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Standards Enforcement and Defect Investigation
Defect and Noncompliance Reports; Record Retention
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Introduction

Advocates for Highway and Auto Safety (Advocates) appreciates this opportunity to provide comments to the National Highway Traffic Safety Administration (NHTSA) regarding the "early warning" reporting required by Section 3 of the Transportation Recall Enhancement, Accountability, and Documentation Act (TREAD), Pub. L. 106-414 (Nov. 1, 2000). The early warning provisions in the TREAD Act are intended to provide NHTSA with greater access to manufacturer reports, customer claims, data analysis and other sources of relevant information in order to expedite identification of defects and potential safety problems in motor vehicles and motor vehicle equipment. Advocates supports the need for additional reporting to provide NHTSA with a more comprehensive picture of emerging safety related problems and trends in the vehicle fleet.

At the outset of these comments, Advocates wishes to stress two important aspects of the issues raised in the advance notice of proposed rulemaking (ANPRM). First, in developing a reporting regulation to implement the TREAD mandate, the starting point must be the existing data collection practices of vehicle and equipment manufacturers. Each manufacturer currently collects information and data on vehicle and equipment performance and defects and most have pro-active programs, processes and procedures in place to analyze that information including, among others, computer analysis of warranty and claims data, field reports, post-crash investigations, and monitoring of special vehicle fleets. NHTSA must review all the different types of information, reports and analyses that manufacturers now rely on to detect safety problems, parts failures and defects. The ANPRM requests information on certain types of data collection and how the data is maintained, but does not specifically request manufacturers to provide a comprehensive list of all information programs they conduct nor the types of data analyses they perform. The agency needs to request this kind of information on current manufacturer practices in order to get a comprehensive picture of what is available. The agency would then be in a better position to determine the kinds of information and analyses that should be submitted.

Second, the information submitted by vehicle and equipment manufacturers must be provided in a format that NHTSA can readily use to analyze safety issues. Advocates concurs with the agency's position that the information must be reported in a uniform manner and in a standardized format that expedites agency review, permits recent data to be aggregated with data that was previously submitted, and facilitates the agency's ability to perform appropriate analyses. This includes formatting electronic information so that it can be merged with a preexisting database. This is essential in light of the limited resources and personnel the agency may have available to devote to review and analysis of potentially vast quantities of information.

The early warning reporting requirements are intended to assist in the identification of repeated failures or safety problem trends that may indicate a potential defect. Advocates is convinced that this goal can be accomplished only if sufficiently specific and detailed information, including the results of manufacturer analyses, are submitted to NHTSA without overloading the agency with disjointed information and raw data. In order to accomplish the early warning goal, the agency should require that manufacturers must report information in an organized and systematic manner which is detailed enough to indicate whether a safety problem might exist. The reported information should clearly identify not just the vehicle and vehicle system involved but, to the extent feasible, the specific item of equipment, component, and mode of failure that is causing the problem.[1]

Relevant Information and Data

The TREAD Act specifically identified certain common types of information that should be submitted by manufacturers. However, the statute gave NHTSA broad authority to require "other data" that are relevant and that would assist in the early detection of potential safety defects. Thus, while fatality, serious injury, warranty and claims data are specifically addressed in TREAD, and no doubt collected and reviewed by all manufacturers, the agency should also require reporting of information on special fleets, such as high mileage fleets, that may provide indications of safety problems at an earlier point in time than the rest of the vehicle fleet. The agency should solicit descriptions of, and information obtained from, all special reporting programs conducted by manufacturers in order to determine whether the regular submission of this information would be of assistance in detecting safety problems and defects. Similar to the ANPRM treatment of manufacturer Field Reports, such information can be required under the "other data" provision of the statute.

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[1]As with other detailed technical problems encountered in safety regulations the agency and the industry will, no doubt, work out logistical issues regarding the information transfer necessary under the TREAD Act through an open and public consultative process.

NHTSA will also have to require that manufacturers advise the agency, on a continuing basis, of any updates or changes in their data and information collection systems. Manufacturers should inform the agency when they are starting new information or data collection programs and when an existing data collection program or practice is changed, which was not considered by the agency during this rulemaking proceeding,. The agency must ensure that new programs and additional efforts developed by manufacturers to collect and analyze data are automatically reviewed by the agency and, if the new information could assist in identifying potential defects, they are included in the early warning information collection process.

