DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2016-0065]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Defect and Noncompliance Reporting and Notification

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

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The Federal Register Notice with a 60-day comment period was published on June 12, 2019.

DATES: Comments must be submitted to OMB on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: NHTSA Desk Officer, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Stephen Hench, Office of Chief Counsel (NCC-0100), Room W41-229, NHTSA, 1200 New Jersey Avenue SE, Washington, DC 20590.

Telephone: 202.366.2992.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the Federal Register providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, see 5 CFR 1320.8(d), an agency must ask for public comment on the following:

i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

iii) How to enhance the quality, utility, and clarity of the information to be collected; and

iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Defect and Noncompliance Reporting and Notification

Type of Request: Renewal of a currently approved information collection

Type of Review Requested: Regular

OMB Control Number: 2127-0004

Affected Public: Businesses or individuals

Abstract: The 60-day notice for this information collection received two (2) comments. One of those comments appears to have been placed on the incorrect docket. The other comment received was submitted by The Alliance of Automobile Manufacturers (Alliance). The Alliance offered comments on the scope of, and burdens associated with, the collection as it relates to the Takata Coordinated Remedy Program. A summary of these comments is below with the corresponding burden estimates, along with the agency's response.

This collection covers the information collection requirements found within various statutory provisions of the Motor Vehicle Safety Act of 1966 (Act), 49 U.S.C. 30101, *et seq.*, that address and require manufacturer notifications to NHTSA of safety-related defects and failures to comply with Federal Motor Vehicle Safety Standards (FMVSS) in motor vehicles and motor vehicle equipment, as well as the provision of particular information related to the ensuing owner and dealer notifications and free remedy campaigns that follow those notifications. The sections of the Act imposing these requirements include 49 U.S.C. 30118, 30119, 30120, and 30166. Many of these requirements are implemented through, and addressed with more specificity in, 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* (Part 573) and 49 CFR 577, *Defect and Noncompliance Notification* (Part 577).

Pursuant to the Act, motor vehicle and motor vehicle equipment manufacturers are obligated to

notify, and then provide various information and documents to, NHTSA in the event a safety defect or noncompliance with FMVSS is identified in products they manufactured. *See* 49 U.S.C. 30118(b) and 49 CFR 573.6. Manufacturers are further required to notify owners, purchasers, dealers, and distributors about the safety defect or noncompliance. *See* 49 U.S.C. 30118(b), 30120(a); 49 CFR 577.7, 577.13. Manufacturers are required to provide to NHTSA copies of communications pertaining to recall campaigns that they issue to owners, purchasers, dealers, and distributors. *See* 49 U.S.C. 30166(f); 49 CFR 573.6(c)(10).

Manufacturers are also required to file with NHTSA a plan explaining how they intend to reimburse owners and purchasers who paid to have their products remedied before being notified of the safety defect or noncompliance, and explain that plan in the notifications they issue to owners and purchasers about the safety defect or noncompliance. *See* 49 U.S.C. 30120(d) and 49 CFR 573.13. Manufacturers are further required to keep lists of the respective owners, purchasers, dealers, distributors, lessors, and lessees of the products determined to be defective or noncompliant and involved in a recall campaign, and are required to provide NHTSA with a minimum of six quarterly reports reporting on the progress of their recall campaigns. *See* 49 CFR 573.8 and 573.7, respectively.

The Act and Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns. These requirements relate to the proper disposal of recalled tires, including a requirement that the manufacturer conducting the tire recall submit a plan and provide specific instructions to certain persons (such as dealers and distributors) addressing that disposal, and a requirement that those persons report back to the manufacturer certain deviations from the plan. *See* 49

U.S.C. 30120(d) and 49 CFR 573.6(c)(9). The regulations also require that manufacturers report to NHTSA intentional and knowing sales or leases of defective or noncompliant tires.

49 U.S.C. 30166(n) and its implementing regulation found at 49 CFR 573.10 mandate that anyone who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire that is not compliant with FMVSS, and with actual knowledge that the tire manufacturer has notified its dealers of the defect or noncompliance as required under the Act, is required to report that sale or lease to NHTSA no more than five working days after the person to whom the tire was sold or leased takes possession of it.

Pursuant to its safety authorities, NHTSA is continuing its oversight of recalls of unprecedented complexity involving Takata air bag inflators.[1] Under the Coordinated Remedy Program established to address this major issue, and the associated Coordinated Remedy Order as amended on December 9, 2016 (the "ACRO"), manufacturers issue supplemental owner communications utilizing non-traditional means.[2]

Estimated Burden: NHTSA previously estimated an annual burden of 36,070 hours associated with this collection (of which 456 hours was contemplated for conducting supplemental recall communications under administrative order to achieve completion of the Takata recalls), $155,450,329 (of which $27,836,329 is contemplated for conducting supplemental recall communications under administrative order to achieve completion of the Takata recalls), and 274 respondents per year (19

[1] *See generally* "Takata Recall Spotlight," https://www.nhtsa.gov/equipment/takata-recall-spotlight.

