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Reporting of Information and Documents About Potential Defects
Retention of Records That Could Indicate Defects
66 FR 66190, December 21, 2001

Advocates for Highway and Auto Safety (Advocates) submits the following comments in response to the National Highway Traffic Safety Administration (NHTSA) notice of proposed rulemaking (NPRM) on "early warning" defect information reporting. In response to the tragic events and the loss of more than 200 lives and many more serious injuries that accompanied the tread separation of Bridgestone/Firestone Wilderness and ATX tires and the lethal rollover of Ford Explorers, Congress enacted the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act, Pub. L. 106-414 (Nov. 1, 2000). Congressional hearings documented the fact that the manufacturers did not inform NHTSA of the safety problems experienced with these same tires and vehicles in foreign markets, and that the agency did not receive vital, real-time information from the manufacturers about the number and scope of tire failures and vehicle crashes in the U.S. as they were being reported to the manufacturers. Section 3(b) of the TREAD Act was intended to address this situation and to avoid similar events from recurring by requiring manufacturers to provide the agency with a range of information to better enable NHTSA to detect potential safety defect problems at an early stage.

In general, the NPRM appears to fulfill the goals of the statute and Advocates supports the overall approach adopted by NHTSA. Section 3(b) was intended to be comprehensive, and to encompass all forms of relevant information and data that could expedite the identification of a "possible defect." The final rule, therefore, must be comprehensive in scope and ensure a sufficient database from which NHTSA can make judgments about areas that require further inquiry. These comments discuss specific points where we disagree or have suggestions to modify the proposed rule. Aside from

technical matters directly related to the proposed rule, Advocates' is also concerned about the lack of a robust benefits analysis to support the rulemaking and the omission from the NPRM of any details regarding public access to the "early warning" information database.

Economic Analysis

The NPRM estimates that, industry-wide, the cost of the proposed TREAD "early warning" information requirements should amount to approximately $18 million in one-time start-up costs and another $6 million in recurring annual costs.[1] These costs, while not insubstantial, are modest in light of the nature of the problem involved and the fact that Congress has mandated that an "early warning" system be developed to improve NHTSA's capacity to detect motor vehicle defects before they become widespread. Even if the cost estimates provided by the agency are at the lower end of the potential cost range for such a program, the overall costs would be modest compared to the benefits that could be expected from averting even one future defect problem on the scale of that involving Bridgestone/Firestone tires and Ford Explorers.

In fact, with regard to tread separation of defective Firestone tires which contributed to Ford Explorer rollovers, NHTSA estimates that 143 lives would have been saved if the recall of August 9, 1998, had been announced two years earlier. PRE at 59. Thus, "early warning" and expedited intervention could have resulted in limiting those incidents to only 49 deaths instead of the 192 fatalities that were reported in connection with those incidents as of the date of the recall, a 75 percent reduction in the total number of defect-related fatalities. This potential life-saving impact of an "early warning" system, which can result in swifter action and earlier intervention either by a manufacturer, NHTSA, or both, is justification enough for the cost of establishing and maintaining such a system. The agency estimates that implementation of the proposed TREAD Act "early warning" reporting information requirements will reduce by one year, on average, the time it takes the agency to screen for and investigate safety defects, a reduction of between 27 and 33 percent over current defect investigation time intervals. *Id.* at 60-61.

This would represent a significant reduction in NHTSA's defect determination time-line. Similar to early detection and diagnosis of diseases such as cancer, earlier

[1] NHTSA's NPRM estimate of $18 million in industry start-up costs is $4 million (29%) more than the $14 million figure cited in the Preliminary Regulatory Evaluation, and the NPRM estimate of $6 million in recurring annual cost to industry is $1million (20%) more than the $5 million figure cited in the Preliminary Regulatory Evaluation as the annual cost. *TREAD Act Early Warning Reporting System Part 579,* Preliminary Regulatory Evaluation, NHTSA (Dec. 2001) ("PRE"). The difference in cost estimates is unexplained but may be due to the fact that the lower estimates in the PRE were based on the advance notice of proposed rulemaking, which contained somewhat different requirements than those in the NPRM.

