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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

**[Docket No. NHTSA-2016-0039]**

#### **NHTSA Enforcement Guidance Bulletin 2016-01; Guidance on Submission and Treatment of Manufacturer Communications to Dealers, Owners, or Purchasers About a Defect or Noncompliance**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is issuing this notice to make manufacturers aware of the statutory requirement to index their communications to dealers, owners, or purchasers about a defect or noncompliance, and to provide recommendations for complying with the index requirement. Additionally, a change in the law requires NHTSA to publicly post all such communications on its website and it is therefore providing notice of its intention to do so. NHTSA will also publicly post on its website the manufacturers' indexes to their communications as they are received.

#### **FOR FURTHER INFORMATION CONTACT:**

For legal issues: Kerry Kolodziej, Office of the Chief Counsel, NCC-100, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202-366-5263).

For submission of documents pursuant to 49 CFR 579.5: [tsb@dot.gov](mailto:tsb@dot.gov).

For submission of documents pursuant to 49 CFR 573.6(c)(10): Recalls Portal Help Desk, 1-888-719-9220; [recalls.helpdesk@dot.gov](mailto:recalls.helpdesk@dot.gov).

## **SUPPLEMENTARY INFORMATION:**

The National Highway Traffic Safety Administration (NHTSA or Agency) is issuing this notice of its intent to enforce and implement the requirements of 49 U.S.C. 30166(f), as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21).

### **I. Legal and Policy Background**

#### **A. Manufacturers are Required to Submit Copies to NHTSA of Communications to their Dealers, Owners, or Purchasers About a Defect or Noncompliance**

The National Traffic and Motor Vehicle Safety Act (Safety Act), as amended, requires motor vehicle and motor vehicle equipment manufacturers to provide NHTSA with copies of communications they send to their dealers, owners, or purchasers. Specifically, the Safety Act requires manufacturers to submit “a true or representative copy of each communication to the manufacturer’s dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard prescribed under this chapter in a vehicle or equipment that is sold or serviced.” 49 U.S.C. 30166(f). This is a long-standing requirement. *See* Motor Vehicle and Schoolbus Safety Amendments of 1974, Pub. L. No. 93-492, § 158(a)(1), 88 Stat. 1470, 1475 (1974).

#### **1. Scope of Submission Requirement**

The requirement for manufacturers to submit copies of their communications to the Agency is broad and requires not only submission of manufacturers’ communications to dealers,<sup>1</sup> owners, or purchasers about vehicle and equipment recalls, but all

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<sup>1</sup> The Safety Act defines “dealer” as “a person selling and distributing new motor vehicles or motor vehicle

communications “about a defect or noncompliance.” 49 U.S.C. 30166(f)(1). With regard to defects, the statutory submission requirement is not limited to communications about safety-related defects. “Defect” is a statutorily defined term meaning “any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.” 49 U.S.C. 30102(a)(2). The plain language of the provision requiring submission of copies of manufacturer communications to the Agency does not condition use of the word “defect” to “defect related to motor vehicle safety,” as is the case with other provisions of the Safety Act. *Compare* 49 U.S.C. 30166(f), *with* 49 U.S.C. 30112(a)(3), 30118(a).

Moreover, the Agency has long interpreted the requirement that manufacturers submit copies of their communications to dealers, owners, or purchasers as capturing all defect-related communications. *See* 49 CFR 579.5. In 1975, the Agency explained that the statute “specifically authorizes the agency to require the submission” of communications about a defect, whether or not safety related. Proposed Amendment, 49 FR 43227, 43228 (Sept. 19, 1975). The Agency explained that this was important because “[i]t is the responsibility of the NHTSA, not the manufacturers, to make a final determination as to whether or not a given defect is safety-related.” *Id.* In 1978, the Agency reiterated that the law “specifically grants the agency [] authority” to collect all communications about a defect and rejected the call from some commenters to limit the submissions to only manufacturer communications about “safety-related defects.” Final Rule, 43 Fed. Reg. 60,165, 60,168-69 (Dec. 28, 1978).

