Additional Questions for the Record

To Michael Wilson for April 14, 2016 Hearing entitled "NHTSA Oversight"

The Honorable Michael C. Burgess, MD

1. The FAST Act requires manufacturers to include the name, description, and part numbers of components or components in its Part 573 report for defects or noncompliance, if a recall involves a defect in a specific component. Can you tell us what the automotive recycler industry's experience has been with this issue since the passage of the Act? What more needs to be done to ensure that recycled parts under recall are quickly taken off of the market?

Since passage of the FAST Act, the Automotive Recyclers Association (ARA) has offered its assistance in writing to the NHTSA Administrator. The Administrator has responded and said that NHTSA staff would be working on this issue. ARA has on several occasions asked NHTSA to convene a summit of automaker safety executives, consumer groups, NHTSA recall experts and the automotive recycler industry stakeholders to address this issue - modeled after other private/public meetings organized by the Administration. ARA has also made a verbal inquiry to a member of the Office of Defects Investigation (ODI) as to the status of implementation. The response was that "groups were being put together" [at NHTSA]. In addition, ARA has offered its technical knowledge and that of the industry inventory management system (IMS) providers to Representative Adam Kinzinger's staff, who has made numerous requests for a joint industry/Congressional/NHTSA meeting on implementation. This has not yet been facilitated. We have no knowledge beyond that of the status of NHTSA efforts toward implementation of this new rule.

To ensure that recycled parts under safety recall are quickly taken off the market, ARA's testimony focused on three major factors that must be considered and incorporated into implementation of this provision:

1. Each vehicle under safety recall needs to be clearly identified by automakers and NHTSA by its unique Vehicle Identification Number (VIN). NHTSA needs to understand prior to implementation the distinction between "specific VINs" versus "VIN ranges". Automotive recycling industry IMS providers do not have the ability to develop automated software if only VIN ranges are provided.

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Some automakers have stated that they can only provide VIN ranges because specific VINs are protected personal information. However, VINs are intended to be widely available to both government and private entities for tracking and recall reasons. There is statutory requirement to have VINs be visible to the public, therefore no reasonable expectation of privacy exists and VINs are not considered confidential or private information for most purposes. Insurance companies, as "financial institutions" are subject to a particular FTC Privacy Rule that may limit disclosure of even non-private information gained in the course of issuing financial services, but this rule does not apply where a non-financial institution, such as ARA or an industry inventory management system, is receiving VINs from another non-financial institution, such as an auto manufacturer or NHTSA.

2. Given that automobile manufacturers already submit quarterly recall reports electronically to NHTSA, ARA believes that the process may only involve a modest technical correction to provide IMS stakeholders timely access to data fields within these reports, which in turn would allow these parties to cross-check that information with the inventories of professional automotive recyclers. Providing these reports in a portable document format (pdf) or other non-integratable format requiring inventory management systems to manually read each file or data field is unacceptable and unworkable.

3. It is important that NHTSA adequately address the scope of data that is required by this provision. To effectively address requirements under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act of 2000 as well as new requirements contained in the FAST Act that requires automobile manufacturers to remedy their recall defects going back 15 years, automobile manufacturers must be required to provide this recalled parts data back to November 2000 to cover the 10,252 recall campaigns over this time period.

In today's world of continuous recalls, defective parts must be effectively addressed to enhance vehicle safety. NHTSA and automakers must fully acknowledge that the recycled original equipment manufacturer (OEM) parts industry is due the same consideration for remedy under the Safety Act as is given to franchise automotive dealerships with new vehicles and owners of used motor vehicles. For far too long, automakers have been allowed to ignore their statutory obligations to address the defective parts that exist in the millions of vehicles that are harvested for parts by professional automotive recyclers annually. Until automakers fulfill their requirements to automotive recyclers like they do dealers, such as providing equitable financial buy-back programs for defective recalled parts, then NHTSA will fall far short of their 100 percent remedy goal and the safety of our nation's drivers will continue to be compromised.

