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March 23, 2001

NHTSA-01-8677-37

National Highway Traffic Safety Administration  
Docket Management  
Room PL-401  
400 Seventh Street, S.W.  
Washington, D.C. 20590

Re: Docket No. NHTSA-2001-8677, Notice 1  
ANPRM: TREAD Act's Early Warning Reporting Requirements

Dear Madam or Sir:

This firm serves as General Counsel to the Specialty Equipment Market Association (SEMA). We have prepared these comments on SEMA's behalf.

SEMA is an industry association representing nearly 4,600 mostly small businesses that are engaged in the manufacture, distribution and retail of specialty automotive parts and accessories. The specialty equipment manufactured, distributed and retailed by our members includes products which enhance the performance and handling of motor vehicles as well as cosmetic equipment which improves and personalizes the appearance of such vehicles. Many of these small businesses will be subject to the rules being considered by NHTSA to implement the Transportation Recall Enhancement, Accountability, and Documentation Act (the "TREAD Act"). Most of these small companies employ a modest number of workers and operate on disciplined cash flows. Given limited personnel and financial constraints, these small businesses will be unable to assume burdensome reporting requirements.

The following are comments and recommendations regarding the early warning reporting requirements of the TREAD Act. We have attempted to respond to your request for guidance on how to best implement the TREAD Act and to obtain the information which is needed by NHTSA to properly protect the public from automotive-related safety hazards. At the same time, it is important that the program that facilitates this process does not place unnecessary burdens on the regulated industry. In this regard, we strongly recommend that the proposed rule focus on *safety-related defects* in motor vehicles and motor vehicle equipment. The TREAD Act itself contains this focus

in adopting the definition for “motor vehicle safety” as defined in the National Traffic and Motor Vehicle Safety Act of 1966. “Motor vehicle safety” is “the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.” [Emphasis added] (49 USC Section 30102).

SEMA concurs with the purposes of the TREAD Act and will work with NHTSA to assist in the successful adoption of implementing regulations. We are, however, concerned that any expansion of the current reporting requirements be limited to information which is related to vehicle safety, be required on the basis of a reasonable showing of need and be limited to only that information which is useful to NHTSA in dealing with automotive safety-related defects.

#### Entities Subject to the Reporting Requirement

Motor vehicle and equipment manufacturers are currently required to provide information to NHTSA where there is a finding by the manufacturer or NHTSA that the vehicle/equipment contains a safety-related defect. (49 CFR Part 573) The central criterion for requiring such information is that there be a determination of a safety-related defect. We believe the TREAD Act makes it abundantly clear that the early warning regulations are to be based on the same “safety-related defect” criterion.

If the information that is to be supplied is directly related to safety-related defects in vehicles and equipment, there is no reason to consider periodic reports or to consider which categories of equipment should be subject to the requirement. Such information should be required of all who produce automotive products and it should be supplied within a reasonable period of time after a manufacturer makes a determination that there is a safety-related defect in its products. In the event NHTSA determines that it should collect information which is beyond the scope of the Act and is not directly related to safety-related defects in motor vehicles and motor vehicle equipment, such information should be required only from manufacturers of categories of vehicles and, ultimately, equipment, that have a history of serious safety-related defects as has been proposed in the ANPRM.

It would seem that if such reporting requirements are to be imposed, they should be directed first to the vehicle manufacturers in that the vehicle manufacturers are most likely to have the type of information which would be useful to NHTSA. The next most likely source of information would come from those manufacturers producing equipment systems which have been historically associated with findings of safety-related defects. The next category of parts manufacturers to be included in the reporting system, if it is determined that the reporting system should be extended, would be those producing products which are covered by Federal Motor Vehicle Safety Standards. We should

then consider whether more is to be gained by expanding the reporting requirements to additional groups of manufacturers. To do otherwise would violate the mandate to assure that reporting requirements are not unduly burdensome on manufacturers and would result in massive amounts of extraneous information being sent to NHTSA. We do not believe that requiring such reporting by equipment manufacturers, especially accessory equipment, at this time is warranted, except with regard to information which involves evidence of safety-related defects in automotive products.