[2] *See generally* "Notice of Coordinated Remedy Program Proceeding for the Replacement of Certain Takata Air Bag Inflator," *available at* https://www.regulations.gov/docket?D=NHTSA-2015-0055.

vehicle manufacturers conducting supplemental recall communications under administrative order to achieve completion of the Takata recalls).[3] Our prior estimates of the burden hours and cost associated with the requirements currently covered by this information collection require adjustment as follows.

Based on current information, we estimate 249 distinct manufacturers filing an average of 988 Part 573 Safety Recall Reports each year. This is a change from our previous estimate of 963 Part 573 Safety Recall Reports filed by 274 manufacturers each year. In addition, with reference to the metric associated with NHTSA's Vehicle Identification Number (VIN) Look-up Tool regulation, see 49 CFR 573.15, we continue to estimate it takes the 17 major passenger-vehicle manufacturers (those that produce more than 25,000 vehicles annually) additional burden hours to complete these Reports to NHTSA, as explored in more detail below. *See* 82 FR 60789 (December 22, 2017). Between 2015 and 2018, the major passenger-vehicle manufacturers conducted an average of 316 recalls annually.

We continue to estimate that maintenance of the required owner, purchaser, dealer, and distributors lists requires 8 hours a year per manufacturer. We also continue to estimate it takes a major passenger-vehicle manufacturer 40 hours to complete each notification report to NHTSA, and it takes all other manufacturers 4 hours. Accordingly, we estimate the annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance for the 17 major passenger vehicle-manufacturers to be 12,640 hours annually (316 notices x 40 hours/report), and that all other manufacturers require a total of 2,688 hours annually (672 notices x 4 hours/report) to file their notices. Thus, the estimated annual burden hours related to the reporting to NHTSA of a safety defect or

[3] *See* 82 FR 60789, 60790 (December 22, 2017).

noncompliance is 17,320 hours (12,640 hours + 2,688 hours) + (249 MFRs x 8 hours to maintain purchaser lists).[4]

We continue to estimate that an additional 40 hours will be needed to account for major passenger-vehicle manufacturers adding details to Part 573 Safety Recall Reports relating to the intended schedule for notifying its dealers and distributors, and tailoring its notifications to dealers and distributors in accordance with the requirements of 49 CFR 577.13. An additional 2 hours will be needed to account for this obligation in other manufacturers' Safety Recall Reports. This burden is estimated at 13,984 hours annually (672 notices x 2 hours/notification) + (316 notices x 40 hours/notification).

49 U.S.C. 30166(f) requires manufacturers to provide to the Agency copies of all communications regarding defects and noncompliances sent to owners, purchasers, and dealerships. Manufacturers must index these communications by the year, make, and model of the vehicle as well as provide a concise summary of the subject of the communication. We continue to estimate this burden requires 3 hours for each vehicle recall for the 17 major passenger-vehicle manufacturers, and 30 minutes for all other manufacturers for each vehicle recall. This totals an estimated 1,284 hours annually (316 recalls x 3 hours for the 17 major passenger-vehicle manufacturers) + (672 recalls x .5 for all other manufacturers).

In the event a manufacturer supplied the defective or noncompliant product to independent dealers through independent distributors, that manufacturer is required to include in its notifications to

[4] For more information about how we derived these and certain other estimates, please see 81 FR 70269

those distributors an instruction that the distributors are then to provide copies of the manufacturer's notification of the defect or noncompliance to all known distributors or retail outlets further down the distribution chain within five working days. *See* 49 CFR 577.7(c)(2)(iv). As a practical matter, this requirement would only apply to equipment manufacturers, since vehicle manufacturers generally sell and lease vehicles through a dealer network, and not through independent distributors. We believe our previous estimate of 87 equipment recalls per year needs to be adjusted to 91 equipment recalls per year to better reflect recent data. We have estimated the burden associated with these notifications (identifying retail outlets, making copies of the manufacturer's notice, and mailing) to be 5 hours per recall campaign. Assuming an average of 3 distributors per equipment item, which is a liberal estimate given that many equipment manufacturers do not use independent distributors, the total number of burden hours associated with this third-party notification requirement is approximately 1,365 hours per year (91 recalls x 3 distributors x 5 hours).