Warranty Claim Data

Advocates agrees with NHTSA that warranty information is clearly included within the scope of the TREAD Act, even though the term warranty appears only in the caption of a subsection and is not reiterated in the text of that provision. It is evident from a fair reading of the statute and the accompanying report language that warranty information is precisely, if not specifically, the type of data Congress intended the agency to obtain from manufacturers. *See* H. Rep. 106-954, 106th Cong., 2d Sess., p. 13 (2000).

Advocates does not agree, however, with the suggestion in the ANPRM that reporting of warranty claims information should be limited to a discrete list of parts that have been the subject of past safety related recalls. While such historic information is relevant and should be considered, nothing in the statute limits early warning reporting requirements only to vehicle and components with a previous track record of failure and recall. While it may be true that "warranty data relating to parts/components that have been the subject of recall campaigns might be significant early warning indicators of possible safety-related defects," 66 FR 6532,6537 (Jan. 22, 2001), this observation is no less accurate for parts and components that have never previously been recalled. Although the fact that a manufacturer conducted a formal recall indicates that there was a safety related defect (although some manufacturers would assert that this is not necessarily the case), the converse is not true, *i.e.*, the absence of a previous recall is not an indication of the absence of a safety related defect. For this reason, it would be illogical and unduly restrictive to limit warranty information only to vehicles, parts, and components with a prior history of safety recall.

This form of restriction on the early warning requirements would undermine the intent of the TREAD Act. Nothing in the TREAD Act indicates that Congress wanted the agency to obtain early warning of only certain defects or even only those vehicles, systems, and equipment that may be deemed more likely to have a defect. The statute sought to cast a wide net in order to broadly improve the agency's ability to identify all safety defects regardless of the vehicle model, component or its safety recall history. Advocates sees no reason why all vehicle systems, parts, and components should not be subject to submission of warranty data that is relevant to safety related problems and defects. For

convenience, the agency could develop a priority list of safety related parts and components as a guidance to manufacturers, but that should not relieve manufacturers of their duty to report warranty information on any and all non-listed parts if the failure of those parts pose a safety danger. Therefore, the agency should reconsider the issue of publishing an exclusive list of vehicle systems, parts, and components for which warranty data must be submitted.

Moreover, as the ANPRM points out, a list of safety related equipment would need to be updated to include new technologies because "defects in newly-developed parts have given rise to a substantial number of safety recalls. *Id.* A list of vehicle systems and components would necessitate constant revision, at least bi-annually if not with each new model year. The agency mentions the possibility that such a list could be updated at some unspecified time in the future, *id.*, implying only after several years or more. This is not acceptable since it would curtail the effect of the TREAD Act and would unnecessarily burden the agency with the repeated chore of revising such a list.

A reporting restriction based on a specified list of safety related vehicle systems and equipment is also not necessary since the agency is contemplating setting threshold levels before a manufacturer must report warranty information. Although Advocates does not support excluding any part or component from manufacturer warranty information reporting,[2] we appreciate NHTSA's concern about the submission of excessive warranty information. Therefore, Advocates agrees with the agency that submission of warranty information could be based on one or more reporting thresholds. The threshold level could vary to some degree based on special safety circumstances or whether the agency considered a specific vehicle system or component to be critical to safety as suggested in the ANPRM. *Id.* This would accommodate the agency's proposal for a list of safety related equipment. Thus, for example, the agency might require reporting of warranty information when the number of warranty claims for any particular vehicle, part or component exceeds 25 claims. This would be the general threshold level for all vehicles, parts, and components. However, the agency could establish a specified list of vehicle systems, parts, or components that are deemed to be critical to safety and require that manufacturers report information about these safety-sensitive parts and components once the number of claims exceeds 15. For vehicles and equipment that raise special safety concerns, such as school buses and school bus mirrors, child restraint systems, and air bag modules, or for vehicles, parts, and components that have been the subject of recent safety recalls (within the past five to seven) an even lower threshold of five warranty claims might be appropriate.

