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**Comments of Public Citizen Regarding
49 CFR Parts 554, 573 and 576:
Standards Enforcement and Defect Investigation
Defect and Noncompliance Reports; Record Retention
66 Federal Register, Jan. 22, 2001**

Introduction

Public Citizen commends the National Highway Traffic Safety Administration (NHTSA) for its prompt action and thorough description of issues in the Advanced Notice of Proposed Rulemaking (ANPRM), issued under the agency's new early warning authority, as provided by the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act. The passage of the TREAD Act last fall signaled new Congressional attention to the problem of uninvestigated motor vehicle safety defects on American highways. The Act provides critical tools that promise to greatly assist the agency's highway and vehicle safety mission.

The Ford-Firestone tragedy dramatically showed Congress, the media and public that NHTSA knew far less about the ongoing damage to consumers from tire tread separations than did the motor vehicle and equipment manufacturers, thus revealing major gaps in the agency's current information collection practices. The TREAD Act was passed, in large part, to remedy this information gap by instructing NHTSA to establish a pro-active information system capable of predicting and preventing dangerous defects on the highway, *before* a loss of human life or serious injury occurs. Of course, NHTSA has long had ample information-gathering authority that it could have used to secure these data even prior to Ford/Firestone.¹

At the same time that NHTSA appeared to be inadequately informed of hazards, it was evident that the automobile and equipment manufacturers use a multitude of information-gathering methods regarding potential defects in their products. Information is conveyed to the manufacturers by consumer complaints, warranty data, dealer reports, lawsuits, insurance records, testing and computer analyses,

¹ Even prior to passage of the TREAD Act, NHTSA had the authority to require manufacturers to submit foreign customer and dealer communications relevant to a defect in vehicles or equipment sold in the United States, *see* 49 U.S.C. § 30101, and subpoena power to secure data the agency needs to identify defective vehicle equipment, *see* 49 U.S.C. § 30163.

and other sources, and is used by the companies in numerous internal investigations, litigation, cost evaluations, recall and design change decisions, as well as for many other purposes.

Implementation Concerns

Congress and the President have clearly provided broad new authority, over and above any existing authority, for NHTSA to require the submission of information that would assist in identifying a safety-related defect. They have also told the agency to determine the form of that submission. Therefore, the key questions, as the agency has framed them in the ANPRM, are the type of information to be submitted and the organizational scheme applied to that information.

In our view, the agency's decision regarding the type of information to be submitted should not be driven by categories of parts or by the corresponding motor vehicle safety standards (which involve a different enforcement scheme based on agency testing against a performance standard). Instead, NHTSA should request information based upon the ability of that kind of information to predict the possibility of harm to the public. Therefore, the amount of information submitted should correspond to the seriousness of the events surrounding a defect. For example, a defect-related fatality would trigger a requirement for additional information to be submitted by a manufacturer, whereas a single consumer complaint most likely would not.

This approach would align much more precisely with Congressional intent and with the agency's obligation to protect the public. Indeed, the agency has long set its priorities based on the likelihood of harm. We propose the application of decision criteria along these lines in the text of these comments.

As to the organizational scheme, we recognize that a potentially valid concern on the part of the agency is that it could be overwhelmed by the sheer number of records to be provided by the manufacturers. It is certainly clear from the history of defect-related litigation that a time-honored tactic is both to over-supply information, thus drowning one's opponent in massive amounts of worthless data, and to under-supply information, through careful omission of crucial documents.

The solution is to unify the requirements for data submission, and the agency's guidelines for the frequency of submission, as much as possible. The agency should strive to create a single relational database containing all of the critical identifying information in summary form. Otherwise, NHTSA will have to compare the outcomes of analyses done in several different information systems — a needlessly time-consuming and laborious task.

The agency's new "early warning" mandate will only be satisfied if NHTSA is able to streamline the process as a whole, and to instantly access large quantities of information so that red flags on defects can be quickly raised. Because these defects can result in death and injury, the agency has a strong obligation to require regular submission of all pertinent data, and a subsequent obligation to put it into a highly usable form for immediate access and review by both the public and NHTSA. We believe that setting out different information requirements based upon lists of components is an unnecessarily complicated approach and will not fulfill the purpose of the TREAD Act and the agency's basic safety obligations.