As for the burden linked with a manufacturer's preparation of and notification concerning its reimbursement for pre-notification remedies, we continue to estimate that the preparation of a reimbursement plan takes approximately 4 hours annually. We also continue to estimate that an additional 1.5 hours per year is spent by the 17 major passenger-vehicle manufacturers adapting the plan to particular defect and noncompliance notifications to NHTSA and adding tailored language about the plan to a particular safety recall's owner notification letters, while an additional .5 hours per year is spent on this task by all other manufacturers. And we continue to estimate that an additional 12 hours

(October 11, 2016).

annually is spent disseminating plan information, for a total of 4,794 annual burden hours ((249 MFRs x 4 hours to prepare plan) + (316 recalls x 1.5 hours tailoring plan for each recall) + (672 recalls x .5 hours) + (249 MFRs x 12 hours to disseminate plan information)).

The Safety Act and 49 CFR Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns, as well as a statutory and regulatory reporting requirement that anyone who knowingly and intentionally sells or leases a defective or noncompliant tire notify NHTSA of that activity.

Manufacturers are required to include specific information related to tire disposal in the notifications they provide NHTSA concerning identification of a safety defect or noncompliance with FMVSS in their tires, as well as in the notifications they issue to their dealers or other tire outlets participating in the recall campaign. *See* 49 CFR 573.6(c)(9). We believe our previous estimate of 12 tire recalls per year needs to be adjusted to 11 tire recalls per year to better reflect recent data. We continue to estimate that the inclusion of this additional information will require an additional two hours of effort beyond the subtotal above associated with non-tire recall campaigns. This additional effort consists of one hour for the NHTSA notification and one hour for the dealer notification for a total of 22 burden hours (11 tire recalls a year x 2 hours per recall).

Manufacturer-owned or controlled dealers are required to notify the manufacturer and provide certain information should they deviate from the manufacturer's disposal plan. Consistent with our previous analysis, we continue to ascribe zero burden hours to this requirement since to date no such reports have been provided, and our original expectation that dealers would comply with manufacturers'

plans has proven accurate.

Accordingly, we estimate 22 burden hours a year will be spent complying with the tire recall campaign requirements found in 49 CFR 573.6(c)(9).

The agency continues to estimate 1 burden hour annually will be spent preparing and submitting reports of a defective or noncompliant tire being intentionally sold or leased under 49 U.S.C. 30166(n) and its implementing regulation at 49 CFR 573.10.

We continue to expect that nine vehicle manufacturers, who did not operate VIN-based recalls lookup systems prior to August 2013, incur certain recurring burdens on an annual basis. We continue to estimate that 100 burden hours will be spent on system and database administrator support. These 100 burden hours include: backup data management and monitoring; database management, updates, and log management; and data transfer, archiving, quality assurance, and cleanup procedures. We continue to estimate another 100 burden hours will be incurred on web/application developer support. These burdens include: operating system and security patch management; application/web server management; and application server system and log files management. We continue to estimate these burdens will total 1,800 hours each year (9 MFRs x 200 hours). We also continue to estimate the recurring costs of these burden hours will be $30,000 per manufacturer.[5] Furthermore, we continue to estimate that the total cost to the industry from these recurring expenses will total $270,000, on an annual basis (9 MFRs x $30,000).

Changes to 49 CFR Part 573 in 2013 required 27 manufacturers to update each recalled

[5] $8,000 (for data center hosting for the physical server) + $12,000 (for system and database administrator

vehicle's repair status no less than every 7 days, for 15 years from the date the VIN is known to be included in the recall. This ongoing requirement to update the status of a VIN for 15 years continues to add a recurring burden on top of the one-time burden to implement and operate these online search tools. We continue to estimate that 8 affected motorcycle manufacturers will make recalled VINs available for an average of 2 recalls each year and 19 affected passenger-vehicle manufacturers will make recalled VINs available for an average of 8 recalls each year. We believe it will take no more than 1 hour, and potentially less with automated systems, to update the VIN status of vehicles that have been remedied under the manufacturer's remedy program. We continue to estimate this will require 8,736 burden hours per year (1 hour x 2 recalls x 52 weeks x 8 MFRs + 1 hour x 8 recalls x 52 weeks x 19 MFRs) to support the requirement to update the recalls completion status of each VIN in a recall at least weekly for 15 years.

As the number of Part 573 Recall Reports has increased in recent years, so has the number of quarterly reports that track the completion of safety recalls. Our previous estimate of 4,498 quarterly reports received annually is now revised upwards to 5,512 quarter reports received annually. We continue to estimate it takes manufacturers 1 hour to gather the pertinent information for each quarterly report, and 10 additional hours for the 17 major passenger-vehicle manufacturers to submit electronic reports. We therefore now estimate that the quarterly reporting burden pursuant to Part 573 totals 5,682 hours ((5,512 quarterly reports x 1 hour/report) + (17 MFRs x 10 hours for electronic submission)).

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support) + $10,000 (for web/application developer support) = $30,000.