identification and recall of defective vehicles and parts will have the substantial public benefit of averting many crashes, fatalities and injuries, and the resultant impact on quality of life, family disruption, medical costs, loss of earnings, etc. Telescoping the time frame between recognition of a potential safety problem and ultimate declaration of a recall will reduce the societal costs of motor vehicle crashes attributable to defects. NHTSA, however, has not attempted to quantify those benefits in terms of annual crashes averted, lives saved, and injuries prevented, nor has the agency calculated the total economic value of these benefits. While Advocates realizes that it is difficult to quantify the true scope of defect-related crashes, fatalities and injuries, the agency should be able to provide benefit estimates based on the agency's past experience with defect investigations. By classifying defects into three groups, those affecting property damage and repairs only, those associated with some deaths and injuries, and those defects (such as Bridgestone/Firestone and Ford Explorers) involving numerous crashes, deaths and injuries, the agency should be able to provide some general estimate or range of the potential benefits that could be derived from earlier discovery and recall of defective vehicles and parts.[2]

NHTSA also discusses the fact that the "early warning" program will generate an additional 63 recalls each year. PRE at 61. According to the PRE, the "early warning" information will result in greater general scrutiny of defect issues and that many defects which, in the past, would have gone undetected or been detected too late for effective action, will be the subject of recalls after the "early warning" program goes into effect. The agency estimates that this will result in a yearly increase of 51voluntary manufacturer recalls and another 12 NHTSA influenced recalls. However the agency makes no attempt to quantify this benefit to the public, stating that it "cannot estimate the impact on fatalities as a result of an increase in future recalls." *Id.*

Moreover, the agency has overlooked a number of benefits to manufacturers, in the form of reduced costs or cost savings, that are likely to accrue from the "early warning" program. These additional benefits of early defect detection and recall include reduced costs associated with product liability claims, litigation and settlements, avoiding the loss of brand or model name use, limiting reduction in product sales, preventing plant and factory closures, avoiding greater negative publicity and corresponding additional advertising and public relations costs to overcome negative publicity and restore product integrity in the marketplace. Other benefits would accrue to manufacturers through

[2]Despite the difficulties in obtaining specific data, NHTSA has developed benefit estimates in many areas and numerous other regulatory proceedings. For example, at the outset of the Intelligent Transportation System (ITS) program NHTSA developed a safety benefits estimate based on assumptions about the installation and use of technologies still under development. The agency estimated that more than one-third of all rear-end, roadway departure and lane change/merge crashes could be prevented through ITS countermeasures. *ITS at a glance,* pp. 1-2, vol. 1, no. 2 , DOT Joint Program Office (1966). Developing an estimate for the benefits of completing defect investigations in shorter time periods, including the beneficial impact on reductions in crashes, fatalities and injuries, should present no greater challenge to the agency than its estimates of ITS benefits.

earlier product quality improvement and design changes, as well as reductions in costs that stem from continuing production and association with a defective product.

On this basis alone, the eventual benefits to industry of an "early warning" information program are considerable and greatly outweigh the costs of the program as estimated by NHTSA.[3] Any reasonable benefit/cost analysis will support the wisdom of establishing an "early warning" defect detection program on a purely economic basis. Early detection of vehicle defects provides an illuminating example of the adage that an ounce of prevention is worth a pound of cure.

Another way to view the issue of the cost of an "early warning" program is based on the cost per vehicle or item of motor vehicle equipment. Even if the agency's estimated start-up cost of $18 million in the first year of the program turned out to be the actual recurring annual cost to industry, this amounts to only slightly more than $1 per vehicle, based on annual sales of just over 17 million new light passenger vehicles sold in the U.S. market.[4] The average cost would drop below one dollar per vehicle if the sales of other vehicles covered by the rule, including motorcycles, buses, trailers, and medium and heavy trucks, were taken into account. This does not include the annual production of tires and child restraint systems sold in the U.S. which will also be part of the "early warning" data system.

Alternatively, the cost per recalled vehicle would also turn out to be quite low based on historic recall data. According to NHTSA, nearly 94 million light vehicles and medium and heavy trucks were subject to recall between 1996 and 2000. PRE at 37. This amounts to an average of almost 19 million vehicles per year. Thus, the annual cost of the program per recalled vehicle is also well under $1 per vehicle and item of equipment even using the $18 million figure as the annual cost to industry. This estimate does not include current recalls for tires and child restraints, and also does not include an increase in the annual number of recalls, and recalled vehicles and parts, that NHTSA expects to occur once the "early warning" program is implemented.