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[2]With the exception of certain peripheral items such as clothing, sunglasses, floor mats and the like mentioned by the agency in the ANPRM. 66 FR 6536 (*e.g.*, exterior and some interior trim, motorcycle rider vests).

Although the idea of distinct threshold levels for triggering warranty reporting for different vehicle systems, parts, and components is appealing, such an approach presents a number of problems. To categorize equipment by threshold level, the agency will need to make determinations as to the relative safety importance and impact of every vehicle part, component, and system, in the event of a catastrophic failure. This could require making decisions, especially for now parts and equipment, based on little safety experience and data. In addition, multiple thresholds could be complex and confusing for manufacturers and the public alike. Therefore, any tiered system for initiating early warning reporting about potential defects should be simple to understand, consist of only several (perhaps three) different threshold levels, and be sufficiently sensitive, *i.e.*, require a small number of failure claims, to trigger reporting even for those parts categorized as least likely to result in a serious injury or death in the event that they fail.

Furthermore, the thresholds in such a system for reporting warranty or other data should be based on specific numbers of claims, not percentages. Advocates opposes using a percentage of production as the basis for a warranty information reporting threshold because it will reduce the effectiveness of reporting warranty information as part of an early warning system, especially for vehicles, parts and components produced in large quantities. The purpose of the statute is to identify potential safety problems and defects as early as possible, while the reports are still few in number and before they become widespread. A percentage of production is not a very sensitive indicator for safety problems and potential defects since the reporting threshold is continually being raised as production volumes increase. Thus, a serious safety problem may not be identified early on, especially during periods of high levels of production, because despite numerous reports of safety problems that percentage of production threshold may not be exceeded as total production increases with each passing month. A percentage threshold for reporting is also subject to manipulation of production schedules.

Advocates recommends that NHTSA establish hard number thresholds for warranty reporting. The agency should determine a reasonable number of warranty claims that would indicate the possibility of a potential problem. An absolute number of filed claims ensures that the threshold level will remain sensitive regardless of production volume, fulfilling the purpose of the TREAD Act to provide an early indication of a potential problems and defects. Given that exceeding the threshold level merely initiates reporting to the agency, not an investigation or a recall itself, there should be little concern about setting low, hard-number thresholds.[3]

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[3]NHTSA should also consider the need to require reporting by manufacturers if they receive a certain number of warranty claims within a specified period of time (the reporting period set by the agency), even if that number does not exceed the general threshold for reporting. For instance, the

Finally, Advocates supports the need for standardizing the warranty information submitted to NHTSA. Warranty information, particularly because it could entail large amounts of information, would be particularly difficult for the agency to use effectively if it is not submitted in a uniform manner. Similar to the coding of police reports, it may be difficult for the agency to standardize warranty coding among a large number of manufacturers. While industry standardization of coding would be optimal, it may not occur as a result of this rulemaking proceeding, and the agency may not have the authority to require the industry to change its current internal coding practices. NHTSA could, however, develop a coding format similar to one currently in use by the industry, and require manufacturers to submit their warranty information according to the coding specified by the agency. This would allow the agency to obtain standardized warranty information without requiring manufacturers to alter their present systems for coding warranty claims.

Deaths and Serious Injury Claims

The ANPRM implements the TREAD Act in requiring all claims of deaths and serious injuries to be reported to NHTSA. Advocates agrees that the term "claim," although undefined in the statute, should be construed broadly. The statute requires manufacturers to submit both data on claims involving serious injury, including death, as well as all instances in which manufacturers have actual notice that a serious injury or death is alleged to have been caused by a possible defect. As a matter of construction, the use of the term "claim" evidently refers to information that is less formal than actual notice or the filing of a legal action. The agency suggests that manufacturers would only need to submit summary information from the claim, including a description of the alleged defect, the system or component affected and other vehicle and equipment identification information. Advocates believes that such information should be provided on a standardized form, similar to the agency's vehicle owner's questionairre for reporting safety problems and failed components. However, where formal actions have been taken, such as lawsuits or arbitration, manufacturers should provide copies of the substantive documents, such as the complaint.