We continue to estimate a small burden of 2 hours annually in order to set up a manufacturer's online recalls portal account with the pertinent contact information and maintaining/updating their account information as needed. We estimate this will require a total of 498 hours annually (2 hours x 249 MFRs).

We continue to estimate that 20 percent of Part 573 reports will involve a change or addition regarding recall components, and that at two hours per amended report, this totals 396 burden hours per year (988 recalls x .20 = 193 recalls; 198 x 2 = 396 hours).

As to the requirement that manufacturers notify NHTSA in the event of a bankruptcy, we expect this notification to take an estimated 2 hours to draft and submit to NHTSA. We continue to estimate that only 10 manufacturers might submit such a notice to NHTSA each year, so we calculate the total burden at 20 hours (10 MFRs x 2 hours).

We continue to estimate that it takes the 17 major passenger-vehicle manufacturers an average of 11 hours to draft their notification letters, submit them to NHTSA for review, and then finalize them for mailing to their affected owners and purchasers. We also continue to estimate it takes 8 hours for all other manufacturers to perform this task. Accordingly, we estimate that the 49 CFR Part 577 requirements result in 8,852 burden hours annually (11 hours per recall x 316 recalls per year) + (8 hours per recall x 672 recalls per year).

The burden estimate associated with the regulation that requires interim owner notifications within 60 days of filing a Part 573 Safety Recall Report must be revised upward. We previously calculated that about 12 percent of past recalls require an interim notification mailing, but recent trends

show that 13 percent of recalls require an interim owner notification mailing. We continue to estimate the preparation of an interim notification can take up to 10 hours. We therefore estimate that 1,250 burden hours are associated with the 60-day interim notification requirement (963 recalls x .13 = 125 recalls; 125 recalls times 10 hours per recall = 1,250 hours).

As for costs associated with notifying owners and purchasers of recalls, to reflect an increase in postage rates, we are revising our estimate of the cost of first-class mail notification to $1.53 per notification, on average. This cost estimate includes the costs of printing and mailing, as well as the costs vehicle manufacturers may pay to third-party vendors to acquire the names and addresses of the current registered owners from state and territory departments of motor vehicles. In reviewing recent recall figures, we determined that an estimated 51.4 million letters are mailed yearly totaling $78,642,000 ($1.53 per letter x 51,400,000 letters). The requirement in 49 CFR Part 577 for a manufacturer to notify their affected customers within 60 days would add an additional $10,223,460 (51,400,000 letters x .13 requiring interim owner notifications = 6,682,000 letters; 6,682,000 x $1.53 = $10,023,000). In total, we estimate that the current 49 CFR Part 577 requirements cost manufacturers a total of $88,865,460 annually ($78,642,000 for owner notification letters + $10,223,460 for interim notification letters = $88,865,460).

As discussed above, to address the scope and complexity of the Takata recalls, NHTSA issued the ACRO, which requires affected vehicle manufacturers to conduct supplemental owner notification efforts in coordination with NHTSA and the Independent Monitor of Takata. On December 23, 2016, the Monitor, in consultation with NHTSA, issued Coordinated Communications Recommendations for

vehicle owner outreach ("CCRs"), which includes a recommendation that vehicle manufacturers provide at least one form of consumer outreach per month for vehicles in a launched recall campaign (*i.e.*, a recall where parts are available) until the vehicle is remedied (unless otherwise accounted for as scrapped, stolen, exported, or otherwise unreachable under certain procedures in the ACRO). *See* CCRs ¶ 1(b); ACRO ¶¶ 45–46. The Monitor also recommended that manufacturers utilize at least three non-traditional means of communication (*e.g.*, postcards; email; telephone calls; text message; social media) as part of their overall outreach strategy. *See* CCRs ¶ 1(a). And the Monitor recommended including certain content in these communications, including certain safety-risk information. *See id.* ¶ 2. If a vehicle manufacturer does not wish to follow the Monitor's recommendations, the ACRO permits the manufacturer to propose an alternative communication strategy to NHTSA and the Monitor. ACRO ¶ 42.

As noted above, two comments were submitted in response to the 60-day notice of this information collection. One of those comments appears to have been placed on the incorrect docket. The other comment, filed by The Alliance (which also attached two previously filed comments regarding this collection), responded to several facets of the notice that touch on two primary issues: (1) the extent to which various provisions of the ACRO are subject to the PRA (and whether the investigatory exception applies to the PRA in this context); and (2) the accuracy of the agency's burden estimate. The Alliance commented that it believes that NHTSA should account for additional cost burdens under the ACRO beyond the monthly outreach recommended under the CCRs. *See* Comments (Aug. 12, 2019) at 2–4. The Alliance also commented that NHTSA underestimated the costs associated with this

monthly outreach, and that NHTSA should provide separate burden estimates for each category of outreach and compare those burdens with "evidence of effectiveness." *See id.* at 2, 5. In addition, The Alliance commented that NHTSA should account for Monitor-conducted surveys and other activities, and provide "information justifying the practical utility" of supplemental non-traditional outreach. *See id.* at 5. The Alliance further commented that it disagrees with NHTSA's discounting of its cost estimates based on vehicle manufacturer settlement agreements in multi-district litigation proceedings. *Id.*

