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December 10, 2001

The Honorable Jeffrey W. Runge, M.D.
Administrator
National Highway Traffic Safety Administration
400 Seventh Street, SW
Washington, DC 20590

Subject: Docket No. NHTSA-2001-10773
49 CFR Part 579
Reporting of Information About Foreign Safety Recall Campaigns Related to Potential Defects

Dear Dr. Runge:

The Association of International Automobile Manufacturers, Inc. (AIAM), submits the attached comments in response to NHTSA's Notice of Proposed Rulemaking (NPRM) regarding implementation of the Foreign Recall Reporting Requirements of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (66 FR 51907). AIAM believes that simplicity and clarity are critical elements of the foreign recall reporting rule, particularly in light of the TREAD-mandated five working day reporting deadline and potential criminal penalties for noncompliance.

AIAM member companies are parts of global manufacturers and have unique experience and expertise in dealing with the complex issues of international manufacturing and the sale of motor vehicles. AIAM appreciates your consideration of our comments. Should you have any questions on this matter, please contact me at 703.247.2105.

Sincerely,

Michael X. Cammisa
Director, Safety

cc: Kenneth N. Weinstein, NHTSA Safety Assurance
Jonathan White, NHTSA Office of Defects Investigation
Z. Taylor Vinson, NHTSA Office of Chief Counsel

BUCKLE UP AMERICA
There's Just Too Much to Lose

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COMMENTS OF THE ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS (AIAM) REGARDING NHTSA'S NOTICE OF PROPOSED RULEMAKING ON FOREIGN RECALL REPORTING REQUIREMENTS UNDER THE TREAD ACT

December 10, 2001

The Association of International Automobile Manufacturers, Inc. (AIAM)[1] appreciates the opportunity to offer its comments and recommendations in response to NHTSA's NPRM on foreign recall reporting requirements under section 3(a) of the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act. AIAM has several concerns regarding the proposed requirements in NHTSA's notice, and we therefore offer several suggestions to clarify and narrow the proposed requirements.

On its face, section 3(a) imposes relatively straightforward reporting obligations. The provision stands in contrast to the detailed information elements and other requirements specified in section 3(b) of TREAD for "early warning" reports. When the simplicity of section 3(a) is considered along with the very stringent 5 working day reporting deadline and the addition of criminal penalties under section 5(b) of TREAD, the need for simple, unambiguous reporting requirements for foreign recalls is apparent. The two provisions are also distinguishable in that the "early warning" requirements address the earliest stages of an investigation, whereas the foreign recall requirements relate to the end of an overseas process, in which there has been a determination to conduct a campaign. Because of differences in the scope and level of detail of the two provisions, the agency should not feel compelled to combine definitions and procedures for the section 3(a) and 3(b) rules. Simplicity and clarity are critical elements of the foreign recall reporting rule.

Although section 3(a) is fundamentally straightforward, there are certain issues raised in the agency's proposal that increase complexity and could lead to confusion if not addressed in the final rule. The foreign recall requirements implicitly raise issues involving relationships among business entities overseas and product differences in various international markets. The AIAM member companies are parts of global manufacturers and have unique experience and expertise in dealing with these complex issues of international manufacturing and sale of motor vehicles. Therefore, through

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[1] AIAM members include American Honda Motor Co., Inc., American Suzuki Motor Corporation, Daewoo Motor America, Hyundai Motor America, Isuzu Motors America, Inc., Kia Motors America, Inc., Mitsubishi Motors America, Inc., Nissan North America, Inc., Peugeot Motors of America, Inc., Saab Cars USA, Inc., Societe Anonyme Des Usines Renault, Subaru of America, Inc., and Toyota Motor North America, Inc. The Association also represents original equipment suppliers and other automotive-related trade associations. AIAM members have invested over $20 billion dollars in new production and distribution capacity, creating tens of thousands of high-skill, high-wage jobs across the country in manufacturing, supplier industries, ports, distribution centers, headquarters, R&D centers and automobile dealerships.

these comments, we identify several areas of concern and suggest possible solutions for NHTSA's consideration.

1. **Definition of "manufacturer".** Proposed section 579.15 requires the reporting of any determination by the manufacturer, **"including any of its subsidiaries and affiliates,"** to recall vehicles or equipment. The proposed definitions of "other safety campaign" and "safety recall" in section 579.11 would add the term "agent" to the list of potentially affiliated entities for purposes of the foreign recall reporting rule. Unfortunately, the meaning of these three terms is not clear, creating a serious problem in the context of a reporting requirement with a 5-day deadline and criminal penalties for noncompliance.