Advocates agrees with NHTSA that claims of deaths alleged to have resulted from a motor vehicle defect, where the death occurred within one year of the incident, should be submitted to the agency within two weeks of receipt of the information alleging or demonstrating that a death occurred.

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agency might require a manufacturer to report warranty information after receiving 20 claims in a two month period, with regard to a part that had not previously been the subject of a claim. Such a rapid increase in the number of claims, even if they do not exceed the general threshold, might indicate an emerging problem that, at the very least, should trigger reporting of the information to the agency.

66FR 6542. There is an obvious need to act as immediately as possible in claims where a fatality has occurred.

The ANPRM proposes to define the term "serious injury," as used in the TREAD Act, as an injury equivalent to an Abbreviated Injury Scale (AIS) level 3 injury. Thus, manufacturers would be required to report claims that can be determined to involve AIS level 3 or greater injuries. Advocates agrees with the suggestion that where the severity of the injury cannot be determined, the injury claim should nevertheless be reported to the agency. Manufacturers should, and probably already do, expend some resources to investigate claims to determine the level of injury severity, however it would be burdensome to require that each claim be fully investigated and a determination of the AIS injury level made prior to reporting the claim to NHTSA. Also, while Advocates does not wish to place added burdens on the agency, it makes more sense to err on the side of caution and require that injury claims be reported to NHTSA where the degree of severity is not certain from the claim itself. Advocates welcomes the agency's reassurance that the proposed AIS 3 level for reporting injury claims does not indicate that the agency will neglect its obligation to conduct investigations of potential defects, and presumably recall vehicle and equipment with defects, that are likely to result only in AIS level 1 or 2 injuries.[4] Advocates assumes, and seeks the agency's confirmation, that this statement is also true for defects that have resulted only in property damage claims but have the potential to cause injury or death as well.

The ANPRM does not indicate any specific time interval for reporting claims of serious physical injury although the agency suggests that injuries requiring hospitalization for treatment, not merely observation, would have to be reported monthly. *Id.* We support this proposal since hospital treatment can be objectively determined from records, and those more serious cases could be reported and confirmed on a prompt schedule. The ANPRM does not, however, suggest any reporting interval for serious injuries, AIS level 3 or greater, that are not treated in a hospital. These and any other serious injury claims could be reported as received on a monthly basis, along with the serious injuries that received hospital treatment. In any event, serious injuries should be reported to NHTSA at least quarterly..

Property Damage Claims

Advocates generally agrees with NHTSA's tentative proposal to have property damage claims information submitted in an aggregate form. Obviously, these reports should provide the agency with cumulative statistics regarding the number and type of claims covered by the report and the number of

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[4]Advocates notes that one of the most pervasive and expensive injuries is whiplash which rarely exceeds AIS 1 in severity.

additional claims received for each specific item of equipment or component since the previous reporting period. The aggregate summary information, however, should not be used as a filter to mask detailed information. It is crucial that the reports identify specific items of equipment or components reported to have failed or caused damage, or at least the vehicle system involved where more detailed information is not known. Although the ANPRM indicates that this type of specific information would be included, the agency also would require manufacturer reports to include percentages by the general category or type of event. The ANPRM cites as an example that "a manufacturer might be required to report that '15% of the total claims in the aggregate alleged property damage due to fire'." 66 FR 6538. Advocates is concerned that this type of generalized summary is not specific enough to raise concerns about any individual vehicle system, part, or component. Any general summary information should be accompanied by a breakdown of the percentages into the applicable subcategories and parts. Such disaggregated data of the actual number and corresponding percentage of reports attributable to specific items of equipment and types of failures , *e.g.*, radial tires, tread separation, is essential.

The ANPRM suggests that a threshold for reporting property damage claims could be established "if the number of claims about a particular vehicle, equipment item, or component was above a specified threshold." *Id.* Advocates agrees that for property damage reporting a minimum threshold level would be useful. The threshold, however, would have to be set at a level which would require reporting when the number of incidents related to a single cause or part is sufficient to require that the agency be advised of the existence of the claims. While the threshold could vary depending on the maintenance and repair history of each part or component, the levels would need to be low enough to trigger reporting when repeated claims could herald a safety problem. In addition, Advocates believes any threshold level adopted by the agency, whether for reporting property damage or other types of information,[5] must consist of a specific hard number of individual claims representing separate incidents. The agency should not set a threshold based on a percentage of the claims filed to the total number of vehicles produced, nor on a specified dollar amount that cumulative total of claims filed must exceed. Since the agency has both the authority and the obligation to investigate safety defects, and if necessary recall vehicles, regardless of whether there has been a death, serious injury, or only property damage (and this authority applies even if but a single report (or claim) has been filed), any threshold requirement should be based on a specific number of individual incidents, not on a percentage that will vary with production volume.