As to the extent to which various provision of the ACRO in addition to the CCRs described above are subject to the PRA, The Alliance previously commented that the investigatory exception to the PRA applies "'only after a case file or equivalent is opened with respect to a particular party . . . and only with respect to 'an administrative action, investigation or audit involving an agency against specific individuals or entities.'" Comments (Jan. 22, 2018) at 2 (quoting 5 CFR 1320.4(a)(2), (c)). The Alliance's position is that "if there is any relevant investigation," it is an investigation against Takata—not the affected automakers, because they "are not the target" of the investigation. *Id.* Therefore, the Alliance believes NHTSA should account for burdens associated with other provisions of the ACRO, beyond the monthly-outreach recommendations in the CCRs. *See id.* at 3–4.

NHTSA is not persuaded that it should deviate from its approach. The plain meaning of the statute specifically exempts collections of information "during the conduct of . . . an administrative action, investigation, or audit involving an agency *against specific individuals or entities*." 44 U.S.C. § 3518(c)(1)(B)(ii) (emphasis added); 5 CFR 1320.4(a)(2), 1320.3(c). NHTSA's investigation is clearly directed at "specific individuals or entities"—both Takata *and* the 19 specifically named vehicle

manufacturers that installed defective Takata inflators. *See* Opening Resume for EA15-001.[6] Indeed, the Coordinated Remedy Order did not originally contain numerous vehicle manufacturers that were, subsequently, added to the Program.[7] After an expansion of the recalls in light of new information, NHTSA specifically added seven "newly affected" vehicle manufacturers to the Coordinated Remedy Program in its Third Amendment to the Coordinated Remedy Order. *See* ACRO ¶¶ 8, 10, 31.[8]

Thus, contrary to Alliance and Global's suggestion, these orders are not generalized so as to apply broadly "to a category of individuals or entities, such as a class of licensees or an industry" under the PRA. *See* Comments (January 22, 2018) at 2 (citing 5 CFR 1320.4(c)). Rather, the orders are limited to specific vehicle manufacturers the Agency has identified as affected by the Takata air bag recalls. *See also Shell Oil Co. v. Babbitt*, 945 F. Supp. 792, 806 (D. Del. 1996) (rejecting argument that agency's investigations were limited to subjects covered in forms agency uses for routine inquiries, noting it is untenable to "to limit [the agency] in a way that would seriously curtail its investigative efforts and in a way Congress never intended in passing" an agency statute and the PRA); *id.* at 805–06 (observing a "long line of cases recognizing that an administrative agency's authority when it requests records and undertakes investigatory functions related to its responsibilities is very broad"); *Lonsdale v. United States*, 919 F.2d 1440, 1445 (10th Cir. 1990) (recognizing courts holding that PRA is

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[6] https://static.nhtsa.gov/odi/inv/2015/INOA-EA15001-4970.PDF.

[7] The "original affected manufacturers" were: BMW of North America, LLC; FCA US, LLC; Daimler Trucks North America, LLC; Daimler Vans USA, LLC; Ford Motor Company; General Motors, LLC; American Honda Motor Company; Mazda North American Operations; Mitsubishi Motors North America, Inc.; Nissan North America, Inc.; Subaru of America, Inc.; and Toyota Motor Engineering and Manufacturing.

[8] These newly affected manufacturers were: Ferrari North America, Inc.; Jaguar Land Rover North America, LLC; McLaren Automotive, Ltd.; Mercedes-Benz US, LLC; Tesla Motors, Inc.; Volkswagen Group of America, Inc.; and, based on a Memorandum of Understanding with the Agency, Karma Automotive (as to certain Fisker vehicles).

inapplicable to forms requesting information issued in investigation against an individual to determine tax liability); *Pitts v. Commissioner of Internal Revenue*, T.C. Memo 2010-101, 10 (May 6, 2010) (rejecting interpretation that PRA applies to tax collection due-process hearings because the hearings involve a "category of individuals" asked to submit a form).

In sum, NHTSA is conducting an ongoing administrative action and investigation into particular parties—both Takata and the specifically enumerated affected vehicle manufacturers—as governed by the Takata Coordinated Remedy Program. The Program is constructed and implemented through various Agency orders (principally the Coordinated Remedy Order and amendments) directed specifically at a discrete, finite number of entities, including only those vehicle manufacturers affected by the Takata recalls. Accordingly, NHTSA's responses to comments and its burden estimates are limited to the monthly-outreach recommendation in the CCRs.