Section 2 (a) of the TREAD Act provides that manufacturers of motor vehicles and motor vehicle parts are required to provide information to NHTSA in the event of a voluntary safety recall campaign or other safety campaign in a foreign country where the vehicles or equipment subject to the recall or campaign is identical or substantially similar to vehicles or equipment sold in the United States. Similarly, where such recalls or campaigns are required by foreign governments, such information must be provided to NHTSA. This treatment of recalls and campaigns parallels requirements which are imposed on manufacturers with regard to similar findings in the United States. We support this expansion of the authority of and requirements imposed by NHTSA.

#### Basis for Requiring Information

As is discussed above, under the existing regulations of NHTSA, a manufacturer is required to supply safety-related information once a determination has been made that a safety-related defect exists in the products of a manufacturer. The determination is to be made by the manufacturer or NHTSA. The TREAD Act would expand this procedure to include similar determinations made in foreign countries. We believe that determinations by NHTSA and the manufacturer of safety-related defects should continue to be the basis for triggering reporting requirements. We are concerned that others who might be incorporated in the process may not have the ability to make such determinations with reasonable levels of reliability. Further, we are concerned that others may make representations about safety-related defects that ultimately are found to be false but cause irreparable harm to the manufacturer in the meantime.

The ANPRM suggests that information might be required of manufacturers on the basis of claims of consumers through complaints or warranty claims, complaints filed in litigation, the commencement of internal investigations of the manufacturer and changes in product design. We strongly object to this approach if adopted in a wholesale fashion. To begin, complaints of consumers, whether general or as a result of a warranty claim, may well allege product defects where none exist. In the event the manufacturer becomes aware of consumer complaints or warranty claims, it is the responsibility of the manufacturer to determine whether a safety-related defect is in evidence and if such a defect is in evidence, it is the responsibility of the manufacturer to provide such information to NHTSA. To require product information on the basis of such complaints without a reasonable basis for finding such a defect would be irresponsible and could cast

aspersions on the manufacturer. We are not able to define how many instances of warranty claims or consumer complaints should be in evidence before a manufacturer makes the determination that reporting requirements have been triggered. Such a determination is so dependent on the particular circumstance that numbers of claims or percentages of complaints vis-a-vis total production should not be established in the regulation.

There are suggestions in the ANPRM that certain companies failed to provide information to NHTSA of large numbers of bodily injury and property damage claims. While we cannot speak to the facts of those cases, it would seem that one could decide that the manufacturers in question had sufficient information to determine that there was a reasonable basis for concluding that a safety-related defect existed in their products. If the purpose of the proposed rulemaking is to deal with the aberrational circumstances described, we believe that it is possible that even the proposal may not stem abuses in the future. We would also remind that often bad facts lead to bad law. Similarly, complaints which are brought against manufacturers in litigation often contain claims of product defects where none exist. Unless there is some reasonable basis for such claims, this should not be the basis of a requirement for a reporting program by the manufacturer.

We are also concerned about requiring manufacturers to provide information concerning internal investigations. Should such investigations lead to the conclusion that there is a product defect which is safety-related, the manufacturer is under an obligation to provide NHTSA with information concerning the defect. To require information about the investigation prior to establishing whether or not such a defect exists, would have the effect of discouraging aggressive investigations by manufacturers and would subject manufacturers which conduct such investigations to the substantial risk of product liability claims prior to a reasonable justification for such claims.

Evidence of changes in product design is also an inappropriate basis for requiring information reporting from the manufacturer. If the purpose of the design change is to remedy a product defect which is related to safety, the manufacturer is obligated to provide such information to NHTSA. If the design change is for some other reason, there should be no obligation to provide such information to NHTSA. For this reason, design changes, by themselves, should not be a basis for requiring information from the manufacturer.

It would seem more appropriate to require product information from manufacturers where there has been an incident where death or serious injury has resulted from a product failure or where there is a pattern that could reasonably lead to the conclusion that the product has a safety-related defect.

