

**TRANSPORTATION
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National Highway Traffic Safety Administration
Docket Management
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590

Re: Docket No. NHTSA 2001-8677; Notice 1; - 32
Early Warning Reporting Advance Notice of Proposed Rulemaking

Dear Sir or Madam:

The Transportation Safety Equipment Institute (TSEI), which I serve as Executive Director, is submitting this comment on the agency's advance notice of proposed rulemaking (ANPRM) to implement the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

TSEI has its offices at 1225 New York Avenue, N.W., Washington, D.C. The Institute is a non-profit trade association representing North American manufacturers of vehicle safety equipment, including headlighting and signal lighting products, rearview mirrors, reflex reflectors, emergency warning triangles, emergency lighting and other safety equipment for truck, trailer, passenger, emergency service and related vehicles.

Small Entity Members

TSEI must take issue with NHTSA's ANPRM statement that "most manufacturers of . . . motor vehicle equipment are not small entities." In fact, what is true for the vehicle parts and equipment industry generally is also true for TSEI's members, many of which are small companies with 750 or fewer employees.

Were manufacturers in TSEI's industry segment required to submit periodic reports, the costs to industry would be substantial, with little return of "early warning" safety information. Responding to the agency's request for a "tentative assessment" of early warning report compliance burdens, one TSEI member has advised the Institute,

" . . . that two additional staff would be required, one in the warranty analysis area and an assistant to the Standards & Regulatory Affairs Manager . . . at a personnel cost, alone, of approximately \$100,000 annually. Continuing system development and administration costs would likely add an additional \$50,000 to \$100,000 annually. . . . Adding two staff and incurring costs of perhaps \$250,000 per year is 'significant' by our measures."

These sentiments are echoed by another TSEI member company which stated that "the government [report] requests would dramatically increase our manpower requirements. . . . To implement such reports would require a massive infusion of manpower and resources."

TSEI believes that a regulation resulting from this rulemaking, if it is applied to the substantial numbers of companies in the vehicle parts and equipment industry, will indeed be a "significant regulatory action" . . . adversely affect[ing] in a material way . . . a sector of the economy. . . ." Exec. Order No. 12866, 58 *Fed Reg.* 51735, 51738 (1993).

Reporting of Equipment Items Covered by a Safety Standard

In the ANPRM, NHTSA suggests that,

“Initially, or after a period of time in which both industry and NHTSA have had experience with the reporting requirements, these requirements could include or be extended to require all manufacturers of original or replacement equipment that is directly covered by a Federal motor vehicle safety standard (FMVSS) to report on the same basis as vehicle manufacturers. . . .”

From the overall context of the agency’s equipment reports discussion, it appears that imposition of a reporting requirement on FMVSS product manufacturers is intended to occur in a second or later stage of the report process.

TSEI’s member companies manufacture products subject to two of the FMVSS, Standards 108 (lamps, reflective devices and associated equipment) and 125 (warning devices). From their perspective, there appears to be little or no promise of “early warning” detection of safety defects in lighting and warning triangle products which are in the first instance manufactured and certified to meet the performance parameters of FMVSS. Consequently, TSEI believes that it would unquestionably be constructive for “both industry and NHTSA [to] have had experience with the reporting requirements” before extension to FMVSS products is considered.

Application of Reports Rule

NHTSA, at several points in its ANPRM discussion of vehicle equipment, refers to component systems or modules. The agency is quite correct in its surmise that “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.”

If the agency, at least in the initial stages of its reports rule, seeks to assess the efficacy and relevance of any vehicle equipment product category, TSEI recommends that the regulatory

focus be on integrated systems of components. Based on its members' knowledge of vehicle systems, TSEI submits that the performance of individual components is often a function of system design. For example, the effectiveness of the signal of a stoplight depends upon the input voltage to the device. It is possible to have a lamp component capable of producing an effective signal, yet be incapable of doing so because the voltage supplied to the lamp component is below the recommended value. Clearly, that is a vehicle system, and not a component problem.

Potential Types of Report Data

With specific reference to vehicle equipment, TSEI believes that the only type of report data that might be of "early warning" use to NHTSA is that related to deaths or serious personal injuries,

- (a) of which the manufacturer has actual notice of such an incident which is directly attributable to a defect in the manufacturer's product; or
- (b) as to which the manufacturer has received written claims or litigation alleging death or serious injury directly attributable to a defect in the manufacturer's product.

Even in such an instance, there will often be a considerable amount of time elapsing between the incident's occurrence, or alleged occurrence, and an equipment manufacturer's knowledge of such an event.

Other data options proposed by the agency, in TSEI's view, offer little return to NHTSA of meaningful early warning data, while placing substantial burdens or making unjustified demands on the vehicle equipment industry to comply. By way of illustration, on the surface it would seem that submission of **warranty claims data** keyed to defect claims as a percentage of a component's production can be simply achieved with this "bright line" reporting approach.

However, sorting through warranty “claims”--still a manual process in many companies—to identify relevant information oftentimes proves to be a daunting task.

Most warranty claims involve issues of normal failure modes with returns simply for “credit.” When returned parts are reviewed, very few are properly coded, and a significant percentage of the returned items are found to be functioning properly. A **standardized coding system**, while an appealing proposal, would not begin to redress such systemic problems as misdiagnosing a parts or equipment issue, keying in the wrong warranty code, deliberately using the wrong code to facilitate payment and other flaws which are endemic in warranty claims reporting. Manufacturers have little or no control over such factors.

TSEI’s members report that they make literally thousands of **product changes** each year for a wide range of reasons. Such engineering change requests can involve cost, feasibility, safety aspects and many other considerations. Where a safety defect is involved, the manufacturer already has the obligation under the law to proceed with the appropriate notice to NHTSA and recall campaign activity with affected customers. Regardless of the rationale for such changes, the change process in many TSEI member companies is subject to periodic audits as part of the QS-9000 and ISO-9000 quality standard systems. The complexities of the design and manufacturing processes in today’s vehicle equipment industry require continuous quality review. This activity should not be mistaken by NHTSA as a “signal” that something is somehow wrong with the “product in process.”

TSEI’s members take very strong exception to the agency’s suggestions that manufacturers provide reports on their **internal investigations** and give NHTSA their customer passwords so that the agency “can **access their internal websites**. . . .” These proposals, perhaps

calculated to draw the negative reaction from industry which assuredly will be forthcoming, represent regulation by saturation, an overly intrusive foray into competitively sensitive and highly proprietary manufacturer domains.

NHTSA should be encouraging the industry to conduct internal reviews, which, assuredly, responsible manufacturers are doing. Attempts to insert itself into this laudable process can only result either in NHTSA's discouraging such self reviews or driving them into the protections of privileged activities subject to the direction and close review of counsel. Either of these results would only hinder the efforts of manufacturers to ensure and maintain the safety of products available to the public.

The prospect of NHTSA's rummaging through manufacturer/customer websites has an Orwellian overtone that the industry believes, to put it politely, is heavy handed, offensive, and counterproductive. Were the kinds of competitively sensitive data contained in these sites to be placed in the agency's public record, the implications for a compromised manufacturer could be disastrous.

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TSEI appreciates the opportunity to provide these preliminary comments on the agency's early warning reports ANPRM, and hopes that the information provided here will be useful to NHTSA as it proceeds to the next phase of a rulemaking notice proposal.

Sincerely,

A handwritten signature in black ink that reads "Brian Duggan" with a long horizontal flourish extending to the right.

Brian Duggan
Executive Director