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U.S. Department of Transportation  
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400 Seventh Street, SW  
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**RE: Docket No. NHTSA-2001-8677**

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

## **OVERVIEW**

The Automotive Aftermarket Industry Association (AAIA) consists of approximately 2,700 member companies involved in the manufacture, distribution, retail sale and installation of high quality automotive parts, fluids and accessories. Combined, these companies represent a significant portion of an industry that employs well over 2 million people and generates annual sales in excess of \$250 billion. The automotive aftermarket encompasses virtually all products and services provided to motorists after the vehicle rolls off the dealer's lot.

AAIA's members have a direct and significant interest in motor vehicle safety. These companies manufacture and sell many of the components that are associated with safe driving. As an industry we continually promote the safety-related benefits of routine automotive maintenance. We understand and appreciate NHTSA's desire to fine-tune the nation's system of defect reporting in order to provide the earliest possible warning of serious safety-related defects in motor vehicles or motor vehicle equipment. It will not be an easy task to isolate data that may help identify potential defects while at the same time remaining true to Congress' intent not to overly burden industry or collect information that is not meaningful.

Still, we urge NHTSA to maintain a degree of objectivity and reality when developing the reporting system as called for in the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act.

## **GENERAL CONCERNS**

AAIA's concerns focus primarily on (1) the confidentiality of information collected by NHTSA, (2) the cost to industry of collecting and disseminating massive amounts of product information, (3) the actual need for certain information (i.e. its utility in predicting possible safety-related defects and outcomes), and (4) the practical consequences of collecting and attempting to process such huge amounts of new information.

From our standpoint, we believe the objectives of an Early Warning System should be:

- To collect information and data that is truly useful in predicting serious, safety-related defects, while minimizing the intake of data that is useless or even marginal.
- To concentrate solely on assessing information and data that is safety-related. If it is not demonstrably safety-related, it should not be addressed in the context of this proposal or the resulting rule.
- To target only those equipment lines that, based on past history, have been shown to pose the greatest likelihood of safety-related defects and recalls.
- To fully substantiate all data sources prior to use by the Agency or release to the public.
- To construct reporting systems to gather the above information that do not unduly burden equipment manufacturers.
- To be sensitive to the need for confidentiality both in regards to competitive issues and to reduce the likelihood of lawsuits based merely on allegation and supposition.

## **SCOPE AND TIMING OF REPORTS**

With respect to the scope of reporting requirements, AAIA supports the Agency's approach that reporting be limited to specific equipment items that, over the past five years, have indicated significant safety-related defects and/or recalls. Having identified "approximately 14,000 individual items of original equipment in a contemporary passenger car" as well as an undetermined number of "replacement/accessory" parts, the Agency recognizes that some items of motor vehicle equipment rarely, if ever, develop a safety-related defect. Excluding such items would maximize the safety impact of NHTSA's assessment efforts by focusing on equipment with a demonstrated history of safety-related problems. At the same time, NHTSA would comply with Congressional intent to minimize the regulatory burden on manufactures whose product information provides the Agency with no meaningful result (TREAD Sec. 3(b)).

Regarding the use of the FMVSS as a trigger for early warning reporting, AAIA believes that in most cases the equipment regulated under this rule has no demonstrated history of defects or serious consequences resulting therefrom (e.g. lamps, windshield wipers, theft protection devices, power windows, etc.). Moreover, it is unlikely that most equipment covered under the FMVSS, if found to be defective, would result in death or serious injury. While there are exceptions (e.g. tires, brake and fuel systems, seat belts and air bags), a blanket requirement for extensive reporting on all equipment covered by the FMVSS would unduly burden many companies while providing negligible improvements in public safety.

Once again, AAIA believes that NHTSA should concentrate its efforts on those items of equipment that have a demonstrated record of risk from defects and recalls. Moreover, AAIA recommends that the list of safety-related items subject to early warning reporting be reviewed periodically allowing equipment that has not been involved in recalls for an appropriate amount of time to be removed from the list and no longer subject to the reporting requirements.

Regarding the timely reporting of defects once they become known to a manufacturer, current law is quite clear in calling for the manufacturer to notify NHTSA if it determines that the “equipment contains a defect and decides in good faith that the defect relates to motor vehicle safety.” Additional regulation pursuant to TREAD will add little or nothing to the existing rules established under CFR 573.8. Likewise, the avalanche of additional reports and data pertaining to equipment that is unlikely to cause safety-related problems, will do nothing to enhance public safety and could, in fact have the opposite effect by inundating the Agency with extraneous and non-essential information.

## **COMMENTS ON SPECIFIC SOURCES OF INFORMATION**

In defining the parameters for “early warning reporting requirements”, Congress clearly intended that any data collected by NHTSA be in a form and of a substance that assists the Agency in identifying safety-related defects. By implication, data that does not help NHTSA achieve this goal should not be collected. AAIA believes strongly that this congressional intent must be respected and that NHTSA should make every effort to limit the scope of its reporting requirements to only those data that contribute materially and directly to the enhancement of public and vehicular safety.

