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October 4, 2012

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

The Honorable David Strickland, Administrator
National Highway Traffic Safety Administration
c/o Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue SE.
West Building, Room W12-140
Washington, DC 20590

The Honorable Jeffrey Zients, Acting Director, Office of Management and Budget
c/o Office of Information and Regulatory Affairs
Office of Management and Budget
725-17th Street NW.
Washington, DC 20503
Attention: NHTSA Desk Officer

**Docket No. NHTSA-2012-0068; Notice 1;
RIN 2127-AK72;**

**Notice of Proposed Rulemaking;
Proposal to revise a currently approved information collection;
Early Warning Reporting, Foreign Defect Reporting, and Motor Vehicle and
Equipment Recall Regulations**

Dear Mr. Strickland and Mr. Zients:

The National Highway Traffic Safety Administration (NHTSA) has asked for comments from the public on the Notice of Proposed Rulemaking (NPRM) regarding Early Warning Reporting (EWR), Foreign Defect Reporting, and Motor Vehicle and Equipment Recall information that manufacturers of motor vehicles and motor vehicle equipment submit to

NHTSA pursuant to the Early Warning Reporting rule. (See 77 FR 55606-55644, hereinafter “Notice.”) Thank you for this opportunity to comment for the record.

The Early Warning Reporting data exist to “provide an [early] warning of safety defects or information related to foreign recalls and safety campaigns [77 FR 55607].” Our research and experience shows that defect surveillance techniques should be consistently applied to data that are detailed, have adequate coverage, timely availability, and that are accessible to independent review.

Our published work related to this subject (and critical commentary about our work from NHTSA) can be found from the following sources: R. A. Whitfield and A. K. Whitfield, “Improving Surveillance for Injuries Associated with Potential Motor Vehicle Safety Defects.” *Injury Prevention*, 2004, 10:88-92, (<<http://ip.bmjournals.com/cgi/content/full/10/2/88>>, accessed October 3, 2012); Joseph Carra, “Unwarranted Assumptions about FARS data;” and R. A. Whitfield and Alice K. Whitfield, “Re: Unwarranted Assumptions about FARS Data,” (<http://injuryprevention.bmj.com/content/10/2/88/reply#injuryprev_el_88?sid=7c4ca265-282e-4c1f-b0fe-7c3cf9a19984>, accessed October 3, 2012).

Our invited presentation to the Transportation Research Board of the National Academies for its “Study of Electronic Vehicle Controls and Unintended Acceleration” entitled, “What NHTSA's Data Can Tell Us about Unintended Acceleration and Electronic Throttle Control Systems,” R. A. Whitfield, October 11, 2010 (<<http://onlinepubs.trb.org/onlinepubs/UA/101011Whitfield.pdf>>, accessed October 3, 2012) also provides an essential context for our comments.

The Introduction section of the Notice begins with this misstatement: “In 2000, Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Public Law 106–414... Congress concluded that NHTSA did not have access to data that may provide an earlier warning of safety defects or information related to foreign recalls and safety campaigns. [77 FR 55607]” Unfortunately, this misstatement inaccurately portrays the history of the original problem in a way that is very important to any consideration of the newly proposed rule. And in fact, the record shows that Congress concluded no such thing.

It was recognized twelve years ago that the failure to take timely action in 2000 with regard to the Firestone/Explorer recalls and replacements was not a lack of information. For example, at the first Congressional hearing into the scandal in 2000, Congressman Steve Largent posed the following to NHTSA’s Administrator, Dr. Sue Bailey: “I would

suggest that maybe you had too much information. Because my question then goes back to this FARS, Fatality Accident Reporting System, that contains all vehicle-related fatalities reported to NHTSA by law enforcement... What the heck do you guys do with this data base that is reported to you by statute from all of the law enforcement agencies around the country? What do you do with this? Because in, let's see, it says from 1998, from the end of 1998, you had information in that data base given to the National Highway Traffic Safety Administration that there were 29 fatalities from accidents in a Ford Explorer fitted with Firestone ATX, ATX II, or Wilderness tires. What is the problem there? You have all of this information from 1998, and yet it takes--you either ignore this or don't look at it, or what happens to this information?" (U. S. House of Representatives, *Hearings before the Subcommittee on Telecommunications, Trade, and Consumer Protection and the Subcommittee on Oversight and Investigations of the Committee on Commerce*, Hearing, September 6 and 21, 2000. Washington, DC.).