Automobile manufacturers are well aware of their obligations to proactively address their defective recalled parts in the automotive recycling industry. However, ARA is aware of only one such outreach in 2014 and one in 2015. In August 2014, General Motors contracted with a third-party supplier to "coordinate the purchase and return of certain used parts, which are subject to a product safety ignition switch recall, from salvage yards." In 2015 American Honda made a specific outreach on defective Takata airbags to the professional automotive recycling industry. Unfortunately, Honda is dictating the terms and conditions of the buy-back program. As currently structured, in order to participate, automotive recyclers are required to upload sensitive and proprietary business information -- every motor vehicle VIN in their inventory -- to a contractor retained by American Honda. However, American Honda should immediately provide the specific VINs and specific part numbers of all defective Takata airbags.

These two recall remedy program initiatives within the automotive recycling industry were out of the 803 recall campaigns issued by auto manufacturers in 2014 and 973 in 2015 that were initiated. Automakers must initiate robust and comprehensive buy-back programs for the over 10,200 recall campaigns over the past fifteen years. It is reckless to allow automakers to profit from their tsunami of recalls by allowing them to withhold important safety data electronically. ARA urges Congress or NHTSA under its Safety Act authority to require automakers to initiate defective part buy-back programs within the professional automotive recycling industry.

2. There is a possibility that some of the defective Takata airbags may inadvertently be in salvage yard inventories across the country. What is your industry doing to make sure those defective airbags don't make their way into the hands of consumers?

a. Are you working with NHTSA or any automakers to address this problem?

ARA has approached numerous automakers and their two trade associations (Alliance of Automobile Manufacturers and Global Automakers) to discuss this critical issue. The responses have varied and some have made suggestions to continue discussing the issue however there has been little follow-up outreach. Likewise, while ARA has met with NHTSA Administrators and senior staff in the past, no further interaction has taken place. ARA stands ready to work with any and all stakeholders.

b. How do automotive recyclers ensure the safety and reliability of a recycled part or component before it is marketed or sold to a consumer?

Professional automotive recycling facilities follow industry established best management practices and methodologies to provide quality OEM recycled parts to

consumers. There are at a minimum, three separate evaluations of any OEM recycled part before it is sold.

These facilities maintain multi-step inspection and quality control systems to ensure that the recycled parts and assemblies provided meet appropriate grade and condition requirements. These systems include, among other things, i) pre-purchase inspection of the salvage vehicle; ii) further inspection of the vehicle, damage, and point of impact analysis of the vehicle at the recycling facility before disassembly; iii) further inspection and grading of the condition of the part or assembly after disassembly has occurred at the facility; and iv) further inspection before delivery to customers to meet their specific order requirements.

Professional automotive recyclers acquire motor vehicles from various sources, including salvage auctions, dealers and direct purchases from insurers and vehicle owners. After the vehicles are acquired, professional automotive recyclers make a careful assessment of the vehicle to determine which parts and assemblies will be removed from the vehicle for disassembly and which parts will be scrapped. Established methodologies for vehicle evaluation and inventory analysis can include processes such as:

- Imaging the vehicle and its component parts and track to the vehicle part record
- Reviewing the vehicle's build codes (if available)
- Imaging the build codes and capture build date (if available)
- Decoding vehicle line and drive train configuration
- Identifying assemblies and parts
- Verifying interior colors and maintain conditions and option lines (seats, dashboard, door parts)
- Verifying condition of core support, bumper reinforcement, head light mounting panel and frame rails
- Assigning condition codes, assess extent and type of any damage, and identify the primary damage field
- Starting vehicle and test mechanical and electrical parts *(e.g.,* fuel pump, alternator, transmission, power windows, mirrors, power seats, power antennae, AC compressor system)
- Logging on the individual part record that the part has been tested
- Engine-oil and compression testing to learn if mileage exceeds certain mileage

Data is recorded in respect to both the vehicle and disassembled parts and assemblies, and part tags with bar codes are assigned to each disassembled part/assembly.

