

AUTOMOTIVE

AN INDIVIDUALIZED MOTOR VEHICLE RECALL INFORMATION DATABASE?

WILL OEMS AND SUPPLIERS GET THE BILL?

An Overview of Proposed Amendments to Defect Notification and Early Warning Reporting Regulations

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Tucked away in the recently enacted 584 page "Moving Ahead for Progress in the 21st Century Act" is a small provision directing NHTSA to make individualized motor vehicle recall information publically available in a searchable on-line database. The idea is that any vehicle owner using his or her VIN could search for any recalls related to that specific vehicle and determine if or when the recall repairs have been performed. On Monday, September 10, 2012, NHTSA published proposed rules that would, among other things, amend defect reporting requirements in order to facilitate the creation of that data base. NHTSA is now seeking comments on the proposed amendments.

Under NHTSA's proposal, all major OEMs would be required to include with their Rule 573 "defect and noncompliance" notifications an electronic listing identifying by VIN all potentially affected vehicles and the recall status of each VIN. Originally, each VIN would be identified as "unremedied." Then, as a recall proceeds, the OEM would have to update the "status" information ON A DAILY BASIS FOR 10 YEARS. So, as each individual vehicle is repaired the status would have to be changed to "inspected and repaired" or "inspected and determined not to require repair" and the date of the inspection/repair would have to be added. If a vehicle is not available for repair because it was stolen or scrapped, that information would also be added. NHTSA initially contemplates a central recall database but it has asked for comment on whether manufacturers could host their own sites.

Although directed to the OEMs, this recall requirement can be expected to impose upon not only OEMs, but also suppliers, a new layer of recall costs. OEMs will incur the upfront costs associated with establishing procedures, programming, data collection and processing necessary to supply the requested information. Initially, they will have to up-load recall information for all recalls conducted during the prior two years. They will also incur added costs associated with the mandated 10 years of daily updates. All OEM terms and conditions have provisions allowing for the recovery of all costs associated with certain recalls from the supply chain. A chunk of those costs are administrative costs and the bill will now get higher. The impact on the automotive industry and especially OEMs and their supply chain will obviously depend on the magnitude of these costs.

The proposed rules also include new requirements for defect and owner notifications. As to defect notifications, the rules would:

- Prohibit disclaimers by manufacturers in defect notifications such as "we haven't concluded it's a safety defect but filed the notice anyway"
- Maintain the 5-day rule for submitting a defect notice but, if the initial filing was incomplete, it would require updated information to be filed within 5 days of it becoming available.
- Require review of the completeness of each defect notice within 90 days of remedy availability and certification by the manufacturer that the information is complete and accurate.
- For the recall of items of motor vehicle equipment, require the manufacturer to include, in addition to the generic name of component, its brand or trade name.
- Mandate inclusion of a statement describing the risk of injury associated with the defect, which most manufacturers do already.

As to owner notifications, the proposed rules would require them to be sent out within 60 days of the filing of the defect notice, regardless of whether the remedy is available. A second notification would be required after the remedy is available, further increasing recall costs. NHTSA also proposes changes to the information included on owner notification envelopes.

Finally, the proposed rules would expand OEM information reporting requirements for early warning reporting of production and incident and claim data.

The comment period for these proposed rules closes on November 9, 2012. The Docket Number is NHTSA-2012-0068.

FOR MORE INFORMATION CONTACT:



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