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equipment primarily to purchasers that in good faith purchase the vehicles or equipment other the for resale.” 49 U.S.C. 30102(a)(1). Therefore the requirement to submit communications to the Agency captures communications including both those between a motor vehicle manufacturer and its dealers and equipment suppliers and their motor vehicle manufacturer customers. *See* 49 CFR 579.5.

## 2. Implementing Regulations

NHTSA implements the statutory requirement that manufacturers submit representative copies of their communications to dealers, owners, or purchasers through two regulations: one specifically addressing recall communications, 49 CFR 573.6(c)(10), and the other addressing manufacturer communications more broadly, 49 CFR 579.5.

Many communications about a defect or noncompliance are communications manufacturers make to their dealers, owners, or purchasers about recalls. Some examples of these communications are letters to dealers and vehicle owners informing them about a recall and service bulletins (also known as technical service bulletins or TSBs) that provide repair instructions for trained technicians performing the recall remedy. NHTSA requires manufacturers to submit a representative copy to NHTSA of recall communications “not later than 5 days after they are initially sent to manufacturers, distributors, dealers, or purchasers.” 49 CFR 573.6(c)(10). This applies to “all notices, bulletins, and other communications that relate directly to the defect or noncompliance [that is the subject of a recall] and are sent to more than one manufacturer, distributor, dealer or purchaser.” *Id.*

The second regulation that implements the requirement for manufacturers to submit communications about a defect or noncompliance to the Agency is 49 CFR 579.5. That requires manufacturers to submit “a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax, or other electronic means and including warranty and policy extension communiqués and product improvement bulletins) other than those required to be submitted pursuant to §

573.6(c)(10) of this chapter, sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser, in the United States, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications), whether or not such defect is safety-related.” 49 CFR 579.5(a). It also requires that “[e]ach manufacturer shall furnish to NHTSA a copy of each communication relating to a customer satisfaction campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicles or equipment, that the manufacturer issued to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, owner, or purchaser, in the United States.” 49 CFR 579.5(b). Manufacturer communications required by 49 CFR 579.5 are due to the Agency “not later than five working days after the end of the month” in which they were issued. 49 CFR 579.5(d).

**B. NHTSA’s Current Treatment of Manufacturer Communications Submitted to the Agency**

It is important that manufacturers fully comply with the requirement to submit copies of communications to their dealers, owners, or purchasers about a defect or noncompliance so that the Agency can effectively carry out its mission. Among other things, the Agency reviews these communications to evaluate whether a safety issue is involved, to engage in proactive communications with manufacturers where there may be a misunderstanding or misidentification of the risk of a particular issue that a manufacturer has decided to control and remedy via a field action that is less than a recall, and to ensure that recalls are carried out effectively.

NHTSA posts a great deal of information on its website, [www.safercar.gov](http://www.safercar.gov),

including copies of many manufacturer communications. NHTSA's website has a search tool that allows a user to search for available documents and information by make, model, and model year of a vehicle, or by brand name and other identifying information for motor vehicle equipment.<sup>2</sup> When a user performs a search, NHTSA's website currently displays available documents and information in four categories: (1) Recalls, (2) Defect Investigations, (3) Complaints, and (4) Service Bulletins.<sup>3</sup> NHTSA plans to rename the "Service Bulletins" category as "Manufacturer Communications" to more fully reflect the available content. Each of these four categories except "Complaints," which are complaints submitted to the Agency primarily by vehicle owners, may contain copies of manufacturer communications submitted to the Agency.