Furthermore, to the burden estimate, NHTSA acknowledges the "wide variety of outreach methods contemplated by the ACRO," and agrees with the Alliance's recognition that estimating per-VIN outreach cost is a difficult task given that outreach populations change and, with those changes, the methods necessary to engage those populations also changes. *See* Comments (Jan. 22, 2018) at 4; Comments (Aug. 12, 2019). The Alliance notes that costs of outreach per VIN may have increased as the recalls have progressed. Comments (Aug. 12, 2019) at 2. The Alliance also states that NHTSA should separately estimate the burdens for each category of outreach and compare the burden with the outreach's effectiveness. *Id.*

The CCR provisions recommend "[e]ngaging in outreach specific to the Takata airbag recall employing at least three" methods of non-traditional outreach, "to ensure that each vehicle in a launched campaign receives at least one form of outreach per month until the vehicle is repaired" (unless the vehicle can otherwise be accounted for as set forth in the ACRO). CCRs at 1 (emphases in original). Thus, the CCRs provide manufacturers wide latitude, and what specific outreach methods a vehicle manufacturer employs is the vehicle manufacturer's decision.[9] The CCRs do not state that vehicle manufacturers must engage in, *e.g.*, canvassing when the remaining recalled vehicle population reaches a certain threshold. NHTSA and the Independent Monitor have simply identified for vehicle manufacturers potential ways to achieve high completion rates for certain vehicle populations.

NHTSA recognizes that as vehicles are repaired, the harder-to-reach owners comprise a larger portion of the remaining unrepaired population, and that as manufacturers adopt more intensive outreach methods, outreach may prove more expensive. NHTSA also notes, however, that while certain forms of non-traditional outreach may be more expensive than others (such as canvassing), such outreach may not be occurring on a monthly basis, nor for all affected VINs. Balancing these considerations, NHTSA is revising its estimate of the cost of monthly outreach upward to $10/VIN per month, and welcomes further comment on the particular combination of outreach methods in which manufacturers are engaging on a monthly basis and associated costs therewith. In addition, although The Alliance does not specifically comment on the burden hours associated with non-traditional outreach,[10] NHTSA

[9] If a vehicle manufacturer does not wish to follow the Monitor's recommendations, the ACRO permits the manufacturer to propose an alternative communication strategy to NHTSA and the Monitor. ACRO ¶ 42.

[10] In its August 12, 2019 comments, The Alliance notes the burden associated with monthly outreach "[v]aries

recognizes that as the recalls progress and there is more frequent implementation of more-intensive outreach methods, the associated burden hours may also increase. Accordingly, NHTSA is also revising its estimate of the monthly burden upward from 2 hours to 10 hours to prepare and administer non-traditional outreach. NHTSA welcomes any additional insights from The Alliance regarding the specifics of its members' outreach costs and burdens.

As to the effectiveness and "practical utility" of outreach under the CCRs, this is in part reflected in the 2017 *State of the Takata Airbag Recalls* report from the Independent Monitor.[11] Notably, completion percentages for recalls of the oldest vehicles under the Takata Coordinated Remedy Program avoided a "leveling off" in completion percentage typically observed for recall campaigns involving vehicles 10 years or older, and this can be attributed to, at least in part, the ACRO and associated CCRs.[12] Another example is the completion percentages for Priority Group 4 vehicles which, for the first two quarters, were triple that of the completion percentages for recall campaigns launched prior to Coordinated Remedy Order in their first two quarters.[13] And a further example can be seen in completion percentages in the first six quarters for Priority Group 4 vehicles, which were twice as high compared to completion percentages in the first six quarters for vehicles with recall

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widely among manufacturers, but includes multi-OEM canvassing activities that are very labor intensive." *Id*. at 4.

[11] This report is available at https://www.nhtsa.gov/recall-spotlight/state-takata-recalls.

[12] *See State of the Takata Airbag Recalls* at 66, fig.37.

[13] *See id*. at 68, fig.39. Recall campaigns for Priority Group 4 vehicles were scheduled to launch March 31, 2017—after the ACRO and CCRs were issued. Most recall campaigns launched at that time. As noted in the Independent Monitor's report, before the issuance of the ACRO and the CCRs, recall campaigns "used mainly infrequent, letter-only communication." *See id*. at 67.

campaigns that were already underway before the Coordinated Remedy Order.[14] As noted in the Monitor's report, those campaigns "achieved in just two quarters what previously took more than five."[15] The Monitor's recent *Update on the State of the Takata Airbag Recalls* further discusses the efficacy of outreach, including an observation that most 2017 focus-group participants indicated that contact for a reminder regarding a serious, urgent safety risk should occur at least weekly, with almost two-thirds of survey respondents indicating several notifications each month would be appropriate.[16]