Field Reports

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[5]With the notable exception of using the AIS level 3 or more, or another medical criterion, as the basis for determining what constitutes a "serious injury" under the TREAD Act.

Field reports which reflect actual experience of manufacturer agents and representatives are invaluable for the purposes of early warning reporting. The agency should compile a list of the types of field reports manufacturers receive and require submission of relevant reports or that the manufacturers provide electronic access to field reporting systems.

Consumer Complaints

Consumer complaints are also essential records for establishing an early warning reporting system. In part, NHTSA relies on its database of consumer complaints to determine, among other things, whether to open safety investigations, grant or deny petitions, and initiate rulemaking. Vehicle manufacturers have extensive consumer complaint databases and they no doubt receive consumer complaint information about safety problems and potential defects in greater numbers before the agency receives similar complaints. This information is an important resource that should be reported in aggregate form in conjunction with other reported information. Thus, if a manufacturer has warranty or other claims information involving a death, serious injury or property damage exceeding the reporting threshold that must be reported to NHTSA, the manufacturer should be required to search its consumer complaint database for relevant entries about the same or similar type of occurrence, vehicle system, part, or component. Copies of relevant complaints, at least those received since the previous search for consumer complaints on that particular subject, should be provided to the agency along with the warranty and claims data. Independent of any underlying warranty and claims reporting, the agency should establish criteria, or adopt those already in use by manufacturers, for identifying complaint trends and equipment failures. Manufacturers should be required to search their consumer complaint databases quarterly to determine if any subset of complaints indicates an emerging problem that should be reported to the agency.

Customer Satisfaction Campaigns, Consumer Advisories and Recalls

The ANPRM suggests that NHTSA may require submission or access to all manufacturer communications with dealers and customers regarding replacement or modification of vehicle equipment or its operation. Advocates agrees that the agency should review such information, including the facts and analysis that led the manufacturer to commence a satisfaction campaign, issue the advisory, or conduct a recall. We concur in the agency's view that manufacturer repair and replacement decisions may indicate a part failure or defect even if the manufacturer has not made a specific determination to that effect. Thus, service bulletins and other so-called "secret warranties" should be reviewed by the agency, particularly where the manufacturer has submitted other information indicating an elevated level of accidents or warranty claims relating to a particular item of equipment.

Internal Investigations

Advocates supports NHTSA's suggestion that manufacturers provide information on internal investigations of potential safety related defects. While we understand that access to such information

may be a sensitive issue involving proprietary information that may require 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 safety investigations. We assume 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 information on internal investigations is similar to the existing process, in which NHTSA opens a formal proceeding or investigation and requests manufacturer information, except that it may occur at an earlier point in time. 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 suggests that the agency not establish criteria for what information should be provided or when. Rather, we suggest 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 should have authority to request access to all the information on a specific manufacturer investigation if, for example, the threshold for reporting warranty or other information for a particular part or component has been surpassed, or if the agency has an independent reliable basis, obtained from other information, to believe that the manufacturer's investigation is relevant to a safety problem that the agency has decided to review or investigate.

Changes to Components and Service Parts

Although changes to components and service parts may be the result of a perceived defect or safety related problem, such changes are also commonly the result of redesign, changes in other parts, and non-safety factors. Since changes in parts and components occur regularly it may not be effective to require automatic reporting of all such actions. Advocates suggests that reporting of changes in component design or engineering should be triggered based on the other types of reporting required by the final rule. Thus, if warranty, claims or other information indicate a problem with a specific vehicle system, part, or component, *i.e.*, the threshold level for manufacturer reporting has been exceeded, the manufacturer should then also be required to submit information regarding the changes made to that item of equipment and the basis for making that change.