Practical Guidelines

There are three specific remedies for the possible paper or information glut faced by NHTSA under the new law. NHTSA should: 1) provide and require the use of a carefully-designed electronic form that necessitates submission of usable analysis as well as the supporting raw data (by make, model and defect in spreadsheet format) and have uniform requirements for the frequency of submission (we believe that all information should be submitted on a monthly basis); 2) create a system for companies to submit this information over the Internet; and 3) provide a system to *automatically* make much of the submitted information publicly available over the Web, in a clear and searchable format for public use.

The Agency Should Address The Issue of Manufacturer and Agency Secrecy in the Rulemaking

As item three, just above, demonstrates, the agency's disclosure policy should be treated as a critical part of its obligation to honor the objectives of Congress and the President in making the TREAD Act a law. Indeed, the agency should address its confidentiality policy regarding early warning submissions as part of the NPRM, so that the public may comment and a full and fair discussion can occur.

In our preliminary view, the agency should set out the categories of documents that are clearly deemed to be routinely non-confidential, as well as the types of information that could, if justified by the submitter, receive confidentiality treatment by the agency, including a description of the instances in which this decision will be made based upon a document's contents. For example, the agency should determine that presumptively non-confidential information includes, at a minimum, consumer complaints, deaths, injuries, lawsuits, company testing related to the defect and warranty data in the aggregate.

Regardless of the agency's categorizations, however, a company submitting information must still explicitly request and justify confidential treatment of any information, and the agency must separately evaluate each such claim.

NHTSA Should Require Summary Information Until Evidence of a Potential Defect Surfaces

Returning to the organizational questions, as an initial matter, virtually all submissions should be in summary form to a master database. For example, rather than requiring the submission of the complaint in defect-related litigation, the agency should at first require merely that the subject of the litigation, and other identifying information, are noted in summary form in a database submitted monthly by the manufacturers to NHTSA.

The summary information in the relational database should be organized by make, model and alleged defect, as well as by the "event," or information, category. Each submission should indicate that the company had taken action, experienced a complaint, or been implicated in an injury or death with regard to a particular alleged failure or defect. (See sample graph below.) As we outline below, the

agency's table of summarized information could be used to "trigger" additional submission requirements, where evidence of a potential defect accumulates.

If, contrary to this suggestion, the agency requires the submission of most of the actual documents as an initial matter, NHTSA will need to develop a working file for many thousands of documents that may never become part of a defect-related inquiry. Because, as we explain more fully below, evidence suggesting a defect would trigger the submission of a package of all the relevant manufacturer's information on a particular defect, by *defect*, the system we propose would make it a simple matter to sort any additional submissions of actual documents according to the defect that is alleged.

There is only one exception to our proposal that a summary of information is superior to requiring the initial submission of documents. The agency can and should require the direct submission of the manufacturers' file of consumer complaints, organized by make, model and alleged defect, accompanied by a cover index, because the agency already has in place a well-developed system for categorizing these complaints by scanning them into a searchable format. Manufacturers should submit the actual complaint, and a Vehicle Owner's Questionnaire can then be sent to the complainant. However, for purposes of the agency's monthly database, we maintain that a notation concerning the total number of complaints submitted is sufficient.

The major effort in the undertaking as we describe it here would be the refinement of parameters for the submission of information (our recommendations are below) and development of an adequate glossary for a uniform description of the vehicle systems or components involved and their alleged defects and failures. The tremendous advantage of this process is that it could truly function as an "early warning" system. Such a system would make it a relatively simple matter to discern, following an evaluation of the database, whether information clusters appear that indicate a possible defect.