Where manufacturer communications involve a recall (i.e., concern a safety-related defect or noncompliance), the Agency makes them available along with other recall-related documents under the "Recalls" section of its website. Other manufacturer communications that relate to an Agency defect investigation (i.e., concern a potential safety-related defect) are also available under the "Defect Investigations" section of the website. Additionally, NHTSA posts manufacturer communications about customer satisfaction campaigns (i.e., concerning defects that have not been determined to pose an unreasonable risk to motor vehicle safety) on the currently named "Service Bulletins" portion of its website. NHTSA also posts information about service bulletins (i.e., repair instructions for trained technicians) for issues that have not been determined to be a safety-related defect or noncompliance on its website under the currently named "Service

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<sup>2</sup> The search tool is currently available at <http://www-odi.nhtsa.dot.gov/owners/SearchSafetyIssues>.

<sup>3</sup> NHTSA presently provides summary information, but does not post copies of service bulletins under the currently named "Service Bulletin" portion of its website.

Bulletin” section of its website. NHTSA summarizes service bulletins and makes the summary available, along with an option to request a copy of the documents.<sup>4</sup>

## **II. New MAP-21 Requirements Regarding Manufacturer Communications Submitted to the Agency**

MAP-21 amended the Safety Act to require manufacturers to submit additional information to the Agency along with copies of their communications and to require the Agency to make that additional information and the communications themselves available on the Agency’s website.

MAP-21 required manufacturers to accompany their submissions of communications to the Agency with an index to each communication. MAP-21, Pub. L. No. 112-141, § 31303(a)(2), 126 Stat. 405, 764 (2012) (codified at 49 U.S.C. 30166(f)(2)). Specifically, communications manufacturers are required to submit to NHTSA under 49 U.S.C. 30166(f) “shall be accompanied by an index to each communication, that—(A) identifies the make, model, and model year of the affected vehicles; [and] (B) includes a concise summary of the subject matter of the communication.” *Id.*

While NHTSA already proactively made a substantial number of manufacturer communications available to the public on its website, MAP-21 also changed the law to make it mandatory for the Agency to post all manufacturer communications to dealers, owners, or purchasers about a defect or noncompliance on its website. *See* 49 U.S.C. 30166(f)(1). Additionally, NHTSA must post the manufacturers’ indexes to their communications on its website in a searchable format. 49 U.S.C. 30166(f)(2).

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<sup>4</sup> NHTSA’s website does not currently include summary information on all service bulletins generated by a manufacturer. Service bulletins for safety recalls in general are not included, and also service bulletins which do not pertain to a safety issue may not be included in the summaries provided.

To implement these changes in the law, NHTSA is providing guidance to manufacturers on the index requirement. This guidance is warranted because manufacturers have not been submitting compliant indexes to the Agency since the MAP-21 changes became effective on October 1, 2012. *See* MAP-21, Pub. L. No. 112-141, § 3, 126 Stat. 405, 413 (2012). In addition to putting manufacturers on notice of this index requirement and the Agency's intention to enforce it, providing guidance will also help to ensure consistency in the format and content of manufacturer indexes, thereby enabling the Agency to readily make the indexes publicly available in a searchable format on its website.

NHTSA is also providing notice of its intention to publicly post all manufacturer communications submitted to the Agency pursuant to 49 U.S.C. 30166(f) on its website. MAP-21 requires NHTSA to post all manufacturer communications to dealers, owners, or purchasers about a defect or noncompliance. Prior to MAP-21, the Agency did not post certain manufacturer communications (specifically, certain service bulletins) on its website, which some manufacturers claimed to be copyrighted documents. Congress in MAP-21's explicit requirement that the Agency post "each communication to the manufacturer's dealers or to owners" about a defect or noncompliance, has now made clear that copyright law is not a restriction on NHTSA action.

### **III. Guidance Regarding Index Requirement**

The law now requires manufacturers to submit to NHTSA copies of their communications to dealers, owners, or purchasers about a defect or noncompliance and requires that such communications "shall be accompanied by an index to each communication." 49 U.S.C. 30166(f). The index must identify the make, model, and model year of the affected vehicles and include a concise summary of the subject matter

of the communication. 49 U.S.C. 30166(f)(2). This requirement has been in effect since October 1, 2012. *See* MAP-21, Pub. L. No. 112-141, § 3, 126 Stat. 405, 413 (2012).