Thus, the costs of the "early warning" information program proposed by NHTSA are reasonable and would impose only a minimal increase in the marginal cost per

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[3] While manufacturers have asserted that the costs of the proposed rule are far higher than estimated by the agency, no specific figures or detailed analysis of the costs have been submitted by industry.

[4] Total sales of new car and non-commercial light trucks in the U.S. were 17.118 million in 2001 and 17.333 million in 2000. *U.S. Motor Vehicle Industry Domestic and International Trade Quick-Facts*, Office of Automotive Affairs, U.S. Department of Commerce (Jan. 28, 2001).
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vehicle/item of equipment.[5] Moreover, since manufacturers will ultimately pass this cost on to the consumer, the impact of the rule on the manufacturer will be negligible.[6]

Public Availability of "Early Warning" Information

Advocates supports making the data base of "early warning" information publicly available on NHTSA's website. The agency has indicated only that the enhanced data processing system being developed for housing "early warning" information, the ARTEMIS Information System, will "facilitate the provision of appropriate information to the public." 66 FR 66213. This vague reference does not commit the agency to providing public access to the database. Just as the Fatal Analysis Reporting System (FARS) database is accessible for public use through NHTSA's National Center for Statistics and Analysis (NCSA), there is no reason not to provide similar public access to the "early warning" information data base.[7] This would serve two purposes. First, the information in the data base could be reviewed by many more persons, both researchers and consumers, allowing for faster and more in-depth review than NHTSA can accomplish on its own with limited personnel and resources. Since the data base will be comprised largely of non-technical information, *i.e.*, data sets of total claims, warranty claims, consumer complaints, property damage, etc., filed in a specified time period, many non-researchers will be capable of making comparisons and analyses of this data. NHTSA should provide an electronic "bulletin board" for this purpose in order to obtain feedback and analysis from the public.[8] While members of the public should be able to submit their views of the data to NHTSA, it would remain the agency's function to determine what information might indicate a potential defect requiring further inquiry.

Public dissemination of the "early warning" data base would be an important improvement over the current situation in which anecdotal reports are the only facts presented to the public. If the "early warning" data base is publicly available, the public would have a statistical perspective against which anecdotal information about individual crashes and alleged defects could be assessed. A public data base would necessitate that the media, manufacturers, and others would have to address whether claims of a defect

[5] The cost per vehicle, including other items of motor vehicle equipment, is at most one dollar and probably far less. This is less than the cost of balancing new tires at the time of purchase.

[6] NHTSA should consider both the small marginal cost of the program and the fact that such cost will be inevitably be passed on to the consumer in reviewing assertions that requirements in the proposed rule are "unduly burdensome" under section 2(b) of the TREAD Act, codified at 49 U.S.C. § 30166(m)(4)(D).

[7] Advocates expects that the public data base would consist of the total numbers of claims and other types of reports categorized by vehicle make and model and component system, as contemplated in the proposed rule, but would not include information that would violate privacy rights or is otherwise legally protected by existing rules that apply to legitimate claims of confidentiality.

[8] It is clear that manufacturers already have the opportunity to comment and characterize the data they submit to NHTSA.

are consistent with the recent and historical data reported for a particular vehicle or item of equipment. This would result in a more informed discussion of potential defects, based on more extensive information, and a better informed public.

Second, consumers could access the "early warning" information data base to compare the information on different vehicles in order to inform their own purchase decisions. While the "early warning" information is not necessarily indicative of any defect, and most certainly agency disclaimers would be posted on the website to advise the public of this fact, the body of information available for each vehicle, and other items of motor vehicle equipment, will, nevertheless, provide consumers with impressionistic information that can be useful when comparing several makes and models.

There are a number of other issues raised in the NPRM which Advocates wishes to address in these comments.

Information That Must Be Reported Initially

Advocates agrees that, for the most part, initial filings should consist only of raw numbers of defect-related reports categorized by the type of report and the make, model and component system alleged to have a defect. This type of reporting, so long as it is comprehensive and covers all relevant sources of information reported to manufacturers, should improve the ability of both manufacturers and NHTSA to detect gross changes in safety reports that, in turn, should signal the need for further analysis and investigation.

We support the agency's decision to require total numbers of incidents in each category without the use of a "trigger" level for such reporting. While Advocates was willing to accept low-level, hard number thresholds for reporting, we concur with NHTSA's conclusion that reporting all information without any reporting threshold is both simpler to administer as well as providing more complete data sets.