Remedy Failure

The failure of a remedy to work as expected, thus requiring successive remedies, is of great concern and the agency should have this information regardless of whether there was a formal recall or not. The agency should have this information in order to monitor manufacturer remedy practices and to ensure consumers are protected.

Fuel Leaks, Fires, and Rollovers

NHTSA raises the possibility of requiring separate reporting of information on fuel leaks, fires and rollover incidents. Advocates understands the need to have certain information on major issues readily available in a separate submission. This may not be necessary so long as the agency requires manufacturers to highlight the information on these issues that are contained in the data submitted to the agency. Nevertheless, should the agency require separate reporting on these particular issues, the information on these broad categories should include a break down of data by subcategory, component, and mode of failure. Other important systems and items of equipment including front impact air bags, side impact air bags, and child restraint systems should be added to this list.

Scope of the TREAD Reporting Requirements

Manufacturers

Advocates agrees with NHTSA's reading of the TREAD Act to include all manufacturers of both vehicles and equipment.[6] We also concur that while all manufacturers are within the scope of the law, not all manufacturers possess relevant safety related information or have the resources to process the information they receive. However, we do not believe that any manufacturer should be entirely exempt from the reporting requirements. Even if registered importers and miscellaneous manufacturers do not collect warranty information, receive claims, or possess other types of data discussed in the ANPRM, they should nevertheless be required to report any information they receive in the regular course of business that is related to a safety problem or potential defect. Although registered importers do not manufacture vehicles, they may receive reports of problems or complaints about the vehicles they import, especially if they are involved in making alterations to meet U.S. safety standards. While the original manufacturer should be primarily responsible to report such information, importers may

[6]NHTSA should specifically state that truck tractor and trailer manufacturers are subject to the early warning information requirements of the TREAD Act.

receive reports of safety problems prior to the manufacturer because of the importers' more recent contact and dealings with the customer. However, registered importers and others in this category should not be required to file regular reports, but should be required to file a report if and when they become aware of safety related problems and potential defects.

Rather than granting blanket exclusions to equipment manufacturers, Advocates believes that part manufacturers and component assemblers should be required to report within two weeks of receiving information regarding a safety problem or potential defect in their equipment. Equipment manufacturers that do not possess the types of information covered by the early warning provisions should not have to report on a regular basis. A threshold for reporting by equipment manufacturers could be developed for each type of supplier based on the kind of information it may collect and possess in the normal course of business. Equipment manufacturers that do not collect or possess warranty information, claims or complaints might be required to report safety information as they receive it or, with a respect to a particular part or component, after they have received a specific number of complaints, warranty claims, or been named as parties in a certain number of lawsuits pertaining to a particular component. However, manufacturers of specific parts for vehicle systems or subsystems should be excluded simply because there is "a historically low recall rate on that subassembly." 66 FR 6536. If the recall history is accurate, then NHTSA might apply an appropriate threshold level for reporting, however the absence of a formal recall in the past is not, by itself, dispositive of whether future safety problems or defects with that part might arise. The agency itself acknowledges that even in a situation where the past recall rate is low, a manufacturer can nevertheless produce a defective part. Thus, equipment suppliers and component assemblers may only need to report information as needed.[7]

Motor vehicle rental companies, like registered importers, do not manufacturer motor vehicles; however, they do purchase large fleets of particular vehicles from manufacturers. Rental vehicles are frequently subject to different usage patterns than individually owned vehicles. Rental fleet vehicles are frequently subjected to high mileage and elevated wear-and-tear as a result of sustained use over a comparatively short period of time, and they are regularly serviced by the rental companies. As a result, rental companies have a great deal of experience with certain vehicles and may also have received complaints and claims from customers as well as service bulletins from manufacturers. For these reasons, NHTSA should consider what type of information might be required or requested from

[7]Also, while the component assembler might be the logical party to report all safety problems or defects that it becomes aware of, NHTSA could permit suppliers and component assemblers to determine which entity should make a report in order to avoid multiple reports, so long as a full report of the problem is submitted to the agency.

nationally based vehicle rental companies (possibly only those that own a certain number of vehicles or specific makes and models), and whether that information would be of assistance.

