

**SUPPORTING STATEMENT FOR  
CRIMINAL PENALTY SAFE HARBOR PROVISION  
OMB CONTROL NUMBER: 2127-0609**

**A. JUSTIFICATION:**

1. Explain the circumstance that make the collection of information necessary. Attach a copy of the appropriate statute or regulation mandating or authorizing the collection of information.

Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act (Pub. L. No. 106-414) establishes 49 U.S.C. § 30170, which provides for criminal liability in circumstances where a person had the intention of misleading the Secretary of Transportation (Secretary) regarding safety-related defects in motor vehicles or motor vehicle equipment that caused death or serious bodily injury. It also contains a "safe harbor" that allows a person to avoid criminal penalties if that person lacked knowledge at the time of the violation that the violation would result in an accident causing death or serious bodily injury and if that person corrects any improper reports or failure to report to the Secretary within a reasonable time. The Secretary is required to establish by regulation what constitutes a "reasonable time" and a sufficient manner of "correction." This collection of information is necessary because it has been statutorily-mandated. In addition, this information collection supports the Department of Transportation's strategic goal in safety by working towards the elimination of transportation related deaths and injuries.

A copy of Section 5 of the TREAD Act is attached.

2. Indicate how, by whom, and for what purpose the information will be used. Indicate actual use of information received from the current collection.

This collection of information would apply to any person who seeks safe harbor protection as noted above. Thus, it applies to motor vehicle and motor vehicle equipment

manufacturers, including officers or employees thereof, and other persons who respond to or have a duty to respond to an information collection pursuant to 49 U.S.C. § 30166 or a regulation, requirement, request, or order issued thereunder.

NHTSA anticipates using the information collection to evaluate a person's application for protection from criminal prosecution and to aid in the identification of potential safety defects in motor vehicles and motor vehicle equipment. However, no information has been collected since the publication of the interim final rule on December 26, 2000.

3. Describe whether the collection of information involves the use of technological collection techniques or other forms of information technology.

This collection of information does not require the use of any specific technological collection technique and, based on experience from prior years, NHTSA has not established an automated process because it does not expect a large volume of information to be submitted under this information collection. Nor does it impose any obstacles to using improved information technology to prepare the information to be provided to NHTSA. Thus, a person submitting information pursuant to 49 U.S.C. § 30170 may do so by any means that person would prefer, so long as the information necessary to satisfy the criminal penalty safe harbor provision of 49 U.S.C. § 30170 is provided in a manner that meets the proposed regulation, as set out in 49 CFR 578.7(c).

It seems unlikely that the use of improved information technology would significantly reduce the amount of time needed to organize and set forth the information that would be reported by a person seeking a “safe harbor” from potential criminal liability. However, there are no obstacles to using improved technology in preparing the information necessary to qualify for that “safe harbor.”

4. Describe efforts to identify duplication. Show specifically why similar information

cannot be used.

The collection of information contained within this rule does not require respondents to submit duplicative information. It will result in persons identifying previously submitted improper reports and correcting or updating the relevant information and documents, but not resubmitting the same information or documents. Given that the information that would be reported here pertains to specific matters, there is no similar information to be used.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burdens.

This collection of information would follow an outstanding requirement for provision of information, which may be established by regulation or in an investigation. In enacting 49 CFR 578.7, NHTSA has considered its impact on small businesses. As a practical matter, the bulk of the relevant information requirements are imposed on large businesses, principally motor vehicle manufacturers. Insofar as this collection would burden small businesses, it still only requires respondents to provide the following three pieces of information, which they already were obligated to provide, and only to the extent that information is available to them: (1) a report identifying each previous improper item of information or document and each failure to report under 49 U.S.C. § 30166, or a regulation or order issued thereunder, for which protection is sought, (2) the specific predicate under which the improper or omitted report should have been provided, and (3) the complete and correct reports, including all information and documents required to be submitted that were not previously submitted or were improperly submitted to NHTSA or, if the person cannot provide this, then a detailed description of that information and/or the content of those documents and the reason why the individual cannot provide it to NHTSA.

