AUG 8 2003

Barry C. Kane, Esq.
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P.O. Box 306
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Dear Mr. Kane:

This is in reply to your letters of June 9 and 10, 2003, which asked for an interpretation of terminology in 49 CFR Part 579 and Part 573. These letters were identical, with the exception noted below under the discussion of Section 579.4(d)(2). Your Part 579 questions related both to the reporting obligations under Subpart B pertaining to foreign safety campaigns, and the reporting obligations under Subpart C, the Early Warning Reporting (EWR) requirements. You wrote on behalf of "divers automotive-related clients," including "original equipment manufacturers, as well as first and second tier providers of parts and/or services."

For purposes of EWR, your clients are considered manufacturers of original equipment (OEM) and thus are covered by 49 CFR 579.27. In response to your initial inquiry, if an OEM does not receive a claim or notice of death in any quarterly reporting period, it is not required to report that fact to NHTSA.

Your next question was postulated on the assumption that section 579.27 requires OEMs to report information about injuries allegedly caused by their products. However, that is incorrect. Section 579.27 requires your clients to report "on each incident *involving* one or more deaths . . . that is identified in a claim . . . or in a notice . . . which notice alleges or proves that the death was caused by a possible defect in the manufacturer's . . . equipment" (emphasis added) (if the incident occurred in the United States, the manufacturer must also report the number of injuries, if any). You asked for confirmation "that an incident in which a manufacturer's component is involved that did not initiate the sequence of events leading to [a death] has not to be reported because such a component does not meet the definition of 'involving' in 579.27."

We have not defined "involving" and a definition of the term is not required to respond to your question. Whether a component initiated a sequence of events that led to a death (and injury) may be a question of fact or law (e.g., proximate cause) that is not developed or resolved at the time a manufacturer receives a claim or notice about a death.

Regardless, if the document received by the OEM meets the definition of "claim" or "notice" and identifies the OEM's equipment with "minimal specificity," as those three terms are defined in Section 579.4(c), the OEM must report to NHTSA in the manner prescribed by Section 579.27.

You have also asked a question about the application of Section 579.4(d)(2)'s definition of identical or substantially similar motor vehicle equipment to a hypothetical situation. Equipment sold or in use outside the United States is deemed to be "identical or substantially similar" to equipment sold in the United States if the equipment has "one or more components or systems that are the same, and the component or system performs the same function" in vehicles sold in the United States (Section 579.4(d)(2)). In your hypothetical, identical fasteners would be used in an air-conditioning unit and an alternator. In your letter of June 9, you stated your belief that "'substantial similarity' looks at the assembly as a whole and not to the components forming the assembly to determine the similarity unless it is the particular fastener in this example that is the rudimentary cause of the failure in one of the components." However, on June 10, you advanced a modified view of "substantial similarity" and concluded that "all these different assemblies incorporating such fasteners are substantially similar irrespective of whether the cause of the failure is another part of the assembly," and you asked whether your clients are "obliged to report all these assemblies . . . although the cause of the defect is not the fastener."

We addressed these situations in the preamble to the EWR final rule (67 FR 45822 at 45844). With respect to the view in your letter of June 9, we remarked that we read the word "equipment" both as the completed item of motor vehicle equipment and as each individual component that comprises the item. With respect to your modified view of June 10, the Motorcycle Industry Council (MIC) had asked "if the only commonality [in equipment] is a single type of fastener that neither failed nor contributed to the incident, are the components or equipment substantially similar?" We replied that the equipment incorporating the fasteners would be substantially similar for EWR purposes, "unless the claim [or notice] specifically identified a non-common component as the source of the failure" (p. 45844).

With respect to the phrase "sold or offered for sale" as it appears in the definition of "identical or substantially similar," a client has asked you "if the rule covers the situation where an automobile is manufactured outside the United States and has been privately imported by an individual consumer." It is your suggestion that "the rule does not apply to this situation," and that it "is intended to apply to manufacturers who intentionally enter the market in this country rather than low volume imports arranged by private consumers." We understand that this question relates to Smart cars, manufactured by DaimlerChrysler A.G. in Europe. That company does not sell these cars or offer them for sale in the United States, but at some future time they may be imported by a Registered Importer.

Although, as a factual matter, a Smart car sold outside the United States would be identical or substantially similar to a Smart car sold or offered for sale by a person in the United States other than its fabricating manufacturer (e.g., a Registered Importer), we do

not intend the rule to impose a reporting obligation upon a manufacturer who is not marketing an identical or substantially similar vehicle in the United States. Thus, the EWR rule does not require DaimlerChrysler to report incidents of deaths outside the United States involving Smart cars, unless and until DaimlerChrysler imports the Smart car into the United States (see definition of "manufacturer," Section 579.4(c)).

You next asked "whether a supplier of parts to OEMs or Tier 1 suppliers is ever required to notify the Administration of the recall under the rule since they do not decide on or carry out a recall themselves, but solely sell their products via the OEMs/Tier 1." Part 579 does not require an OEM to notify NHTSA that a person is conducting a defect notification and remedy campaign on products that incorporate equipment which the OEMs have supplied. Defect reporting obligations arise under another regulation, 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*. In some instances, these obligations apply to, or may be assumed by, OEMs (see Section 573.3).

With respect to the obligation under Section 579.5(b) to provide copies of each communication relating to a customer satisfaction campaign (as defined in Section 579.4(d) to include other terms as well) within five days after the end of each month, you suggest that "this rule only needs compliance when indeed such customer satisfaction campaigns exist." This is correct. We need not be informed that there were no customer satisfaction campaigns in the previous month. It is also your tentative view that "the campaigns need only be reported when there is "communication with two or more of those involved in the distribution chain for the assembly in the U.S." That is incorrect. If a communication is "issued to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, owner or purchaser, in the United States," a copy of the communication must be furnished to us. See Section 579.5(b).

Your last question is "whether we should consider additional rules, statutes, or provisions promulgated by the individual states or whether this rule supercedes individual state requirements." We are unaware of any State requirements that address the same issues as Part 579.

If you have any questions, you may phone Taylor Vinson of this Office (202-366-5263).

Sincerely,

Jacqueline Glassman

Jacqueline Glassman
Chief Counsel