Advocates' believes that for certain information initial reporting should consist of the number of reports received as well as specific documents. It is appropriate that certain types of documentation be forwarded to NHTSA on a regular basis in addition to the report count totals so that NHTSA can assess defect allegations and safety trends immediately and independently. The types of documents that should be forwarded to the agency include, most importantly, consumer complaints received by manufacturers, as well as defect-related formal legal filings containing the factual recitation of the claim against the manufacturer and field reports. With such information readily available, the agency should be able to perform additional, more in-depth reviews on any particular vehicle or part that appears from the raw number counts of defect-related reports to have an increased involvement in crash deaths and injuries.

Listing of Motor Vehicle Parts and Components for Reporting

Advocates opposed NHTSA's initial suggestion, included in the advance notice of proposed rulemaking, to establish a discrete list of motor vehicle parts for the information reporting system based on historic defect and recall information. After evaluating the presentation made in the NPRM, Advocates now believes that the component list covers all essential vehicle parts and systems that are relevant to safety defects. The analysis of recall and complaint data prepared by the Economic Analysis Division of U.S. Department of Transportation's Volpe National Transportation Systems Center supports the agency's decision. Moreover, since the proposed rule includes a category for reporting defects related to "other" parts, in addition to those specifically identified on the list, we have no objection to this approach.

Minimum Specificity

There is an obvious need for some degree of "minimum specificity" in order to identify the vehicles, vehicle equipment, child restraints and tires that are the subject of the reports filed by manufacturers with NHTSA. Advocates is concerned, however, that many claims and notices could be ignored by manufacturers and not reported to NHTSA because a vehicle model name or year, or a part name or component model number, was not reported to the manufacturer. Although most consumers should be able to supply the make, model and model year for vehicles, the model name or number for a child restraint, and the model and size for tires, Advocates is not convinced that average consumers will be able to identify a model name or model number for other items of motor vehicle equipment. Consumers are not necessarily familiar with the nomenclature for vehicle parts used by manufacturers or the technical designations for components and systems included on NHTSA's list for this rule. Moreover, many consumers are only generally aware of the problem they are encountering with their vehicle and, unless they have obtained the information from a mechanic, the consumer may not know, and cannot report to the manufacturer, the model number or model name of the part, component or system involved. For example, a vehicle owner may report the vehicle make, model and model year, but may only be able to generally describe the problem the owner has encountered, such as vehicle stalling, without specifically identifying an item of equipment or a component system by part name or model number. In such instances, there is no requirement that the manufacturer identify the part or component from the descriptive information in the claim or notice, or that the manufacturer attempt to contact the person who filed the claim or notice to obtain the specific information needed. The NPRM would allow manufacturers to ignore such claims and notices and defer reporting until a subsequent communication containing more specific information is received. 66 FR 66196.[9]

[9] The wording in the NPRM states that manufacturers need not report defect information that does not contain the minimum specificity that manufacturers must report to NHTSA. 66 FR 66196. The wording further implies that manufacturers need take no action to clarify the information initially reported, but can passively await a "subsequent communication." *Id.* In fact, if a high number of reports regarding a specific

We note that the proposed rule, in order to make reporting simpler for original and replacement equipment manufacturers (other than tire and child restraint system manufacturers), will allow these manufacturers to "describe the systems or components involved in their own words, based on the claim or notice." 66 FR 66197. Similarly, defect claims, notices and consumer complaints from vehicle owners and consumers should not be discarded, left uncounted, or entered as "unkown," because the description in the communication does not precisely identify the component or system with minimum specificity.

Reporting of Injuries

Advocates supported NHTSA's proposal to define the term "serious injury" for the purposes of this rule as an injury classified as three (3) or greater on the Abbreviated Injury Scale (AIS). We do not believe that identification of such injuries present an insurmountable problem to manufacturers since the AIS system is well understood, in common use in medical, research and engineering communities and, for crashes involving serious injuries, the existence of AIS 3+ injuries might be evident based solely on the description of the injury or injuries in a notice or claim. However, in many instances, the extent of the injury and the AIS level will not be readily apparent from the claim or notice alone and will some further investigation or information collection, such as a telephone call or written communication with the claimant, or access to medical records would be necessary. Our previous comments acknowledged that there would be cases involving uncertainty and in which the severity of the injury cannot be determined. In those situations we supported reporting the information to the agency even if the AIS level was unknown.