Where Evidence of a Defect Appears, More Information Should Be Submitted

The agency should also set up second-stage "triggers" that will automatically indicate that submission of all the manufacturer's information that relates to that problem is required. For example, manufacturers should be required to report, in summary form on a monthly basis, if there is any single lawsuit in which a defect is alleged. The database should be cumulative over time, so that additions from month to month may easily be tracked. The accumulation of three lawsuits on the same defect would then trigger the need for the manufacturer to submit all of the actual complaints that had been filed in the litigation, as well as any other company documents that are covered by the early warning rule and are relevant to those defect claims.²

The agency's automatic "trigger" for the submission of the actual documents, as an addition to the company's database summary, would cut across every category of information. Thus, if any *one* of a list of conditions was met (e.g., one death, 3 serious injuries, 3 lawsuits, etc.), for a single make/model

² Under its early warning authority, the agency would also of course retain the right to request documentation even if a trigger was unsatisfied, i.e., a single lawsuit had been filed.

and alleged defect, manufacturers would be required to compile and submit all related field reports, internal investigation papers, litigation complaints, design change documents, company testing, consumer complaints, remedy failures, executive review documents, information from and instructions to suppliers, the raw data supporting any company decisions, etc., and submit this information alongside the updated summary information in the next month's report. Any "triggers" established for claims in the aggregate, such as warranty or property damage claims, should be hard numbers rather than percentages, due to the ability of percentage figures to be manipulated by the manufacturers.

As one example of how this recommendation could be operationalized, the TREAD Act requires the reporting of aggregate statistical data on property damage claims. The summary data submitted monthly to the agency database should include at a minimum, as proposed in the ANPRM, a description of the type of damage and the product and/or components damaged. We suggest that information regarding the supplier of the component at issue and any associated injuries, crash types, etc., should also be required (see sample chart, below).

The agency's ANPRM further notes that an analysis of property damage claims might be a required submission. We recommend that this analysis be produced in response to a "trigger" event, such as exceeding a certain hard number of property damage claims, a single death, 3 lawsuits, etc., related to the same vehicle make, model and alleged defect, rather than as an initial matter. Of course, what is considered the "same" defect will require ongoing refinement by the agency, but should at least be obvious where the agency knows the make/s and model/s affected and is familiar with the names of the relevant component suppliers.

Another example would be a general or aggregate reporting of remedy failures, field reports, or changes to components and service parts in the agency's monthly summary database. Information would, again, be sorted by make, model and alleged defect and include the relevant dates and a simple description of the remedy failure, contents of the field report/s or nature of the change. If the accumulated information regarding an alleged defect meets one of the agency's list of automatic triggers, or if the agency decides that additional information is warranted and sends a letter to that effect, at that point the manufacturer would be required to assemble and submit all of the information and documentation indicated, organized according to the alleged defect. In short, a manufacturer could be required to submit, in a single "defect" file, the actual field reports, actual manufacturer communications as to changes in components or service parts, as well as the manufacturer's statistical analysis of any property damage claims, along guidelines provided by NHTSA.

In this way, the agency could use its information-gathering authority as a tool to be scaled up or down, depending upon the agency's estimation of the threat to the public. The agency should be guided in its selection of these "triggers" by the following three principles: 1) the seriousness of the indications in terms of the potential for further defect-related harm to vehicle occupants and the public; 2) the extent of the population's probable exposure to harm; 3) the evidence of a cause-effect relationship between the defect and the possibility for harm.

To assist it in determining the parameters for both summary information and the “triggers” for submission of these “next-level” documents in its rulemaking, the agency should preliminarily request information from companies concerning the types of internal analysis and investigation of defect-related information that currently occurs when evidence of a defect is raised.

Who Should Be Required to Respond

We believe that the many equipment manufacturers that are not involved in vehicle manufacture will be far less likely to obtain actual notice of the kind of information that it will be necessary to report under the early warning requirements. However, to the extent that NHTSA faces a duplication problem in submissions, original equipment and component-only manufacturers should be required to coordinate their information submissions with the vehicle manufacturers.³ After all, there is nearly always a vehicle involved in any incidents, and as the agency itself noted in the ANPRM, “a defect in a modular component installed as original equipment is far more likely to come to the direct attention of the vehicle manufacturer than the assembler of the component, or the manufacturers of the component’s individual parts.”

