



The New NHTSA Rules, or Don't TREAD on Me

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In 2000, Congress passed the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requiring new cars to be equipped with a warning system that indicates when a tire is under-inflated. Congress ordered the National Highway Traffic Safety Administration (NHTSA) to issue rules governing how and when this requirement would operate. NHTSA set about – at typical government speed – drafting rules and requirements.

On October 5, 2005, a mere five years later, the final rules went into effect. NHTSA decreed that by August 31, 2006, 20% of all manufacturers' light vehicles are required to come equipped with a tire pressure monitoring system (TPMS). After August 31, 2007, that number increases to 100%.

This news should have every tire and wheel dealer sitting up and taking notice because the TREAD Act creates a host of new responsibilities for retailers. So many, in fact, that this article will be one in a series focusing on the TREAD Act and its new rules. This installment will outline the basic requirements of the new rules and how they impact anyone who replaces, repairs, or services tires or wheels.

To begin, the new rules require the TPMS to notify a driver when any one of the tires is under-inflated by at least 25%. The only systems currently able to meet this requirement are

direct TPMSs, which have sensors located either on the valve stem or in the drop center of the rim. Each sensor contains a battery and communicates with the vehicle by emitting radio waves. Because of the location of the sensors, each time the tires or wheels are rotated, removed, repaired or replaced the sensors must be removed, reset and recalibrated.

A small percentage of replacement tires will render the TPMS inoperable even when installed correctly. It is now impossible to know which replacement tires are incompatible with direct TPMSs. As a result, NHTSA does not require vehicle manufacturers to certify that the TPMS will continue to function properly with replacement tires.

Instead, NHTSA is requiring that all TPMSs be equipped with a malfunction indicator light (MIL) which would illuminate when the TPMS is not functioning properly. If a tire retailer installs incompatible tires, or makes an error during installation, the MIL will illuminate, warning the consumer that the replacement tires have caused a TPMS malfunction. Well then, you might think, tire retailers are covered, right? Not so fast.

According to the TREAD Act, it is unlawful for a distributor, dealer or repair business to "*knowingly* make inoperative" any part of a TPMS. This means that once a tire dealer discovers a certain tire in his inventory renders TPMSs inoperable, he can no longer install that tire on cars equipped with TPMS, no matter how many are gathering dust in his storeroom. To do so would be knowingly rendering a TPMS inoperable, which is a violation of the TREAD Act. Worse still, if the customer has an accident as a result of under-inflated tires – an accident that an operable TPMS may have prevented – the dealer could be facing a hefty lawsuit.

Untrained or inexperienced service technicians can also cause a dealer to run afoul of the TREAD Act (or be on the losing side of a lawsuit). In the context of federal regulations, the word "*knowingly*" has been interpreted to mean only that an act was intentional – as opposed to accidental – and does not require that the actor be aware that his behavior was unlawful. A

court could find that a service technician who takes off a TPMS sensor and throws it in the glove box, whether out of frustration or ignorance, has knowingly rendered a TPMS system inoperable, leaving his employer open to fines and liability.

To avoid this situation, all service technicians must be trained to spot TPMS sensors and know how to correctly remove and reinstall them. Technicians must also be trained to reset and recalibrate the TPMS. In addition, new equipment will be necessary to ensure that every TPMS is properly reset and recalibrated when tires are changed or rotated. Because the TPMS will not function properly after a tire repair or service unless it has been reset and recalibrated, a tire retailer that rotates and replaces the tires on a car with TPMS without investing in the proper training and equipment may violate federal law by knowingly rendered the TPMS inoperable.

Clearly, the new TREAD Act regulations will drastically change the way tire retailers do business. Our next installment will discuss the costs of dealing with TPMS and how retailers can limit liability through consumer education.