



February 3, 2009

BY ELECTRONIC MAIL

Ronald Medford, Acting Deputy Administrator  
National Highway Traffic Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building  
Washington, DC 20590  
Electronic Address: [www.regulations.gov](http://www.regulations.gov) (Docket ID-NHTSA-2008-0169)

***Re: Comments on NHTSA's Proposed Early Warning Reporting Regulations***

Dear Acting Deputy Administrator Medford:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) is pleased to submit the following comments on the National Highway Traffic Safety Administration's (NHTSA's) *Proposed Early Warning Reporting Regulations*.<sup>1</sup> The proposed rule would raise the early warning reporting (EWR) threshold levels for light vehicle and trailer manufacturers from 500 to 5,000 or more units annually.<sup>2</sup> NHTSA concludes that this change would reduce the regulatory burden on small manufacturers while maintaining NHTSA's ability to identify safety-related defects in these vehicles.<sup>3</sup> Accordingly, Advocacy supports the proposed change and commends NHTSA for proposing regulatory relief for these small businesses. Advocacy also recommends that NHTSA reconsider whether burden reduction would also be appropriate for other categories of vehicles subject to the EWR rule.

**Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>4</sup> as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),<sup>5</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and

<sup>1</sup> 73 Fed. Reg. 74101 (December 5, 2008).

<sup>2</sup> Id. at 74103.

<sup>3</sup> Id. at 74106.

<sup>4</sup> 5 U.S.C. § 601 et seq.

<sup>5</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

to consider less burdensome alternatives.<sup>6</sup> Moreover, Executive Order 13272<sup>7</sup> requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. Further, the agency must include, in any explanation or discussion accompanying publication in the *Federal Register* of a final rule, the agency's response to any written comments submitted by Advocacy on the proposed rule.

## **Background**

In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106-4414) in order to better identify potential safety defects in motor vehicles and equipment. NHTSA promulgated implementing regulations for the TREAD Act and began receiving information from vehicle manufacturers (including light vehicles, trailers, medium-heavy vehicles, motorcycles, and buses) in 2003.<sup>8</sup> The TREAD Act specifically requires NHTSA to review its data-collection program periodically and propose changes to minimize undue burdens on manufacturers. NHTSA previously committed to conducting a formal program review after two years of receiving information, and the present rulemaking is a result of that review.<sup>9</sup>

At the request of NHTSA, Advocacy hosted a small business roundtable on March 16, 2006 to discuss the EWR rule and to obtain small business input on how to improve it. The roundtable was attended by representatives of NHTSA as well as small business representatives from several industries affected by the rule, including some of those that had formally petitioned NHTSA for changes to the rule.<sup>10</sup> Several of the participants at the roundtable recommended that NHTSA raise the reporting thresholds for light vehicles and trailers from the current reporting threshold of 500 or more units annually to 5,000 or more.

## **Discussion**

Advocacy supports NHTSA's proposal to raise the threshold reporting levels for light vehicles and trailers because it would represent a significant burden reduction for small businesses without impeding NHTSA's ability to identify safety-related defects.<sup>11</sup> As NHTSA discusses in the preamble, the proposed changes would remove 30 of the 60 light vehicle manufacturers<sup>12</sup> and 190 of the 250 trailer manufacturers that are currently required to report under the rule (except for instances involving a death).<sup>13</sup> As NHTSA

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<sup>6</sup> 5 U.S.C. § 603 (c).

<sup>7</sup> Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking (67 Fed. Reg. 53461) (August 16, 2002).

<sup>8</sup> 73 Fed. Reg. 74102.

<sup>9</sup> Id.

<sup>10</sup> 73 Fed. Reg. 74106.

<sup>11</sup> 73 Fed. Reg. 74106 - 74108.

<sup>12</sup> 73 Fed. Reg. 74105 - 74106.

<sup>13</sup> 73 Fed. Reg. 74107.

states, the bulk of useful data it currently receives is from larger manufacturers (those that produce over 5,000 units annually) and that it receives a relatively small amount from firms producing less than 5,000 units annually.<sup>14</sup> Further, NHTSA concludes that the limited data from these smaller companies is of little value in identifying potential safety defects and has not been helpful to the program.<sup>15</sup>

Advocacy supports the proposed changes in reporting thresholds for light vehicles and trailers, but notes that similar burden reductions are not being proposed for medium-heavy vehicles and motorcycles,<sup>16</sup> and that the threshold level for buses is actually being lowered from 500 units per year to one.<sup>17</sup> Advocacy recognizes that data submission in these categories is more uniform, making burden reduction less compelling. NHTSA notes that medium-heavy vehicles can be damaged during final stage manufacture, and provides background information about a number of bus and motorcycles accidents, but does not clearly indicate that early warning reporting would have prevented these accidents.<sup>18</sup> Accordingly, Advocacy recommends that NHTSA reassess its conclusions about medium-heavy vehicles, motorcycles, and buses, and determine whether burden reduction would be appropriate for these categories as well.

### **Conclusion**

Advocacy appreciates the opportunity to comment on NHTSA's *Proposed Early Warning Reporting Regulations*, and supports NHTSA's proposal to raise the threshold reporting levels for light vehicles and trailers. Advocacy also recommends that NHTSA reassess its conclusions about medium-heavy vehicles, motorcycles, and buses to determine whether burden reduction would be appropriate for them as well. Please feel free to contact me or Bruce Lundegren at (202) 205-6144 (or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov)) if you have any questions or require additional information.

Sincerely,

/s/

Shawne C. McGibbon  
Acting Chief Counsel for Advocacy

/s/

Bruce E. Lundegren  
Assistant Chief Counsel for Advocacy

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<sup>14</sup> 73. Fed. Reg. 74106 – 74107.

<sup>15</sup> Id.

<sup>16</sup> 73. Fed. Reg. 74109 – 74111. (NHTSA proposes to leave these threshold reporting levels at 500 or more units annually.)

<sup>17</sup> 73. Fed. Reg. 74108 – 74109.

<sup>18</sup> For example, if these accidents were the result of operator error rather than equipment defects, early warning reporting would not have prevented them.

Copy to: Kevin Neyland, Acting Administrator  
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