In 1997, ARA established its Gold Seal Certification Program that defines standards for recycled parts quality assurance, customer service, parts descriptions and other facets of quality control. This program continues to grow and is recognized by the Automotive Service Association and other industry partners.

c. How are recyclers monitoring counterfeit automotive parts in the marketplace and ensuring that they are not being sold to consumers?

ARA has a long history of speaking out against counterfeit automotive parts and warning the automotive repair industry community and consumers about the dangers such parts pose and their increasing prevalence. ARA urges customers to utilize quality, recycled original equipment manufacturer (OEM) parts supplied by professional automotive recyclers because it is the professional automotive recycling operations that have robust product assurance and quality control procedures in place to help identify parts that do not meet industry accepted standards.

Most professional automotive recycling facilities employ multi-step quality control precautions that help to identify counterfeit parts. The industry employs sophisticated methods to process, inspect, evaluate and analyze OEM parts harvested from vehicles. For example, at a typical professional automotive recycling facility, these processes may include a review of the vehicle's build codes (if available), capturing images of the vehicle and its component parts to track the vehicle part record, verification of interior colors, conditions and option lines (seats, dash board, door parts) and checking the vehicle identification number. As a result of these quality control processes, parts found to be of a substandard condition grade, rusted, non-repairable or otherwise suspect, such as possible counterfeit parts, are not listed as available on estimates or sold to customers.

ARA is working on many fronts to ensure that counterfeit parts are not being sold. At the state level, ARA has supported legislation making it a crime to knowingly manufacture, import, install, reinstall or sell a counterfeit or nonfunctional airbag. In addition to meeting with NHTSA staff about this issue, at the government's request, ARA also met with senior policy staff from the Administration responsible for coordinating the federal government's efforts on intellectual property (IP) enforcement issues to discuss the issue of counterfeit airbags.

Preventing the spread of counterfeit automotive parts and targeting criminals who engage in that type of activity also is a priority for the National Intellectual Property Rights Coordination Center (IPR Center) which is a joint task-force agency led by Homeland Security Investigations, a component of the Immigration and Customs Enforcement (ICE) agency. According to the IPR Director, the use of illegal counterfeit automotive parts is increasing in the U.S and automakers and automotive recyclers both can and need to help with this problem. The Director further stated that "automotive recyclers know their business and can recognize when a part seems out of place, or doesn't seem right." In addition, he suggested that consumers should only "do business with reputable repair shops, the manufacturer's dealership repair network, or legitimate automotive recyclers selling used OEM parts." ARA is working with many different sectors to help reduce the incidence of counterfeit automotive parts in the replacement parts marketplace.

The Honorable Gregg Harper

3. The FAST Act requires manufacturers to include the name, description, and part numbers of components or components in its Part 573 report for defects or noncompliance, if a recall involves a defect in a specific component. Can you tell us what the automotive recycler industry's experience has been with this issue since the passage of the Act? What more needs to be done to ensure that recycled parts under recall are quickly taken off of the market?

The question is identical to the first question by Chairman Burgess so please refer to the answer above.

The Honorable John Sarbanes

1. I was a cosponsor of the ROADS Safe Act and worked with my colleagues in the House to make sure that the Driver Alcohol Detection System for Safety, or DADSS, program, was authorized as part of both MAP-21 and the FAST Act. I know that you are also a strong supporter of the DADSS program.

2. This is an important project as it has the possibility of eliminating drunk driving in America and saving over 7,000 lives each year according to estimates from the Insurance Institute for Highway Safety. Can you provide an update on the current status of the project? What is being done to accelerate this technology?

While the DADSS program sounds like a vital and effective program to eliminating drunk driving in the U.S., ARA has never dealt with this program and thinks that the question may have been meant for one of the automaker associations who may have worked on this project.

The Honorable G.K. Butterfield

1. Particularly once a car is out of warranty, many drivers have their cars repaired by independent repair shops - many of which use recycled parts.

a. Recycled parts are often far less expensive than the corresponding brand new part sold by a dealer. Does that have an effect on the overall market for automotive parts?

