

OCT 14 2003

Mr. Lance Tunick
Vehicle Services Consulting, Inc.
P.O. Box 23078
Santa Fe, NM 87502-3078

Re: Request for Clarification and Reconsideration of Interpretation

Dear Mr. Tunick:

This is in reply to your FAX letter of August 12, 2003, asking for a clarification and reconsideration of recent NHTSA interpretations of certain provisions of the early warning reporting (EWR) regulation issued by the National Highway Traffic Safety Administration (NHTSA), which are set out at Subpart C of 49 CFR Part 579.

Your first question is: "Consistent with the May 7, 2003, interpretation to Dan De Decker . . . is it correct that a Small Volume Manufacturer ('SVM', i.e. a producer with fewer than 500 USA units/year) does not have to report information going back 9 model years to the extent that such information is not available as computer data and only exists on paper?"

The threshold figure of 500 is not a sum total of motor vehicles but separate totals applicable to the individual categories we have established for EWR purposes. Thus, if a manufacturer produces 350 light vehicles and 400 medium-heavy vehicles in a year, it would report under 49 CFR 579.27 for each category.

The De Decker letter addressed a different situation than the one you raise. We informed Mr. De Decker that, to the extent that a manufacturer has not stored historical warranty records in an electronic medium (e.g., the warranty system is only paper-based), the manufacturer need not submit historical warranty information with respect to the one-time historical report required by Section 579.28(c). The one-time historical report is not required from manufacturers that report only under Section 579.27, and a manufacturer must provide the information on incidents involving deaths, as specified in subsections (b) and (c) thereof, even if it "only exists on paper." Prospectively, beginning with the third calendar quarter of 2003, manufacturers covered by 49 CFR 579.21-.26 must report warranty and warranty adjustment data regardless of the type of data storage system they maintain.

Your second question relates to the timing of a manufacturer's determination of the 500 vehicle production threshold separating limited and comprehensive reporting under the early warning reporting regulation. As set forth in a letter to Jason Cavallo of July 21, 2003, where individual small volume manufacturers are held by a single parent corporation, under Section 579.3(b), EWR reports could be filed by either the parent corporation or each of the vehicle-manufacturing subsidiaries, but in either event, the production of all related vehicle manufacturers must be aggregated to determine whether the threshold for comprehensive reporting was met. We also stated in a July 24, 2003 letter to you that we expect each manufacturer to make a good faith estimate of its expected annual production of a category of vehicle, and that if its estimated production is 500 or more annually, the manufacturer should begin comprehensive reporting in the quarter in which the estimate is made rather than the quarter in which production actually reaches or exceeds 500.

You also stated that you had been under the impression that comprehensive reporting would begin with the first quarter following the calendar quarter in which production first exceeded 500. In consideration of these letters and your understanding of the regulation, you have asked us to agree to exercise our prosecutorial discretion not to take action against any manufacturer whose total production in 2003 was less than 500 if it fails to file comprehensive information for the first quarter of 2004.

While we do not believe it appropriate to make such a commitment, we do not anticipate taking enforcement action, particularly against relatively small manufacturers, who make good faith mistakes in attempting to comply with the EWR regulation.

If you have any questions, you may phone Andrew DiMarsico of my staff at (202) 366-5263.

Sincerely,

Original Signed By

Jacqueline Glassman
Chief Counsel