In the preamble to the proposal, NHTSA asserts broad jurisdiction over foreign-based corporations that produce vehicles for sale in the U.S., not just U.S.-based subsidiaries. As stated in Attachment 10 to the Alliance of Automobile Manufacturers' comment on the agency's early warning reporting ANPRM, NHTSA should use the flexibility provided by Congress under TREAD to avoid unnecessary extraterritorial effects of regulations, by assuring that the regulations are reasonable, restrained, and sensitive to any concerns that might be raised by foreign countries in the regulatory process. To avoid unnecessary interference with the sovereignty of other nations, NHTSA should seek to extend its requirements to foreign entities only where there are direct, substantial, and foreseeable effects of the activities of those entities on the U.S.

AIAM is particularly concerned that the agency not seek to impose liability on a manufacturer based on a failure to obtain information in the possession of undefined "subsidiaries," "affiliates," and "agents" that have no nexus to the U.S. Manufacturers have relationships with a variety of entities overseas, and these relationships take a wide range of forms. Marketing in some countries is undertaken through distributors that are independent from the manufacturer. Some of these entities may add components to vehicles overseas without the involvement of the original manufacturer. In addition, some of these foreign entities may engage in "safety campaigns" (particularly as broadly defined in the proposal, see below) without notifying the manufacturer in advance or in some cases at all. In some instances, these distributor entities are no larger than a single dealership. These entities have no direct connection with the U.S. market, and it would be unreasonable for NHTSA to seek to extend the scope of its regulations to the activities of these entities. Manufacturers may have no, or only limited ability to discover the actions by such entities, so it would also be unreasonable to hold the manufacturers accountable for reporting the activities of these entities.

Due to the ambiguity in the scope of the terms "subsidiaries," "affiliates," and "agents" in section 579.13 and the potential for inappropriate extension of those terms, AIAM urges that NHTSA not attempt to expand the definition of "manufacturer" beyond the definition that is currently in the Safety Act and which Congress left unchanged when enacting TREAD.

2. **"Substantially similar" vehicles and equipment**. AIAM has several concerns with respect to proposed section 579.12 that purports to define 'substantially similar" vehicles

or equipment. We strongly urge that the provision be replaced with a simpler, more objective definition.

Our principal concern relates to the fifth criterion in the definition (section 579.12(a)(5)). This provision would require the reporting of recalls involving foreign-sold vehicles (even if the vehicles are of a type not sold in the U.S.) if the component or system that formed the basis for the recall is used in a U.S.-sold vehicle. However, the determination of whether U.S. and foreign components/systems are the same is not always clear or readily ascertainable, and we know of no company that has a system that allows tracking at the component or sub-component level. Some portions of a system may be the same in U.S. and foreign vehicles without the entire system being the same. For example, the same hydraulic components could be used in U.S. and foreign brake systems but different friction components could be used. Moreover, the precise sub-component in a system that causes a recall to become necessary may not be used in the dissimilar U.S. vehicle, potentially making the reporting obligation ambiguous. In these circumstances, making a determination within the 5-day reporting window would be all but impossible. The meaning of section 579.12(a)(5) is further confused given the similarly worded 579.12(b). The existence of the two separate provisions raises questions about their meaning.

Another aspect of the fifth criterion that is confusing involves common suppliers. Suppose a vehicle manufacturer were to conduct a recall overseas based on a defect in a system (e.g., a seat belt) supplied by an independent supplier. This supplier may have sold the same system to other manufacturers, some of which may use the system in U.S. vehicles. Section 579.12(a)(5), in conjunction with section 579.13(a), could be read to require the first manufacturer to report to NHTSA. However, it would be unreasonable to require vehicle manufacturers to have such a complete knowledge of all component sourcing for other manufacturers. For all the reasons stated above, the fifth criterion (section 579.12(a)(5)) should be deleted.

In addition, we question the usefulness of the fourth criterion relating to "counterpart" vehicles. See section 579.12(a)(4). The term "counterpart" is no more objective or unambiguous than the phrase "identical or substantially similar," so its inclusion in section 579.12 is not only not useful, but also introduces an ambiguity, which is inappropriate given the penalties for noncompliance. Therefore, this criterion should also be deleted.

AIAM recommends that the agency adopt a simple, objective definition in section 579.12(a). Objectivity is critical, given TREAD's 5-day reporting period for foreign recalls and the existence of criminal penalties for noncompliance.