Similarly, the Toyota unintended acceleration scandal in 2010 resulted from no lack of information available to NHTSA as the text of this email apparently written by a Toyota employee regarding his interactions with NHTSA indicates: "I have discussed our [Toyota] rebuttal with them [NHTSA], and they are welcoming of such a letter. They are struggling with sending an IR [Information Request] letter, because they shouldn't ask us about floormat issues because the petitioner contends that NHTSA did not investigate throttle issues other than floormat-related. So they should ask us for non-floormat related reports, right? But they are concerned that if they ask for these other reports, they will have many reports that just cannot be explained. And since they do not think that they can explain them, they don't really want them..." (email from Chris Santucci, Toyota Motor North America, Inc. to Takeharu Nishida, May 5, 2009, Exhibit 12, "Complaint for Damages," Margaret Sowders, et al. v. Toyota Motor North America, Inc. et al. <www.lieffcabraser.com/media/pnc/4/media.1074.pdf>, accessed October 2, 2012).

We note lastly that in the fall of 2008, Quality Control Systems Corp. analyzed data from NHTSA's Early Warning Reporting system through the first quarter of 2008. Our analysis showed that injuries allegedly related to vehicle speed control failures in the 2007 Lexus ES 350 had risen to first place in our rankings of unusual patterns of claims. In fourth place on the list was the twin vehicle to the Lexus ES 350, the 2007 Toyota Camry. The Camry claims were also related to vehicle speed control. Our analysis was published on October 24, 2008 by the Vehicle Safety Information Resource Center on its public web site (<<http://vsirc.com/ewr#rankings>>, accessed October 3, 2012).

Ten months after our early warning rankings were published, on August 28, 2009, a widely publicized crash related to speed control failure in a 2009 Lexus ES 350 killed a family of four in Santee, California. This incident led directly to the Congressional hearings, the associated recalls, amended recalls, a sales suspension, and even a temporary production halt by Toyota of some of its makes and models over the issue of sudden unintended acceleration. Given our published rankings of unusual patterns of claims, there was no lack of information available to NHTSA about the atypical pattern of claims of injuries in vehicles similar to the one in the Santee, California crash with possibly on-going speed control issues. However, the specificity of this information to unintended acceleration was lacking in the EWR data.

That is why the lack of detail in the component coding proposed by this Notice is so noteworthy. Also, the National Academies' Committee on Electronic Vehicle Controls and Unintended Acceleration in its 2012 report *The Safety Promise and Challenge of Automotive Electronics* (National Research Council of the National Academies, Washington, D.C., 2012) regarding consumer complaints to NHTSA, observed that "unintended acceleration could be categorized under the code for the service brake, speed control, power train, or a number of other components. Similarly, conditions that have little to do with unintended acceleration, such as stalling or hesitation due to transmission problems, may be categorized under the code vehicle speed control [page 114]... ODI analysts noted that the EWR data lack the detail needed to be the primary source for monitoring the fleet for safety defects and that the main use of these data (especially the field reports) has been to support defect monitoring and investigations by supplementing traditional ODI data [page 115]." Yet the present proposal for EWR data would allow this demonstrated deficiency to continue unabated; nowhere does the Notice propose any coding for unintended acceleration.

We understand that coding claims of unintended acceleration as such invites consideration of potential safety related defects "that just cannot be explained" (see Santucci email, above), but to do otherwise is dangerous to the public and self-defeating for NHTSA. We hope you will reconsider this decision, just as the Agency reconsidered its original coding requirements for EWR deaths and injuries claims data coding by light vehicle manufacturers following the Firestone/Explorer debacle, which – incredibly – did not require coding "rollovers" (66 FR 66208). Similarly, it is very extraordinary that with four recalls related to accelerator pedal entrapment by floor mats (one of these recalls less than four months ago) involving more than seven million potentially affected vehicles made by Toyota, the Agency has not proposed adding a component code for floor mats in this Notice.

It is also very remarkable that, after collecting nine years worth of EWR data, NHTSA has not proposed requiring any additional detail for the category of “Air Bags.” As of the second quarter of 2012, light vehicle manufacturers have reported death or injury claims involving air bags nearly 25,000 times. Even so, this Notice does not propose asking manufacturers to differentiate claims in which the air bags were alleged to have deployed from claims involving air bags which allegedly did not deploy. Similarly, “Seat Belts” are coded more than five thousand times. However, this coding does not separate claims deaths or injuries from seat belts with buckles that fail, anchorages which separate, or with stitching or torsion bars that allow the belts to spool out in a crash, failing to restrain occupants.