The automotive parts supply chain includes many options for consumers. These options, which can save hundreds if not thousands of dollars for a car owner, include OEM parts which professional automotive recyclers harvest from total loss or end-of-life vehicles, remanufactured parts and aftermarket new parts. Without these options a consumer would be limited to only the automotive dealership and new OEM part prices.

Having the recycled OEM products available provides a counter-weight to make sure that those new parts prices are in balance and have competition in the marketplace.

b. Are recycled parts meaningfully different from the corresponding new parts?

OEM parts are essentially the exact part that the auto manufacturer put on the car in the assembly line. Professional automotive recyclers sell these quality, recycled OE parts that are designed by auto manufacturers and built to meet their requirements for fit, finish, durability, reliability and safety. These parts continue to operate as they were originally intended in terms of form, function, performance and safety.

2. In your testimony, you noted that auto manufacturers frequently change original equipment (OE) replacement part numbers. Please expand on the relationship between OE replacement part numbers and VIN numbers, and why it is so important to recyclers to have access to real-time updates on OE number parts.

The VIN is a unique vehicle identification number that includes codes to where the vehicle was made as well as every option that was put on that particular vehicle on the production line. The last 6 digits of the VIN are called the **RPO (Regular Production Option) codes** which define the specific configuration of a new vehicle and detail exactly what was built into that vehicle on the production line.

Even a vehicle without option equipment will have RPOs that specify important information such as the engine type and exterior paint color. An example of the breakdown of a VIN is below.

VEHICLE IDENTIFICATION NUMBERS: AN IN-DEPTH EXPLANATION

A VEHICLE IDENTIFICATION NUMBER, COMMONLY ABBREVIATED TO VIN, IS A UNIQUE SERIAL NUMBER USED BY THE AUTOMOTIVE INDUSTRY TO IDENTIFY INDIVIDUAL MOTOR VEHICLES. VINS WERE FIRST INTRODUCED IN 1954, AND FOR 27 YEARS, THERE WAS NO ACCEPTED STANDARD FOR THESE NUMBERS, RESULTING IN EACH MANUFACTURER USING A DIFFERENT VIN FORMAT. IN 1981, THE U.S. NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION STANDARDIZED THE FORMAT, REQUIRING ALL OVER-THE-ROAD VEHICLES SOLD TO CONTAIN A 17-CHARACTER VIN.

VIN Digits	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
	MANUFACTURER The first three characters uniquely identify the manufacturer of the vehicle using the World Manufacturer Identifier (WMI) code.				VEHICLE ATTRIBUTES The fourth through eighth positions in the VIN are the Vehicle Descriptor Section (VDS). This is used according to local regulations to identify the vehicle type, and may include information on the automobile platform used, the model and the body style.				CHECK DIGIT The ninth digit is a VIN accuracy check digit, verifying the previous VIN characters.	MODEL YEAR	PLANT CODE The eleventh digit reveals the assembly plant for the vehicle.	SEQUENTIAL NUMBER The twelfth to seventeenth positions represent the Vehicle Identifier Section, or VIS. These digits may signify the options installed or engine and transmission choices. In North America, the last five digits must be numeric.				
EXAMPLES	WDB Mercedes-Benz)				WK54F SLK280 Model				5 Is the check digit	6 Year 2006	F Bremen Germany	077435 Standard edition/trim, 6 cylinder, gas 3.0, 7 speed automatic, comfort package, heating package, automatic dimming mirror, driver seat memory, dual power seats, heated front seats, power tilt steering wheel, metallic paint, and all standard options.					
	TRADITIONAL VIN DECODE										These identifying digits are used in combination with the first 11 digits of a VIN to map to RPO codes within the manufacturer's database and uncover detailed options information.						