Notwithstanding these concerns, if the agency retains the fifth criterion in some form, it should not be incorporated into the annual reporting requirement in section 579.13(e). That provision would require each manufacturer to provide to NHTSA by November 1 of each year a list of "identical or substantially similar" vehicles that it intends to sell in the U.S. during the following year. With regard to the fifth criterion of 579.12(a), the scope

of this proposed requirement is unclear. Does NHTSA intend to require manufacturers to report all components in any of their vehicles that are used both in the U.S. and overseas? If so, the reporting obligation would be overly broad and the accompanying burden would be excessive, because we know of no manufacturers that have systems to do this, and we doubt that they reasonably could be created. This could result in the reporting of more information than NHTSA could effectively process and use. In fact, such an interpretation would likely result in the reporting of all vehicles worldwide, due to likely common part usage at some level (such as bolts and fasteners), and would thus make the annual list confusing and meaningless.

3. **Report content.** Proposed section 579.14 would require that reports must contain the information specified in section 573.5(c)(1) through (7). Collecting all this information within the 5 business day period may be extremely difficult, since some of it may not have been previously developed. The specified information includes a chronology of events in the foreign country, test results using the foreign country's test procedure, and information on the number of affected vehicles in the foreign country. Much of the information would be of limited value in assessing the potential effect in the U.S. AIAM recommends that the agency only require the submittal of the information in paragraphs (1), (2), and (5) (i.e., the manufacturer's name, the affected vehicle population, and a description of the defect) within the 5 business day period. If the agency finds that it needs additional information in order to evaluate a particular situation, it has the authority to require the submittal of such information at a later date through a more narrowly targeted request. Moreover, it would frequently be in the interest of the manufacturer to provide additional clarifying information voluntarily in its report, so further mandated information is unnecessary.

4. **Other safety campaigns.** The definition of "other safety campaign" in section 579.11 is overly broad and unworkable. The proposed definition potentially applies to all communications from manufacturers relating to vehicle operation or repair. As written, it could apply to routine maintenance instructions in an owner's manual, advertising relating to maintenance, or even seat-belt use campaign or anti-drunk driving materials. Congress intended the phrase "or other safety campaign" in TREAD to assure that manufacturers report on foreign recall campaigns, whether government mandated or voluntary, even if the elements of such campaigns differ in minor respects from U.S. campaigns (such as timing or manufacturer payment requirements) and even if the activity is not expressly designated as a recall. There is insufficient justification to extend reporting requirements to other types of activities. To correct this problem, NHTSA should provide a single definition of "safety recall or other safety campaign," using the language of the proposed definition of "safety recall."

5. **Recall determinations.** Section 579.13(b) would require manufacturers to report any "determination" by a foreign government that a recall/campaign **"must"** be conducted. However, the preamble (66 Fed. Reg. 51910) states that such a "determination" includes any determination that a recall **"should"** be conducted, whether final, initial, or conditional. The preamble language might be read to extend to informal urging of a recall by staff level officials, even before a full technical analysis has been completed.

This provision should be clarified to apply only to "official" or "formal" determinations that are in writing.

6. **Report timing.** The reporting requirement in section 579.13 establishes a "5 business day" time frame for making reports, consistent with TREAD. The agency should clarify in that section that the "business day" calculation excludes company holidays and shutdown periods. The calculation should also reflect holiday and shutdown periods in any affected country, so that the report period would be 5 "overlapping" business days. Manufacturer staff in several countries may need to participate in the preparation of the report (e.g., the staff at the overseas parent company where the affected vehicles were manufactured, the other foreign country where the vehicles were sold and the recall occurred, and the United States). Holidays and shutdown periods in any of the relevant foreign countries limit the manufacturer's ability to gather the required information, while holidays/shutdowns in the U.S. limit the ability to process and transmit the information to the agency. The stringency of the 5-day period makes imperative the additional flexibility provided by our recommended approach.

7. **Non-safety defect communications.** Proposed section 579.6 carries over the existing regulation in section 573.8 regarding providing copies of notices, bulletins, and other communications relating to defects, whether or not such defects are safety related. The preamble to the proposal (66 Fed. Reg. 51908, October 11, 2001) states that the existing language does not specifically address communications relating to non-safety defects occurring in vehicles outside the U.S. It is our understanding that the longstanding practice in this area is to consider the provision applicable only to communications relating to U.S.-manufactured vehicles. The preamble also states that the agency simply intends to restate and transfer section 573.8, without re-proposing it (see 66 Fed. Reg. 51915). However, transferring this language into Part 579, which applies in part to foreign-manufactured vehicles, creates the potential for confusion regarding the scope of the provision. Nothing in TREAD requires the reporting of non-safety defect information. A requirement for reporting foreign, non-safety defect communications would impose significant burdens (including record gathering and translation burdens) with little or no benefit to the agency, given the significant product differences between the U.S. and foreign markets. NHTSA should modify this provision to state explicitly that it applies only to communications relating to U.S.-sold vehicles.