After so much experience with the EWR data, it is disappointing that NHTSA has proposed a system that would continue to “lack the detail needed to be the primary source for monitoring the fleet for safety defects [See National Research Council of the National Academies, above].” The Agency can and must do better.

We suggest the implementation of a coding system for light vehicle deaths and injuries claims which links the category of the allegedly failing component with a separate code denoting the type of failure that is alleged. Such a system would take careful planning to propose and to put into practice. But it would be better to begin this planning now than to continue another nine years with an early warning system so lacking in necessary detail that NHTSA’s own analysts don’t rely on it for anything more than performance in a supporting role.

We note that the Agency’s proposal to amend subsection 573.6(c)(3) to require only larger volume motor vehicle manufacturers that manufacture 25,000 or more light vehicles annually or 5,000 or more motorcycles annually to submit vehicle VINs for each vehicle that potentially contains a defect or noncompliance. However, this plan is in conflict with the principle of fleet surveillance that should promote full coverage. If the goal of the proposal for VIN submission is to improve recall completion rates, it is difficult to understand why the proposal should not apply to all manufacturers. This is particularly true if, as the Agency’s Notice states, “Our proposal would impose little to no additional burden on manufacturers. Vehicle manufacturers already acquire VIN information from state motor vehicle agencies for purposes of conducting recalls [77 FR 55619].”

A similar issue of coverage concerns the proposal to eliminate the quarterly requirement for large volume manufacturers and small volume manufacturers that opt in to the VIN look-up service to report summary recall completion data. Your proposal notes that this service “will be providing daily information from which the agency can determine completion information...[77 FR 55622].” Yet such information will thereby become

unavailable to the public and independent researchers. Such reports have proven very valuable to us in assessing the efficacy of existing recall remedies. In particular, they are potentially helpful in identifying failed recalls. Why would NHTSA not wish to have such information easily accessible for independent review?

The Notice does not make clear how the Agency views potential privacy issues surrounding its proposal “to offer vehicle owners and prospective purchasers an enhanced vehicle recalls search tool through its Web site...[77 FR 55608]” How would a user of the service declare his or her status as an owner or a prospective purchaser? Why would the service not be available to a prospective leaser? Given the practice by some rental car companies to lease vehicles to their customers with known, unremedied conditions subject to a manufacturer’s safety recall (see NHTSA Audit Query, AQ10001), why would the service not be available to the customers of companies which rent cars, trucks, or trailers?

The Notice fails to address a continuing problem in the timely availability and accessibility of the EWR data to independent review. This is because the Notice does not specify reasonable Agency procedures for making public the EWR data that the Agency now deems non-confidential. As you may know, with very few exceptions since 2008, the quarterly records submitted by light vehicle manufacturers for deaths and injuries claims, property damage claims, and light vehicle production are simply not made available to the public until our company, Quality Control Systems Corp., submits a Freedom of Information Act request for the data. Why should it be necessary to wait for us?

This begs the important question of why the Agency’s policy is to keep so much of the early warning data secret. As we commented in 2006 on a previous, related, rulemaking proposal, “Keeping secret public health data about deaths and injuries that are linked to potential motor vehicle safety defects serves no one’s best interest. Secrecy is sure to bring about new failures to provide timely warnings to the public, just as secrecy brought about the original scandal six years ago [Document ID: NHTSA-2006-25653-0009 <<http://www.regulations.gov/#!home;tab=search>>].”

The “new failure” we warned of in 2006 came to pass in 2010. Yet the present Notice does not propose an early warning system with enough detail that is apparently needed for the data to be used as a primary surveillance source at NHTSA. Why would you not present a plan to reform the Early Warning Reporting System in such a way as to avoid the next unnecessary failure? Timely availability of the collected EWR data to the public and the data’s accessibility to independent review are not addressed at any point in the proposal. Therefore, based on past experience, this rulemaking will likely fail again to protect American consumers and the Agency itself from another major safety scandal.

The present proposals should be revised and resubmitted for public comment so that the proposed rules are in better accordance with well-established principles of safety defect surveillance for motor vehicles.

We hope you will find these comments helpful.

Very truly yours,
For Quality Control Systems Corp.:

A handwritten signature in black ink, appearing to read "R. A. Whitfield". The signature is written in a cursive style with a prominent horizontal line across the middle.

R. A. Whitfield,
Director

A handwritten signature in black ink, appearing to read "Alice Whitfield". The signature is written in a cursive style with a prominent horizontal line across the middle.

Alice K. Whitfield
CEO