NOV 4 2003

Mr. Robert S. Strassburger
Vice President
Vehicle Safety and Harmonization
Alliance of Automobile Manufacturers, Inc.
1401 H Street, NW, Suite 900
Washington, DC 20005

Dear Mr. Strassburger:

This is in reply to your letter of September 2, 2003, regarding my July 21, 2003, letter to Mr. Cavallo of Halcore Group, Inc., which discussed the early warning reporting (EWR) responsibilities of small volume manufacturers.

I had advised Mr. Cavallo that "[f]or the purposes of determining whether the production of vehicles meets or exceeds the 500 vehicles per year threshold in Section 579.21 *et seq.*, the production of the divisions, parent, subsidiaries and affiliates must be aggregated." This interpretation is consistent with other letters interpreting the EWR regulation. See Letter from Jacqueline Glassman to John D. Evans of April 11, 2003, at p. 3; Letter from Jacqueline Glassman to Rod Nash of August 20, 2003, at p. 2; and Letter from Jacqueline Glassman to Rod Nash of October 10, 2003.

You assert that the interpretation that I provided to Mr. Cavallo was inconsistent with statements made by a person other than the Chief Counsel at a public meeting. The September 24, 2002 public meeting you reference concerned technical issues, such as security and acknowledgement of submissions, regarding electronic EWR submissions to the agency. The Federal Register Notice announcing this meeting was clear that this was to be only a technical meeting. See 67 FR 55448. Moreover, at the time of the meeting, we expressly stated that the information presented was not binding upon the agency, and that nothing stated at the meeting should be construed as a final National Highway Traffic Safety Administration (NHTSA) interpretation. Transcript p. 8.[1] In addition, the Alliance of Automobile Manufacturers (Alliance) and its members are familiar with NHTSA's interpretive processes. As such, the Alliance is fully aware that the Chief Counsel is the only NHTSA official with authority to issue interpretations of agency regulations. See 49 CFR 501.8(d)(4).

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[1]Docket NHTSA 2001-8677-530. Available at http://dms.dot.gov.

Second, you state that the interpretation in the Cavallo letter is inconsistent with how the agency intends to use the information collected from EWR, as stated in the final rule. You also said that the value in the information provided by low volume manufacturers is very limited when conducting trend analysis because a single incident can look like a high "incident rate" relative to the performance of other vehicles manufactured in larger quantities. In addition, you concluded that "the agency's guidance from September 2002 public meeting regarding the limited reporting requirements for low volume subsidiaries makes sense in the overall context of the EWR rule and the uses to which NHTSA plans to put the EWR information."

We disagree with your conclusion. The statement was not "the agency's guidance." We determined that the 500 unit production threshold is the appropriate demarcation point in part based on small business concerns. We also determined that aggregate reporting is appropriate in order to capture all vehicles manufactured by an entity with affiliates or subsidiaries. Moreover, while a single incident may skew the "incident rate" relative to other vehicles, it is not the only factor that controls NHTSA's initiation of a defect investigation or the determining factor in deciding to issue an initial determination. Also, EWR information will not be the sole basis for opening a defect investigation. As we stated in the preamble to the final rule, "if we identify matters that might possibly suggest the existence of a defect, we plan to seek additional clarifying information from the manufacturer in question, and from other sources, to help us to decide whether to open a formal defect investigation." 45822 FR at 45865. We see no reason to vary from our current position.

Lastly, you stated that, in the context of FMVSS No. 208 phase-in requirements, the agency in an interpretation letter previously determined that low volume subsidiaries of larger parent companies retain their low volume status. As you recognize in your letter, a letter interpreting FMVSS No. 208 does not control the interpretation of the EWR regulation. We also noted in that letter that the interpretation provided therein only reflected consideration of factors underlying FMVSS No. 208, and did not provide guidance for interpreting any other regulatory provisions. See Letter from John Womack to Grant Nakayama of August 22, 2001. We do not believe that the concerns underlying that interpretation letter are the same as those underlying the EWR regulation. First, the exclusion of low volume subsidiaries from the phase-in requirements of FMVSS No. 208 reflected the technical challenges faced by smaller manufacturers given the complexity of the advanced air bag requirements. Second, that exclusion simply deferred compliance with the advanced air bag rule by low volume subsidiaries to the end of the phase-in period. In contrast, your suggestion would, in effect, totally exclude low volume subsidiaries from the comprehensive reporting requirements of the EWR regulation.

If you have any questions, you may call Andrew DiMarsico of this Office (202-366-5263).

Sincerely,

Jacqueline Glassman

Jacqueline Glassman
Chief Counsel