Equipment manufacturers should report both to vehicle manufacturers, who would be required to include such information in that company’s monthly submissions, and to NHTSA directly, where the information should be temporarily stored in a separate database pending its submission by the vehicle manufacturer. This system should be followed even where the equipment bears little relation to the vehicle involved, as in the case of motorcycle jackets, because reporting by the vehicle manufacturers is the simplest and easiest way for NHTSA to maintain a usable database. An equipment manufacturer with actual notice of an incident would, we believe, nearly uniformly be aware of the vehicle manufacturer involved. If not, this information could be routinely and easily collected.⁴ Obviously, the submission requirements are delimited by the fact that the information to be submitted must be in the possession of the manufacturer, or put another way, the manufacturer must be on actual notice of the information.

The Agency Should Be Clear That the Burden of Defect Notification Has Not Shifted

As an over-arching issue, NHTSA should make it clear that its new authority has no effect upon any pre-existing defect reporting obligations, and that, after TREAD, the companies have an even clearer burden than before to bring their knowledge of safety-related defects to NHTSA’s attention.

³ This would encompass, as noted in the ANPRM, manufacturers of several-stage or incomplete vehicles.

⁴ Importers of motor vehicle equipment for resale may be the only exception to this general rule and should, as stated in the ANPRM, bear the same monthly reporting obligations as the motor vehicle manufacturers. Some types of information required to be reported by motor vehicle manufacturers could potentially be omitted by this class of equipment manufacturers, if it is not in their possession.

For its part, the agency should be certain that, where problems are indicated, NHTSA is willing and able to perform its own analyses of early warning information, using the raw data, summary information, and company documents submitted.

In short, the agency's challenge is to craft a verifiable and workable format for submission of information that will limit company mischief, maximize rapid review and action, and minimize the potential for public harm and suffering. Our further comments are designed to assist the agency in implementing these goals.

The ANPRM's Incremental Approach Puts the Agency's Anxiety Before Congressional Intent

The reporting language used in the TREAD Act is exceedingly broad, and provides considerable authority for the agency to determine the data submitted and its form. Public Citizen strongly opposes the incremental approach suggested by the agency as dangerously under-inclusive and thus out of conformance with Congressional intent under the TREAD Act.

Congress did not intend for NHTSA to limit the scope of its early warning programs to certain components or special lists of parts. Instead, it desired the development of a comprehensive warning system, regardless of the vehicle or part affected. The agency's incremental approach would risk another Ford-Firestone, but this time NHTSA's failure to anticipate problems could be due to the agency's own short-sightedness in crafting the limitations of its requirements.

Excluding certain parts or manufacturers from the TREAD reporting obligations would almost certainly create an opportunity for potential defects to fall through the cracks in the agency's new early warning system. If the agency requires additional funding to implement its additional obligations under the TREAD Act, it should make this clear in the coming appropriations and reauthorization discussions.

Moreover, the proposals in the agency's ANPRM are unnecessarily confusing and complex. The system NHTSA proposes would vary by phase of the rule, manufacturer type, information category, reporting frequency, and potentially also by type of component. So many variables are simply unworkable and could result in a system with a glut of data, but that would require an enormous expenditure of agency staff to turn it into usable information. We strongly suggest that the agency establish as many standard practices and as much uniformity as possible. With such a system, the agency would not have to select among all these variables.

The Agency's Goal Should Be to Design An Early Warning System That Works to Warn

Rather than backing anxiously into a huge job, the agency should design an information system designed to identify most, if not all, defects from the information submitted by the manufacturers to, and organized by, its system. The power to set the terms of the information's submission is, in fact, the power to assure that the reported data will be useful, readily available, and informative.

The electronic format for submissions, a sample of which is below, should be completed by the manufacturers on a monthly basis and downloaded to the agency over the Internet. It would provide a working, relational database of useful information. The agency could also provide all respondents with a relatively brief explanatory booklet, containing full explanations of each requirement, as is done for income taxes. The booklet would lay out the requirements for submission of information in each category, and could be revised on an annual basis as the agency's needs change or as questions concerning categorizations arise.