The underlying authority provided to NHTSA for the early warning reporting requirement is found in Section 2 (b) of the TREAD Act. The language of the Act provides for reports, periodically or upon request, from manufacturers on information received by the manufacturer "...to the extent that such information may assist in the

identification of defects related to motor vehicle safety...(including) data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects...." As a result of the language of the Act, it is beyond the authority of NHTSA to request information that has been submitted to the manufacturer until there is some reasonable basis for concluding that a safety-related defect is in evidence. The Act also requires information on "customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of...equipment." The language quoted above relating to motor vehicle safety is clearly intended to limit the scope of the authority granted to the requirement for information that relates to safety-related defects in motor vehicles and motor vehicle equipment. This is so even though existing regulations would require reporting of such campaigns where there has been no finding of a relationship of such a campaign to a safety-related defect. Information concerning customer satisfaction campaigns, recalls and the like are beyond the scope of the authority granted by the Act unless there is some reasonable basis for concluding that they are related to a safety defect in a vehicle or item of equipment.

The amendment to 49 U.S.C. 30166 creating Section (m)(3)(C) which requires reporting of information received by a manufacturer of actual notice of fatalities or serious injury alleged or proven to be caused by a defect in a motor vehicle or motor vehicle equipment, must be read in light of the purposes of the Act and other sections of the Act which require that the "...Secretary shall not impose requirements unduly burdensome to a manufacturer...." We would suggest that the information which must be supplied by the manufacturer must have some reasonable basis for concluding that the death or serious injury was, in fact, related to a defect in a vehicle or a piece of equipment. Such a procedure would protect manufacturers from reporting where the requirement is the result of spurious claims which are found in complaints against manufacturers in litigation or otherwise.

#### Format for Information Required by the Act

We would also like to comment on the type of information which is to be required and the form in which it is to be supplied. To begin, we agree with the provisions of the Act which preclude requiring manufacturers from maintaining and submitting records which they do not maintain. Further, the Act maintains that manufacturers not be required to undertake activities which are unduly burdensome. Therefore, the prohibition on requiring new records or requiring records which are unduly burdensome limit the type and format of the information which may be required of manufacturers. Despite the representations in the ANPRM to the contrary, many, if not most of the manufacturers of specialty equipment are small businesses. Their ability to participate in burdensome programs to supply information about their products is limited. Therefore, we would respectfully suggest that such manufacturers be required to provide only that information which they possess and only in the fashion in which the information is maintained. The suggestion by NHTSA that manufacturers might be required "...to process, organize, and

to some degree analyze the raw data...” is, we believe, beyond the authority granted by the Act. Further, we agree that the information which is required of the manufacturers should be maintained in confidence unless and until conclusions establishing safety-related defects have been determined concerning the products and recalls are required. This is consistent with the requirements of the Act that information not be disclosed pursuant to Section 30167 (b).

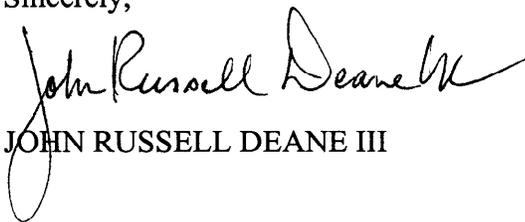
The form in which the information is required under the regulations should consider the ability of the manufacturers to comply. As is stated above, the businesses which comprise the specialty equipment industry are small businesses and are not capable of meeting new formatting requirements. Their ability to supply information in a uniform, high technology fashion may well present an insurmountable obstacle. We believe that the information which is required should be only that which is directly related to the safety-related defect which has been found to exist. Further, the information required should be that which is available to the manufacturer and in the format in which it is kept by the manufacturer.

#### Regulatory Requirements

SEMA disagrees with the conclusion that small businesses will not be affected by the regulations which will be ultimately promulgated by NHTSA to effect the early warning reporting procedures. As we have maintained, SEMA is an industry association of small businesses. Even with the recommendations that we have made, the eventual regulations will impose a burden on our members which is out of proportion to the benefits which may be achieved. We respectfully request that NHTSA comply with the requirements of the Regulatory Flexibility Act and seek alternative approaches in achieving the goals of the TREAD Act which are less burdensome on the small businesses that comprise the automotive aftermarket.

We appreciate having the opportunity to provide our comments on this matter and stand ready to provide whatever additional information is available to us to the extent that such information might be of value to NHTSA.

Sincerely,



JOHN RUSSELL DEANE III