- 8. Amend §579.21 by:
 - a. Revising the first sentence of paragraph (a);
 - b. Adding a third sentence to paragraph (b)(2); and
 - c. Adding a sixth sentence to paragraph (c)

The revisions read as follows:

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

* * * * *

(a) *Production information.* Information that states the manufacturer’s name, the quarterly reporting period, the make, the model, the model year, the type, the platform, the fuel and/or propulsion system type coded as follows: CNG (compressed natural gas), CIF (compression ignition fuel), EBP (electric battery power), FCP (fuel-cell power), HEV (hybrid electric vehicle), HCP (hydrogen combustion power), PHV (plug-in hybrid), SIF (spark ignition fuel), OTH (Other), and UNK (unknown) and the number of vehicles produced. * * *

(b) * * *

(2) * * * If a vehicle manufacturer is unaware of the vehicle type at the time it receives the incident, the manufacturer shall use the abbreviation “UN” in its report to indicate that the vehicle type is unknown. * * *

(c) * * * For each report, the manufacturer shall separately state the vehicle type and fuel and/or propulsion system type if the manufacturer stated more than one vehicle type or fuel and/or propulsion system type for a particular make, model, model year in paragraph (a) of this section. If a vehicle manufacturer is unaware of the vehicle type at the time it receives the property damage claim, consumer complaint, warranty claim or field report, the manufacturer shall use the abbreviation “UN” in its report to indicate that the vehicle type is unknown.

* * * * *

Nancy L. Lewis
Associate Administrator
for Enforcement

Billing Code 4910-59-P

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