Maintaining such momentum—through mechanisms such as monthly outreach—is vital to the success of the recalls. And this is a goal in which Congress continues to take significant interest, including at a hearing on the issue on March 20, 2018. The Takata Monitor testified at that hearing: "Vehicle manufacturers using frequent, multi-channel outreach have seen completion percentages nearly twice as high as rates for vehicle manufacturers using traditional letter outreach, when targeting similarly situated vehicles over the same period of time."[17] Two vehicle manufacturers likewise testified about

[14] Again, recall campaigns for Priority Group 4 vehicles were scheduled to launch March 31, 2017—after the ACRO and CCRs were issued. Most recall campaigns launched at that time. Note that Priority Group 4 data for quarters 3 through 6 consist of data from one vehicle manufacturer, which launched its Priority Group 5 campaign early (and therefore, at the time of the report, had six quarters of data).

[15] *See id*. at 69, fig.40.

[16] *Update on the State of the Takata Airbag Recalls* (2018) at 14, fig.9, available at http://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/update_on_the_state_of_the_takata_airbag_recalls.v2.pdf. The Agency and the Independent Monitor have been and remain open to sharing information about the efficacy of certain methods of outreach to better guide vehicle manufacturers in executing their recall campaigns.

[17] Written Testimony of John D. Buretta, Independent Monitor, https://www.commerce.senate.gov/public/index.cfm/hearings?ID=EAE03543-B332-480F-8390-B301E8F79CBB.

their use of innovative outreach strategies to reach consumers and convince them to come in for a free repair.[18]

As to accounting for Monitor-conducted surveys and other activities, as a general matter, monitors are "an independent third-party, not an employee or agent of the corporation or of the Government."[19] Moreover, for the reasons described above, any such "collection of information" is subject to the PRA's investigatory exception. Additionally, it should be noted that such research was not a prerequisite to the implementation of the monthly-outreach provisions in the CCRs. As NHTSA previously observed in its notices, various other sources served as the bases for this recommendation.[20]

As to discounting our cost estimates based on vehicle manufacturers' settlement agreements in multi-district litigation proceedings, The Alliance's position is essentially that the ACRO predates the MDL settlement, and that "[t]he settling companies would have set aside more than $1Billion to comply with [the] ACRO, even if there had been no MDL settlement."[21] Comments (Aug. 12, 2019) at 5. The Agency disagrees that this dictates a change in its approach. While the ACRO predates the MDL settlements, the agency must, on an ongoing basis, consider all attendant circumstances and be forward-looking in estimating the costs associated with its initiatives—consistent with the forward-looking purpose of its statute: "to reduce traffic accidents and deaths and injuries resulting from traffic

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[18] Written testimony of Rick Schostek, Honda North America; Written Testimony of Desi Ujkashevic, Ford Motor Company, https://www.commerce.senate.gov/public/index.cfm/hearings?ID=EAE03543-B332-480F-8390-B301E8F79CBB.

[19] https://www.justice.gov/usam/criminal-resource-manual-163-selection-and-use-monitors.

[20] *See* 82 Fed. Reg. 45941, 45945 & ns.5–6 (Oct. 2, 2017); 82 Fed. Reg. 60789, 60794 & n.6 (Dec. 22, 2017).

[21] Those manufacturers are Toyota; Subaru; Nissan; BMW; Mazda; Honda; and Ford. *See generally In re: Takata Airbag Products Liab. Litig.*, 14-cv-24009, MDL No. 2599 (S.D. Fla.). Our 60-day notice only accounted for six vehicle manufacturers that have entered into settlement agreements—there are seven.

accidents." 49. U.S.C. 30101; *see id.* 30118(c)(1) (notification of vehicle owners of a defect); *id.* 30119 (notification procedures); *id.* 30120(d) (manufacturer's remedy program).

At present, settling vehicle manufacturers have already chosen to enter into these settlement agreements, and looking forward, these vehicle manufacturers must comply with its terms—including provisions for enhanced outreach efforts. It is appropriate that NHTSA's burden estimate discounts for enhanced outreach that will occur regardless of the ACRO. In fact, the Agency's view is that outreach conducted under the settlements appear to satisfy the minimum recommendations of the ACRO and CCRs. The Alliance's comments that costs associated with the ACRO were considered when executing the settlement agreements, or that manufacturers would have set aside those funds to comply with the ACRO in the absence of a settlement, do not affect this. But for NHTSA's ACRO, as NHTSA is presently submitting its information-collection renewal, settling MDL vehicle manufacturers would still conduct outreach that would satisfy the ACRO's requirements—and therefore the monthly outreach under the ACRO is not a marginal "burden" for those vehicle manufacturers for which the Agency must account in this collection.