The booklet accompanying the graph should clearly state what type of events must be reported, and what supplemental information must accompany such reporting. Because this is merely a summary, and very basic information is required, *all* potentially informative events should be briefly noted and described. Our recommendations are in the graph below, which should be taken as a conceptual suggestion rather than as a completed model to meet the agency's needs.

Though certainly not an exhaustive list, the events mentioned in the agency's ANPRM that should trigger *summary* reporting by make, model, alleged defect and incident number should include:

- 1 death
- 1 serious or unknown injury; 3 minor injuries
- 1 lawsuit
- Warranty claims (according to a hard number threshold)
- Consumer advisories, notifications, information campaigns, etc.
- Property damage claims
- Remedy failures
- Field reports
- Internal investigations, company panels, task forces, etc.

The details to be submitted with each category of "event" would vary, and could be prompted through the use of automatic drop-down boxes encoded in the database. For example, for an incident record reflecting that a lawsuit has been filed against the vehicle manufacturer or component supplier, the identifying information suggested in the agency's ANPRM would suffice, and the drop-down boxes could assure a record's completion. For such a system to be fully informative, NHTSA would need to develop a system of manufacturer/vehicle codes, standardize the list of vehicle component names and parts, and develop adequate guidelines for the kinds of information to accompany each type of entry.

Notably, the list of vehicle systems and components involved would be searchable by NHTSA for any patterns of component failure the agency cared to investigate, thus answering the suggestion in the ANPRM that special notice be taken of items such as tires, fuel systems, and suspension system defects.

For deaths, injuries, property damage claims, and field reports, manufacturers should indicate whether any special safety codes, as specified by the agency, apply to a particular entry, as well as whether there was a crash and the type of crash. The list of safety codes we suggest in the sample table derives from the ANPRM, in which the agency stated that certain types of defects and failures require special attention. For entries in the aggregate, our preliminary judgment is that the safety code may be omitted, except for consumer complaints, which should be coded as they are submitted to NHTSA.

Safety codes could also be used to indicate, perhaps in another column, any defect typology that NHTSA wishes to monitor, such as defects that cause failure of major vehicle control systems, failure of critical vehicle components, or sudden removal of the driver from the vehicle control instruments.

Of course, if the agency requests further information, or its submission is “triggered” by a set of criteria designed by NHTSA, the defect record may be augmented by the manufacturer with additional details, even as to those entries initially submitted in the aggregate. The record would also reflect any change in the characterization of the incident (i.e., an injury becomes a death), as demonstrated in the graph below.

Because there is a limited number of types of reportable “events,” the cumulative submission of a monthly report will eventually provide a comprehensive and developing view of a defect-related problem. At a glance, the agency will be able to see most of the company activity in response to a particular alleged defect, whether the situation involves a special risk to consumers, what consumer response to a defect has been, how many deaths or injuries are related to the defect, whether a supplier is contributing to a defect experienced across vehicle manufacturers or fleets, what components or sub-components are causing repeated problems, and so on. By comparing records from month to month, the agency will be able to measure the increase in claims, and determine whether a rapid response is required, particularly where there has been a rapid increase in defect-related incidents.

The goal is to design a manageable and transparent system to alert the agency about defect-related safety problems that require further information-gathering and document submission, and that may potentially provide the basis for opening a defect investigation or initiating a recall action. Only this, and nothing less than this, will truly answer the call to action issued by Congress in response to both NHTSA’s oversight and the manufacturer malfeasance that have produced the ongoing Ford-Firestone tragedy.

MARCH 2001 SAMPLE TABLE FOR MONTHLY MANUFACTURERS' ELECTRONIC SUBMISSION OF EARLY WARNING INFORMATION

[Explanatory notes bolded and in brackets.]