Most manufacturers comply with the long-standing requirement to submit copies to the Agency of their communications to dealers, owners, or purchasers about a defect or noncompliance.<sup>5</sup> However, manufacturers have not complied with the change in law requiring them to accompany their communications to the Agency with indexes to those communications.

We are providing this guidance to make manufacturers aware of their legal obligation to index their communications. The Agency expects all manufacturers to expeditiously come into full compliance with the law and will take additional action to enforce the index requirement as necessary. The index requirement is subject to daily civil penalties. *See* 49 U.S.C. 30165(a)(3).

We are also providing this guidance to communicate to manufacturers the content requirements for the index. We are providing recommendations for preparing and submitting the index to help ensure consistency across manufacturers and to enable the Agency to readily make the indexes publicly available in a searchable format on its website.

**A. Which Manufacturers Must Submit Indexed Communications to the Agency?**

Every manufacturer of motor vehicles or motor vehicle equipment is responsible both for submitting copies of communications to dealers, owners, or purchasers and to

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<sup>5</sup> Where manufacturers have failed to comply with this requirement, the Agency has taken enforcement action. *See* August 28, 2015 Consent Order, In re: AQ15-001, Triumph Motorcycles (America), Ltd.; July 8, 2015 Consent Order, In re: AQ14-001, Forest River, Inc.; July 8, 2015 Consent Order, In re: TQ14-003, Spartan Motors, Inc. The Agency has also has and continues to take steps to educate the industry about the communication submission requirement so that the Agency receives this critical information.

provide an accompanying index of those communications to the Agency. 49 U.S.C. 30166(f). The Safety Act defines “manufacturer” broadly to mean “a person—(A) manufacturing or assembling motor vehicles or motor vehicle equipment; or (B) importing motor vehicles or motor vehicle equipment for resale.” 49 U.S.C. 30102(a)(5).

**B. What Types of Communications Must a Manufacturer Index Going Forward?**

As discussed in this notice, NHTSA implemented the requirement to submit copies of communications to dealers, owners, or purchasers about a defect or noncompliance through regulations at 49 CFR 573.6(c)(10) and 49 CFR 579.5. Therefore, a manufacturer must accompany its future submissions of all communications pursuant to these provisions with an index that meets the statutory requirements.

**C. How Does a Manufacturer Come into Compliance with the Index Requirement for Prior Submissions?**

The index requirement became effective as of October 1, 2012. *See* MAP-21, Pub. L. No. 112-141, § 3, 126 Stat. 405, 413 (2012). No manufacturer to date has submitted compliant indexes. Some manufacturers have submitted incomplete indexes to their communications that do not satisfy the statutory requirements. To come into full compliance with the law, a manufacturer must submit complete indexes to the communications it previously submitted to the Agency pursuant to 49 CFR 579.5 between October 1, 2012 and the present, along with copies of all communications listed in the index.

A compliant submission requires both a complete index and copies of the indexed communications. *See* 49 U.S.C. 30166(f). A manufacturer may not supplement its earlier submission of communications pursuant to 49 CFR 579.5 by providing an index only. While we understand that this may necessitate, in many cases, manufacturers to resubmit

a large quantity of communications to the Agency, this is what the law requires. The Agency must receive a full and complete submission of communications accompanied by an index so that it may fulfill its statutory obligation to make the communications and index available on its website.<sup>6</sup>

While a manufacturer must accompany future submissions of communications pursuant to 49 CFR 573.6(c)(10) (i.e., recall communications) with an index, we are exercising our enforcement discretion to deem prior submissions of these communications compliant with this requirement. These are recall communications, such as letters to owners or dealers informing them of the recall and service bulletins regarding the recall repair. Manufacturers need not resubmit copies of recall communications or an accompanying index.<sup>7</sup>

The Agency has long had a practice of posting recall communications on its website along with a great deal of information about the recall. As safety critical information, the Agency wants to avoid any disruption that could occur by making changes to the recall portion of its website. Moreover, changes are unnecessary. Recall communications are already indexed and available on the Agency's website. Recall communications are readily accessible through a searchable interface that is familiar to public users of the Agency's website.