To account for the progression of the recalls since its last notice, NHTSA is revising its previous estimates associated with this part of the collection. NHTSA continues to estimate a yearly average of 19 manufacturers will be issuing monthly supplemental communications over the next three years pursuant to the ACRO and the CCRs. Manufacturers may satisfy the CCRs through third-party vendors (which have been utilized by many manufacturers), in-house strategies, or some combination thereof. NHTSA estimates the cost for supplemental communications at $10.00 per VIN per month.

The volume of outreach required by the ACRO and the CCRs (and the costs associated with that outreach) is a function of the number of unrepaired vehicles that are in a launched campaign and are not otherwise accounted for as scrapped, stolen, exported, or otherwise unreachable. The schedule in Paragraph 35 of the ACRO delineates the expected remedy completion rate, by quarter, of vehicles in a launched remedy campaign.

Utilizing these variables, we now estimate an initial annualized cost over the next three years of $1,018,882,470 per year, with an annualized discount of $541,833,140 to account for outreach conducted pursuant to the MDL settlement agreements by seven vehicle manufacturers, for a net annualized cost of $477,049,330. NHTSA estimates that manufacturers will take an average of 10 hours each month drafting or customizing supplemental recall communications utilizing non-traditional means, submitting them to NHTSA for review, and finalizing them to send to affected owners and purchasers. NHTSA therefore estimates that 2280 burden hours annually are associated with issuing these supplemental recall communications, with an annualized discount of 840 hours to account for outreach conducted pursuant to the MDL settlement agreements by seven vehicle manufacturers, for a net annualized burden of 1440 hours.

Because of the forgoing burden estimates, we are revising the burden estimate associated with this collection. The 49 CFR part 573 and 49 CFR part 577 requirements found in today's notice will require 66,004 hours each year. NHTSA estimates the labor cost for compiling and submitting the required information under 49 CFR Parts 573 and 577 to be $33.98 per hour using the Bureau of Labor's mean hourly wage estimate for technical writers in the motor vehicle manufacturing industry

(Standard Occupational Classification # 27-3042).[22] NHTSA thus estimates that it will cost vehicle manufacturers $2,242,815.92 in wage costs to comply with the Part 573 and 577 requirements. The Bureau of Labor Statistics estimates that for private industry workers, wages represent 70.1% of total compensation.[23] Therefore, the total labor cost associated with the hourly burden is estimated to be $3,199,453. Accordingly, manufacturers impacted by 49 CFR part 573 and 49 CFR part 577 requirements will incur a recurring annual cost estimated at $92,334,913 total.

The burden estimate in this collection contemplated for conducting supplemental recall communications under administrative order to achieve completion of the Takata recalls is 1440 hours each year. That administrative order contemplates impacted manufacturers incurring an annual cost estimated at $477,049,330. NHTSA also estimates the labor cost for compiling and submitting the required information to be $35.28 per hour using the Bureau of Labor's mean hourly wage estimate for Media and Communications Workers in the motor vehicle manufacturing industry (Standard Occupational Classification # 27-3000).[24] Assuming that 1440 hours per year would be associated with issuing supplemental recall communications, at an average cost of $35.28 per hour, NHTSA estimates vehicle manufacturers will incur $50,803.20 (1440 hours x $35.28) annually in wage costs. The Bureau of Labor Statistics estimates that for private industry workers, wages represent 70.1% of

[22] National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100 - Motor Vehicle Manufacturing, May 2018, https://www.bls.gov/oes/current/naics4_336100.htm#47-0000, last accessed August 26, 2019; US Office of Management and Budget. *Standard Occupation Classification Manual*, 2018.

[23] Employer Costs for Employee Compensation-March 2019, https://www.bls.gov/news.release/pdf/ecec.pdf, last accessed August 26, 2019.

[24] National Industry-Specific Occupational Employment and Wage Estimates NAICS 336100 - Motor Vehicle Manufacturing, May 2018, https://www.bls.gov/oes/current/naics4_336100.htm#47-0000, last accessed August 26, 2019; US Office of Management and Budget. *Standard Occupation Classification Manual*, 2018.

total compensation.[25] Therefore, the total labor cost associated with the hourly burden of supplemental recall communications is estimated to be $72,472.47.

Therefore, in total, we estimate the burden associated with this collection to be 67,444 hours each year, with a recurring annual cost estimated at $569,456,715.47.

Estimated Number of Respondents –

NHTSA estimates that there will be approximately 249 manufacturers per year filing defect or noncompliance reports and completing the other information collection responsibilities associated with those filings. NHTSA estimates there will be an average of 19 manufacturers each year conducting supplemental nontraditional monthly outreach pursuant to administrative order in an enforcement action associated with the Takata recalls.

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Jeffrey Giuseppe

Associate Administrator for Enforcement

[25] Employer Costs for Employee Compensation-March 2019, https://www.bls.gov/news.release/pdf/ecec.pdf,

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