Source: Directions Magazine (November 2012)

A complex automotive part or component can use, for example, several different coil springs each of which looks similar but each of which is slightly different. When one of these springs fail or otherwise needs replacing, the customer can order a replacement spring by simply asking for the part by the unique part number and be confident that they will be shipped the correct part. It's a good system for identifying parts – so good in fact that virtually every manufacturer uses this method to identify parts in a product.

Some manufacturers have taken the position that part numbers are proprietary[i], either as trademarks or trade secrets, thus they cannot be shared with the automotive recycling industry. Yet this information is shared with others in the collision repair industry, undermining any argument that part numbers are in any form intellectual property. Furthermore while it is theoretically possible for a part number to be a trade secret, and likewise theoretically possible for a part number to be trademarked, it is legally impossible for a part number to be both a trade secret and a trademark simultaneously.

It is no secret that auto manufacturers have placed major restrictions on the dissemination of OEM part numbers and build sheet data so that this information cannot be integrated into professional automotive recyclers' inventory management systems. Without this important parts data, recyclers are not able to seamlessly integrate their OEM parts inventory into estimating and collision repair platforms. Delays in updating parts inventories often means that consumers have fewer choices when making important decisions about the service and repair of their vehicles.

ARA's position is that the industry must be provided with safety information that can be automatically synchronized with recycled parts inventory so that important recall and service bulletin information is seamlessly integrated into the inventory management systems utilized by the automotive recycling industry.

3. In your testimony, you referenced information posted to NHTSA's website, safercar.gov.

a. How do automotive parts recyclers use safercar.gov?

All owners of vehicles are requested to use safercar.gov to determine if the car in question has a safety recall. The owners of end-of-life vehicles know this information as well and professional automotive recyclers are the owners of hundreds if not thousands of these vehicles.

While NHTSA's www.safercar.gov is a necessary first step and a good solution for the individual consumer, many automotive recyclers are frustrated with its functionality. The website is currently designed for only single VIN lookups and security mechanisms built into every single VIN search slow down its usefulness. For many businesses, going to individual automotive manufacturer websites is quicker than www.safercar.gov. Bulk VIN upload capability on safercar.gov would help professional automotive recyclers

immensely and would be a much more efficient process for automotive recyclers than typing in individual 17-digit VINs for the hundreds of vehicles in inventory.

b. When a vehicle has been subject to a recall and subsequently had that repair completed, does safercar.gov provide that information?

ARA has found that safercar.gov does not provide any information when a vehicle has been repaired. The file appears blank.

In addition, some of ARA's members have found errors in the government's database. One recycler found that 2 out of 3 of his personal vehicles that he knew had recalls did not show up as having been recalled according to the information on safercars.gov.

c. Please explain why that information is useful to automotive parts recyclers.

The average age of vehicles on America's roads is now estimated to be 11.5 years old. In many cases an end-of-life vehicle has had more than one owner. The safercar.gov website has no record that the recalled component has in fact been repaired - it is only an assumption when viewing a blank record.

d. Are there other changes to safecar.gov that you would recommend to ensure that your members do not stock recalled parts?

As answered in the response to Chairman Burgess, there are many limitations to safercar.gov. ARA maintains that no new government database needs to be developed because auto manufacturers are already required under 49 CFR Section 573.8 to maintain publicly available lists of specific VINs of the vehicles involved in a recall. ARA believe that a modest technical correction to provide recyclers' inventory management systems with timely access to these data fields.

4. Currently, when a recall is issued, is the defect information that is provided in the recall notice sufficiently specific? What information do automotive parts recyclers need when a recall is issued?

No, the current defect information is not at all sufficient. Automakers prepare 573.6 recall reports required by NHTSA. While there are many fields where data needs to be entered addressing the recall, the information is descriptive at best and does not come even close to specifying the exact defective part. (A copy of a random 573.6 report is attached.) Automotive recyclers need specific component names and part numbers tied to a specific VIN to be able to efficiently identify the defective part.

[i] Trademark and Trade Secret Rights in OEM Part Numbers, Borges Law Firm, Toronto, Ontario.