In the NPRM, NHTSA has decided to require reporting of all defect-related claims and notices involving any injuries. We concur with the agency's decision because all injuries, not just serious injuries, are relevant to the purpose of identifying vehicle and equipment defects. Not only can the same vehicle defect result in both serious and non-serious injuries, depending on the factual circumstances, but defects that result in large numbers of non-serious injuries also present a danger and economic burden to society that should be redressed by the "early warning" information system. Furthermore, the success of the TREAD Act "early warning" information system will be proven if the system can identify safety defects based on non-serious injury reports, before more serious injuries become widespread. The agency is also correct in its legal analysis that while the statute specifically requires the reporting of "serious injuries" as part of the warranty and claims data, 49 U.S.C. § 30166(m)(3)(A)(i), the statute also authorizes the collection of "other data" that "may assist in the identification of defects related to motor

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defect are received, it is in the manufacturer's interest not to pursue information regarding potential additional defect reports. Moreover, unless a death or serious injury is involved, a consumer who has previously filed a complaint, claim or other notice with a manufacturer is not likely to provide additional facts or information that were omitted from the prior communication unless the manufacturer responds and specifically solicits the necessary information.

vehicle equipment in the United States," 49 U.S.C. § 30166 (m)(3)(B). Injuries other than serious injuries certainly fall within the scope of this latter statutory category. Finally, we agree with the agency that the reporting of all defect-related injuries in claims and notices will streamline the process and reduce the burden on manufacturers to analyze or investigate claims and notices to distinguish between serious and non-serious injuries.

Oral Communications

In defining a consumer complaint the NPRM states that a "'communication of any kind' would primarily include communications that are written but it would also include oral complaints, such as made through a telephone call, that a manufacturer memorializes in a document, including an electronic information system." 66 FR 66202. In the final rule, NHTSA should clarify that this interpretation applies to all forms of information reporting requirements. Thus, for example, relevant information provided by consumers during in-person meetings, through telephone conversations or other means, must be reported by a manufacturer if that information has been reduced to writing or has been otherwise recorded by employees of the manufacturer. Similarly, relevant oral communications from dealers, employees of subsidiaries of the manufacturer, and field reports that are memorialized or recorded would likewise be covered and need to be reported.

Internal Manufacturer Investigations

Advocates stated in comments to the advance notice pf proposed rulemaking that NHTSA should have access to information developed during internal investigations by manufacturers of potential safety related defects. While agency access to such information may involve proprietary information that requires confidentiality, the purpose of the early warning requirements is to bring potential safety problems to light as soon as possible. The TREAD Act intended NHTSA to have access to relevant safety information so long as the agency can use the information in a meaningful manner and the requirement is not unduly burdensome. The most effective means of accomplishing the early warning requirements is to have manufacturers share with the agency the manufacturer's information and analysis obtained during the course of its own safety investigations. It makes no sense for "early warning" defect information to only include information reported by consumers, while excluding information developed by the manufacturer.

Advocates assumes that manufacturers conduct internal investigations on the basis of some design or engineering concern or as a result of receiving the same types of information that will be subject to early reporting requirements pursuant to this rulemaking. Providing such information on internal investigations is not a departure from current requirements, under which NHTSA can request information from internal manufacturer investigations after the agency itself opens a formal proceeding or

investigation into a potential safety problem or defect. The only difference is that the agency is now authorized to obtain access to information from internal investigations at an earlier point in time, when it may avoid the problem from becoming more widespread. We agree with NHTSA that access to internal manufacturer investigations, as part of the early warning system, would be part of the screening process used by the agency to determine whether to open a defect investigation. 66 FR 66211.

Access to manufacturer investigations could prove highly beneficial for safety because the agency can understand the approach and methodology of manufacturer investigations at an early stage; a separate agency investigation might be unnecessary; duplication of certain aspects of any independent agency investigation could be avoided; and early detection of safety problems will be enhanced.

Advocates suggested that the agency require manufacturers to provide a monthly status report and summary of all safety-related internal investigations that pertain to vehicle systems, equipment and components, including those being conducted by outside contractors. The agency would request access to information on specific investigations if, and when, the agency has a basis to believe that the manufacturer's investigation is relevant to a safety problem that the agency has decided to review or investigate.

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