#### **D. When are Indexed Communications Due to the Agency?**

The law requires that communications submitted to the Agency "shall be

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<sup>6</sup> An index must enable a user to locate the indexed communications. NHTSA will provide each communication with a unique identifier, linked to the manufacturer-provided index. NHTSA will provide instructions on its website for using the unique identifier to search for and retrieve the communication.

<sup>7</sup> This is not intended to limit the Agency's authority to make future requests for documents or information. See 49 CFR 30166(b), (e), (g).

accompanied by an index.” 49 U.S.C. 30166(f)(2). Therefore, manufacturers should submit an index at the same time as they submit communications to the Agency. As discussed above, 49 CFR 573.6(c)(10) requires submission of recall communications “not later than 5 days after they are initially sent to manufacturers, distributors, dealers, or purchasers.” Manufacturer communications required by 49 CFR 579.5 are due to the Agency “not later than five working days after the end of the month” in which they were issued. 49 CFR 579.5(d).

### **1. Current and Prospective Submissions of Communications**

The Agency expects manufacturers to make a good faith effort to expeditiously comply with the requirement to provide an index to accompany the communications they submit to the Agency. However, the Agency recognizes that manufacturers will need to educate staff and may need to change internal policies and procedures to begin complying with this requirement. While the Agency is not excusing noncompliance with the law, the Agency recognizes that the entire industry has been out of compliance with the index requirement and intends to exercise its enforcement discretion to allow manufacturers a reasonable period of time from the date of this notice to come into compliance with the index requirement on a going forward basis. However, manufacturers should not delay providing communications to the Agency.

### **2. Retroactive Resubmissions of Indexed Communications**

The Agency will not excuse manufacturers from providing indexes for communications submitted to the Agency pursuant to 49 CFR 579.5 on or after October 1, 2012. For any communications previously submitted to the Agency pursuant to 49 CFR 579.5 that were not accompanied by a fully compliant index at the time of

submission, manufacturers must submit indexed communications to the Agency. As discussed above, this requires an index along with resubmission of all communications listed in the index. This is necessary to allow the Agency to fulfill its statutory obligations.

The Agency intends to exercise enforcement discretion to allow manufacturers a reasonable period of time to resubmit indexed communications required by 49 CFR 579.5. The Agency recognizes that, in many cases, the volume of communications submitted to the Agency since October 1, 2012 is significant. The Agency will take the volume of communications into account in considering what constitutes a reasonable period of time for a given manufacturer. In general, we expect that a manufacturer will resubmit indexed communications on a rolling basis until it achieves full compliance.

In sum, the Agency is not specifying a deadline for compliance with the index requirement before it expects to take enforcement action. All manufacturers must begin immediately making a reasonable good faith effort to take steps to comply expeditiously for both retroactive and future submissions. The Agency will take any such actions into account in evaluating whether a given manufacturer came into compliance with the law within a reasonable period of time.

**E. What are the Penalties for Not Complying with the Index Requirement?**

Indexes are required by 49 U.S.C. 30166(f), therefore, failure to provide indexes, or failure to provide timely or complete indexes, is subject to civil penalties under current law of up to \$21,000 per violation per day and up to a maximum penalty of \$105 million for a related series of daily violations. 49 U.S.C. 30165(a)(3); *see* Civil Penalty Factors, 81 FR 10520 (Mar. 1, 2016) (issuing final rule).

## **F. What Information Must the Index Contain?**

At a minimum, an index must identify the make, model, and model year of the affected vehicles and must include a concise summary of the subject matter of the communication. These are statutory requirements. 49 U.S.C. 30166(f)(2). This is mandatory information when applicable.