Equipment

Advocates opposes the proposition that the reporting requirements should be limited to a subset of equipment manufacturers or to a specific set of parts. The TREAD Act covers all manufacturers and all parts. Since the agency cannot predict what parts or equipment will have safety problems or defects, it is inappropriate to slowly phase in reporting over a period of years or through limiting reporting initially only to certain major safety related systems or components. As a pragmatic matter, the agency and manufacturers may need a period of time, six months to one year, to gain experience with the new reporting system and to work out problems before the full scale reporting on all equipment and by manufacturers begins. This would also allow the agency to gauge the volume of reporting it can expect. But aside from this necessary phase-in to accommodate pragmatic concerns, there is no need to limit reporting requirements beyond one year. Advocates is also strongly opposed to limiting reporting based on whether vehicle parts or equipment are specifically regulated by a federal motor vehicle safety standard (FMVSS). Many parts and equipment, *e.g.*, side impact air bags, cruise control, and child booster seats, are not directly regulated by the FMVSS and would be excluded from reporting under this scheme. The TREAD Act does not limit the application of the reporting requirements in this manner, but applies to all vehicles and all items of motor vehicle equipment. Any part or component used in or on a motor vehicle should be covered by the reporting requirements if it could constitute a defect that is related to motor vehicle safety.[8]

How Should Information Be Reported

As noted at the outset of these comments, Advocates believes that it is essential for NHTSA to receive the report information in a uniform and coherent format. We agree with the agency that manufacturers should be responsible "to process, organize, and to some degree analyze the raw data and information." 66 FR 6542. Explanations of the information, accompanying data, and highlighting the manufacturer's analysis should accompany submission of computer spreadsheets and matrices containing raw data, including aggregate numbers by make, model, model year, and component, and further categorized by the type of information (injury claims, death claims, lawsuits filed, warranty data). Uniform, standardized submission of data will allow the agency to review the new data promptly and to add it to the agency's existing database. Separate manufacturer analysis will ensure that the agency understands the importance of the data according to the manufacturer.

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[8]Even as a method for accomplishing a phase-in of the early warning requirements, the use of the FMVSS as a basis for determining which parts are covered by reporting and which are not is unnecessarily complex and would likely result in inordinate delay.

Record Retention

Section 4 of TREAD amended 49 U.S.C. § 30120(g)(1) to extend the time period within which consumers can have vehicle defects remedied free of charge to ten years and tire defects to five years. Advocates supports requiring the retention of records reported under the early warning requirements for similar periods of time -- ten years for vehicles and vehicle parts and equipment, and five years for tire information.

Possession of the Manufacturer

Advocates supports the agency statement in the ANPRM that the term "possession" includes, in addition to actual possession, the concept of "constructive possession and ultimate control of information." 66 FR 6543. As examples, the ANPRM refers to information in foreign countries and information possessed and controlled by outside counsel and consultants. This should encompass information under the dominion and control of corporate affiliates, representatives, and other parties that have a contractual relationship with the manufacturer.

Disclosure of Information

The docket for this ANPRM contains a letter from the NHTSA Office of Chief Counsel explaining the agency's view of the disclosure provision in the TREAD Act. The letter supports the view that the TREAD Act disclosure provision supplements 49 U.S.C. § 30167(b) and extends the state of disclosure law as it existed on October 31, 2000, to cover disclosure of the additional information submitted to the agency under the early warning requirements. Advocates has reviewed the statute and the agency letter, and we agree with NHTSA's conclusion that the TREAD Act did not alter the state of disclosure law. The amount and variety of information submitted under the early warning requirements will, no doubt, result in an increase in requests for confidentiality and disclosure. NHTSA's determination of those requests should be made under the same applicable law, policies, and practices that now govern the agency's decisions to grant or deny confidentiality, and to grant or withhold disclosure.

Burdensome Requirements

The ANPRM primarily addresses the need for manufacturers to submit information that they already collect and to provide analyses they already perform. Advocates does not view the additional cost of preparing the data for submission or converting information into a form the agency can use effectively as falling within the scope of the prohibition on "unduly burdensome" requirements referred to in section 3(b) of the TREAD Act.

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