A	B	C	D	E	F	G	H
<p>Defect ID record</p> <p>(Reporting manufacturer and Model – Reporting Month – Year – Alleged defect/s)</p> <p>(Manufacturer/ model code names can be found in NHTSA glossary for Column A.)</p>	<p>Model year/s of vehicle/s involved in defect allegations</p>	<p>Incident number, event type and appropriate supplemental data (death, injury, warranty code in aggregate, consumer complaint in aggregate, lawsuit, internal investigation, replacement part in aggregate, etc.). (Required information for each event type is listed in NHTSA glossary for Column C and will appear in drop-down menu.) [Update further developments in a single record involving the same vehicle or passengers using the original reporting code. Mark changes in a prior record by indicating that it has been updated, date and type of change.]</p> <p>For deaths, injuries, property damage claims, and consumer complaints, indicate if there was a crash and crash type, and use any applicable safety failure code/s: Rollover (RO); Roof Crush (RC); Vehicle Fire (VF); Fuel Leak (FL); Child Restraint (CR); Seat Belt (SB); Side Air Bag (SAB); Front Air Bag (FAB); Passenger Ejection (PE); School Bus (SB); High Mileage Vehicle Fleet (HM); Tire Tread or Belt Separation (TS).</p> <p>Consumer complaints, field reports, property damage claims, remedy failures, customer satisfaction campaigns, consumer or dealer advisories, and warranty claims may be listed in the aggregate with required data unless related to other reportable incidents.</p>	<p>Vehicle system/s containing alleged defect (e.g., steering, tires, etc.) and description of alleged defect</p> <p>(Describe using NHTSA terms glossary for Column D.)</p>	<p>Component/s and sub-component/s involved (if applicable)</p> <p>Provide the manufacturer's and supplier's internal parts/warranty code/s.</p>	<p>Equipment Supplier for system/s and/or component/s (name, address and phone no.)</p> <p>Does supplier produce this item for other vehicles in the manufacturer's fleet and if so, what model/s and year/s?</p> <p>If known, are the parts used by another manufacturer/s and in what model/s?</p>	<p>Briefly describe engineering specifications for part/s, system/s or component/s involved in the alleged defect.</p> <p>(Omit this column if submission by after-market parts manufacturer)</p>	<p>List document/s submitted with report.</p> <p>All consumer complaints must be submitted, including address of complainant.</p> <p>Other documents may be required if so indicated by NHTSA guidelines on second-level “triggers” or letter sent by NHTSA to the manufacturer requesting additional information.</p>
<p>FE [Ford Explorer] -- Mar – 2001 – Tire/Rollover/ Roof</p>	<p>1995-1997</p>	<p>1) 1 Death: [Required data] (updated 1/3/01; entry changed from injury to death); 2 serious injuries [Required data] (updated 1/3/01; entry changed from injury to death); 1 lawsuit [Required data] (Added to record 1/3/01); 1 consumer complaint; RO, PE, RC, TS; RO SV [Rollover Single-Vehicle] crash..</p> <p>2) 16 consumer complaints: [Required data] 2RO, 16TS, 1PE [updated from 14 total in previous record, submitted Feb 2001]</p> <p>3) 1 internal investigation. [Required data.]</p>	<p>Tire Roof Vehicle stability</p> <p>Tire tread separates; vehicle sometimes rolls over.</p>	<p>Firestone tires: Wilderness AT P235/75R15 [New defect ID no. – see Col. A—used for other tire models.]</p> <p>Ford warranty code for tires: X5678.</p>	<p>Bridgestone/ Firestone Headquarters Address, 800-999-7777.</p> <p>[Product information for fleet.]</p>	<p>Original equip. specs predict tire failure at 60,000 miles.</p> <p>Roof specs and testing for roof crush</p>	<p>[A death triggers full reporting of manufacturer's defect file.]</p> <p>Documents sent: 2 consumer complaints submitted to Ford and Firestone since Feb. Internal investigation: all related</p>

		4) 19 warranty claims [Required data]		Firestone warranty code for tires: 3LTY.			communications, agendas, etc. Warranty claims submitted to Ford and Firestone [component manufacturers co-ordinate with vehicle manufacturers]
FE -- Mar -- 2001 -- Door Latch	1991	1) 15 consumer complaints [Required data] 2) 15 warranty claims [Required data]	Rear door latch pops open during turns	Latch spring	Latchorama, Inc. Poughkeepsie, NY 800-455-6789	Specs do not predict failure	15 consumer complaints

Note: Submission is cumulative of all previous records.