However, the Agency recognizes that for communications submitted by motor vehicle equipment manufacturers, in many cases, there are no specific affected vehicles. This is also true for a limited number of generalized communications by motor vehicle manufacturers. In such cases, the manufacturer should include other identifying information for the affected motor vehicles or motor vehicle equipment in lieu of make, model, and model year information for specific affected vehicles.<sup>8</sup>

To help ensure consistency across manufacturers, the Agency is also providing recommendations on the specific format and content of the indexes. In addition to the recommendations provided in this notice, the Agency may provide more detailed recommendations on a forthcoming webpage at <http://www-odi.nhtsa.dot.gov/mc/>. The Agency will make available a template index for download and will provide examples of completed index entries on its website. The Agency encourages manufacturers to continue to visit this webpage as the Agency may refine its recommendations over time as it evaluates manufacturers' index submissions. While we are providing guidance and recommendations at this time, the Agency will evaluate the content and consistency of index submissions across manufacturers to determine whether a future rulemaking is

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<sup>8</sup> This does not excuse a motor vehicle manufacturer from providing make, model, and model year information for affected vehicles when that information is reasonably available. For example, it is not sufficient for a motor vehicle manufacturer to include vehicle platform information in its index instead of make and model.

warranted.

### **1. Recommended Format for Index**

NHTSA strongly recommends that manufacturers submit their indexes as word searchable electronic files. While the Agency is not requiring use of any particular software, to ensure compatibility, the Agency requests that manufacturers submit indexes as searchable Microsoft Excel files.

The Agency recommends that a manufacturer list each communication on a separate row in its index and include separate columns for each item of discrete information included. For example, the index should include separate columns for make, of the affected vehicles, model of the affected vehicles, and model year of the affected vehicles. We recommend including a separate row for each make, model, or model year of vehicle affected by a single communication. In other words, a single communication may populate multiple rows on an index. We also recommend including a column for manufacturer communication identifier number, if one is used.

The Agency's website and template index available for download will provide more specific recommendations and information on the Agency's preferred format for manufacturer indexes. See <http://www-odi.nhtsa.dot.gov/mc/> (forthcoming).

### **2. Recommendations for Preparing the Concise Summary**

At a minimum, NHTSA recommends that a concise summary of the subject matter of a manufacturer's communication should identify the defect or noncompliance, describe the effect of the defect or noncompliance, and describe the purpose or type of the communication. In many cases, simply repeating the subject line or title of a communication will be insufficient. Likewise, a generic description that does not actually summarize the communication or describes multiple communications with minimal

changes, such as “service bulletin number 123” does not meet the statutory requirements. The Agency will post examples of concise summaries on its website.

**G. Recommended Method of Submitting the Indexed Communications to the Agency**

NHTSA requests that manufacturers submit their indexed communications to the Agency electronically. Electronic submission will best enable the Agency to make the manufacturer communications and searchable index available to the public on the Internet as the law requires.

As discussed above, manufacturers must index recall communications that they submit to the Agency pursuant to 49 CFR 573.6(c)(10) and communications that they submit pursuant to 49 CFR 579.5. Manufacturers are required to submit recall communications through NHTSA’s recalls portal and should also submit their recall communication indexes through the portal. *See* 49 CFR 573.9. For communications required by 49 CFR 579.5, NHTSA strongly recommends that manufacturers submit their indexed communications electronically to [tsb@dot.gov](mailto:tsb@dot.gov). *See* 49 CFR 579.6(a).

We note that some manufacturers have had a past practice of submitting multiple communications under 49 CFR 579.5 in a consolidated format, such as a single large .pdf file. We strongly recommend that manufacturers discontinue this practice, in order to ensure that each communication listed in the manufacturer’s index is a readily identifiable separate document. The Agency would prefer to receive each communication as a separate .pdf file.