Furthermore, based on the fact that the agency has received no reports from entities since

this information collection requirement was first put into place, we have estimated that roughly one person a year would submit a report under this collection of information. We have also estimated that a maximum of two hours would be needed to gather and provide the information. Thus, we have estimated that two burden hours a year would be spent on this collection of information. In light of the above, we believe the burden to small businesses in complying with this collection of information to be almost non-existent.

6. Describe the consequence to Federal program or policy activities if the information is not collected or collected less frequently.

If this information is not collected or is not collected on a per matter basis, NHTSA will not be able to meet its statutorily-mandated obligations, primarily by failing to identify safety-related defects in motor vehicles and motor vehicle equipment.

7. Explain any circumstances that requires the collection to be conducted in a manner inconsistent with the guidelines set forth in 5 CFR 1320.6.

The rule is fully consistent with all the guidelines set forth in 5 CFR 1320.6.

8. Provide a copy of the FEDERAL REGISTER document soliciting comments on extending the collection of information, a summary of all public comments responding to the notice, and a description of the agency's actions in response to the comments. Describe efforts to consult with persons outside the agency to obtain their views.

This regulation was first issued as an interim final rule, published in the Federal Register at 65 FR 81414 on December 26, 2000. NHTSA subsequently published a final rule that implemented the safe harbor provision. 65 FR 38380 (July 24, 2001). On March 14, 2007 (72 FR 11930), NHTSA published a notice soliciting comments on the extension for 3 years of a Paperwork Reduction Act ("PRA") clearance for the collection of information required therein. NHTSA received no public comments on this proposed extension. A copy of this March 14, 2007 notice is provided in the Attachments.

9. Explain any decision to provide any payment or gift to respondents, other than

remuneration of contractors or grantees.

No payment or gift will be provided to any respondent.

10. Describe any assurance of confidentiality provided to respondents.

The rule provides no assurances of confidentiality to respondents. However, it does not supersede any outstanding provisions for confidentiality under other existing laws or regulations regarding information reported to NHTSA.

11. Provide additional justification for any questions on matters that are commonly considered private.

The information requested from the respondents is not of a private nature.

12. Provide estimates of the hour burden of the collection of information on the respondents.

As stated above, we have estimated that persons seeking safe harbor protection would spend a total of two burden hours a year on collecting this information. This number is based on an estimate of one response a year with each collection of information taking two hours to complete. Using the above estimate of 1 respondent per year, with an estimated two hours of preparation to collect and provide the information, at an assumed rate of \$26.70 an hour, the annual, estimated cost of collecting and preparing the information necessary for 1 complete “safe harbor” corrections is \$53.40.

13. Provide estimates of the total annual cost to the respondents or recordkeepers.

Assuming the respondent uses the U.S. Postal Service, the calculation cost for postage for one report at a cost of 41 cents each is \$0.41. If the respondent e-mails the report to NHTSA, the cost may be less than \$0.41.

14. Provide estimates of annualized costs to the Federal Government.

The costs to the Federal Government are minimal with respect to this information collection. NHTSA’s Office of Chief Counsel, the Office of Defects Investigation, and the

Office of Vehicle Safety Compliance are the only offices normally involved in processing and analyzing information relating to safety-related defects. Given that only one report a year is expected, this collection of information will not involve a significant portion of those offices' time. No government form, printing or postage are involved in this collection of information.

15. Explain reasons for any program changes or adjustments imported in Items 13 or 14 of the OMB Form 83-I.

No changes in Items 13 or 14.

16. For collections of information whose results will be published, outline plans for tabulation and publication.

The collections of information resulting from this rule will not be published.

17. If seeking approval to not display the expiration date form OMB approval of the information collection, explain the reasons that display would be inappropriate.

Approval to not display the expiration date for OMB approval is not sought.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

No exceptions to the certification statement are made.

## **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection of information does not employ statistical methods.

### **Attachment(s)**

1. Section 5 of the TREAD Act (Pub. L. No. 106-414)
2. July 24, 2001 (66 FR 38380) Criminal Penalty Safe Harbor Provision final rule
3. March 14, 2007 (72 FR 11930) request for comment on a 3-year extension of the collection of information associated with the Criminal Penalty Safe Harbor Provision rule.

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