**IV. Notice of Intention to Publicly Post All Manufacturer Communications About a Defect or Noncompliance on NHTSA’s Website**

NHTSA has reevaluated the information that the law permits it to make publicly available on its website in light of the changes made by MAP-21. As a result, NHTSA is

providing this notice of its intent to publicly post all manufacturer communications submitted to it pursuant to 49 U.S.C. 30166(f).

The law now affirmatively requires NHTSA to “make available on a publicly accessible Internet website” copies of communications to manufacturers’ dealers, owners, or purchasers about a defect or noncompliance that manufacturers submit to the Agency.

Prior to enactment of MAP-21, the Agency did not publicly post copies of all service bulletins that it received.<sup>9</sup> Some manufacturers copyright their service bulletins. Service bulletins are a manufacturer’s repair instructions, and repair shops or other interested individuals may purchase them from a commercial source.

Pursuant to the fair use limitation on copyright, to date NHTSA has posted on its website copies of service bulletins for recall repairs and service bulletins related to its defect investigations. *See* 17 U.S.C. 107; *see also* 49 U.S.C. 30167(b). NHTSA also has made a paper copy of other service bulletins available to the public pursuant to the library provision of copyright law. *See* 17 U.S.C. 108.

Congress necessarily made the decision in enacting MAP-21, that copyright law does not restrict NHTSA from publicly posting copies of all manufacturer communications received by the Agency pursuant to 49 U.S.C. 30166(f) on its website. Indeed, 49 U.S.C. 30166(f) expressly requires the Agency to do so.

MAP-21 trumps the limited waiver of sovereign immunity for copyright infringement claims. *See* 28 U.S.C. 1498(b). Congress could not have intended to allow manufacturers to assert copyright infringement against the federal government based on

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<sup>9</sup> Although the law also limits the Agency’s ability to disclose confidential information, 49 U.S.C. 30167, manufacturers do not treat these documents as confidential and, in the case of service bulletins, make them available to the public through commercial providers. *See* 49 CFR part 512.

the Agency's publication of service bulletins and other manufacturer communications on its website in light of the express statutory requirement that the Agency do so. *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) ("The classic judicial task of reconciling many laws enacted over time, and getting them to 'make sense' in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute. This is particularly so where the scope of the earlier statute is broad but the subsequent statutes more specifically address the topic at hand . . . . [A] specific policy embodied in a later federal statute should control our construction of the earlier statute, even though it has not been expressly amended.") (internal quotation marks, brackets, and citations omitted).

Because the law directs the Agency to make manufacturer communications publicly available on its website, the Agency is acting to effectuate the law. The Agency will post on its website those manufacturer communications submitted to the Agency on or after the October 1, 2012 effective date of MAP-21 that are not already available on the Agency's website. Going forward, the Agency intends to post to its public website all manufacturer communications submitted pursuant to 49 U.S.C. 30166(f), including documents submitted pursuant to 49 CFR 573.6(c)(10) or 579.5. The Agency will also post manufacturer indexes for communications submitted to the Agency on or after October 1, 2012 on a rolling basis as compliant indexes are received. The Agency intends to make manufacturer indexes available in a searchable format.

***Applicability/Legal Statement:*** This Enforcement Guidance Bulletin sets forth NHTSA's current interpretation and thinking on this topic and guiding principles and best practices to be utilized in complying with the legal requirements of 49 U.S.C. 30166(f). This

Bulletin is not a final agency action and is intended as guidance only. This Bulletin is not intended, nor can it be relied upon, to create any rights enforceable by any party against NHTSA, the Department of Transportation, or the United States. Moreover, these recommended practices to not establish any defense to any violations of the statutes and regulations that NHTSA administers. This Bulletin may be revised without notice to reflect changes in NHTSA's evaluation and analysis, or to clarify and update text.

**Authority:** 49 U.S.C. 30101, *et seq.*; 49 U.S.C. 30165(a)(3), 30166(f); delegations of authority at 49 CFR 1.95(a), 501.2(a)(1), 501.5.

**Issued on: March 21, 2016.**

Paul A. Hemmersbaugh,  
Chief Counsel.

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