As noted in the ANPR, NHTSA was further instructed by President Clinton to “implement the disclosure requirements of the TREAD Act in a manner that assures maximum public availability of information.” Given the massive amount of new data proposed for disclosure, this mandate would seem to justify industry’s concern that information traditionally held confidential will be made available to the public and used for whatever purpose the public deems appropriate. Indeed, the potential for frivolous or unsubstantiated legal action, should be considered a prevailing theme throughout our discussion of data reporting. We strongly urge NHTSA to consider and address the negative consequences, both to the industry and to the cause of public safety, of forcing manufacturers to publicly divulge proprietary data and other information.

In addition to these general observations, the following comments pertain to specific information sources that NHTSA has suggested could be included in its early warning reporting system.

Warranty claim data. Reporting of warranty claims should target only safety-related items and of those, only items that historical data suggests may have real potential for defects and/or recalls. This policy would limit NHTSA's collection and assessment responsibilities to products that deserve greater attention while reducing or eliminating the reporting burden on manufacturers whose products that have no history of safety-related problems.

Claims for death, injury or property damage. In each of these cases, AAIA's primary concern is the ultimate disposition of this information. In the ANPR, NHTSA repeatedly refers to claims of "alleged" injuries, death or damage arising from "possible" defects. The implication seems to be that such claims are unproven. Yet, proven or not, this information would likely be made available to the public, providing an open invitation to opportunistic lawsuits. Companies that are forced to provide such detailed information on "allegations" would put in jeopardy their chance for a successful defense in any suit involving death, injury or even significant property damage. NHTSA's characterization of these claims as allegations should be enough to convince the Agency to rely on more factual evidence.

Lawsuits. When a lawsuit is filed against the manufacturer of motor vehicles or equipment, certain information becomes public. NHTSA should limit its data-gathering to this information. Requiring companies to disclose confidential or proprietary information destined for use in court would seriously undermine the manufacturer's ability to defend itself and put in question company's right to a fair and impartial hearing.

Consumer complaints. Care must be taken to fully substantiate consumer complaints, originating as they normally do from persons not typically involved in the automotive service industry. Until scientifically validated, consumer complaints would have to be considered allegations and therefore not admissible as proof of defective design or manufacture. If a complaint, whether justified or not, involves death, injury or serious property damage, it can quickly become fodder for extremely damaging litigation and/or public harassment.

Internal investigations. Once again, AAIA is seriously concerned about the public release of any information that should properly be considered proprietary. Such information, if submitted to NHTSA, would have to be held in the strictest confidence by the Agency. Indeed, fear of lawsuits may actually motivate certain companies to forego testing in order to reduce or eliminate the possibility of developing data that could be used against them in a court of law. This result, would obviously run counter to NHTSA's intent.

Changes to components and service parts. AAIA has several concerns with the reporting of this data. The first relates to competition. Product design is almost by definition proprietary in a market as competitive as the automotive aftermarket. Competitive advantage goes to the company that produces the best product at the earliest time. From a practical standpoint, making safety judgements based upon design changes is speculative at best. For example, would a company become suspect if it decided to downgrade an over-engineered part? Using NHTSA's example, consider a switch that is downsized because the more robust design was found to be unnecessary. Another conflict might develop in instances where there is controversy over the safety-implications of a certain piece of equipment. Sheet metal body parts provide an excellent example. How would the Agency determine which modifications are significant to public safety and which are not?

Fuel leaks, fires and rollovers. AAIA agrees that incidents involving fuel leaks, fires and rollovers warrant NHTSA's attention and investigation. At the same time, the Agency must show a willingness to work with equipment manufacturers as these problems are addressed and remedied in an orderly and composed manner. Immediate public disclosure of unconfirmed or alleged incidents obliges the manufacturer to fight its battles in the media and courts before ever having the opportunity to make a proper scientific determination of cause and effect. Such a threat puts a chill on the entire process of cooperative testing and disclosure.

## **BURDENSOME REQUIREMENTS**

It is difficult to estimate the actual time or cost of complying with the reporting requirements, for although the ANPRM describes a number of possible scenarios, it does not specify what information will be required, in what form or at what frequency. All of these factors will significantly affect the cost and time burdens encountered by equipment manufacturers. Still it is easy to imagine a tremendous reporting commitment should many of the proposed reporting requirements be implemented. For large manufacturers with many equipment lines, the cost of compliance will, in gross dollars be huge. For small manufacturers, the cost, while smaller in gross terms could well be excessive in percentage terms. Again, the huge potential cost of blanket reporting would clearly argue for a much more targeted approach.

## **REPORTING FREQUENCY.**

AAIA believes that all NHTSA early warning reporting requirements should be risk- and need-based. This criteria should similarly apply to reporting frequency. Rather than burdening equipment manufacturers with periodic reporting when there is nothing to report, NHTSA should instead require data only when an incident justifies it. In other words, claims of death, serious injury or certain serious malfunctions (e.g. fuel leaks, fires, roll-overs, etc.) would trigger immediate reporting requirements for the items specifically involved.

## CONCLUSION

AAIA appreciates the opportunity to comment on these proposed rules. We agree that motor vehicle safety should be a primary responsibility of everyone involved in the automotive industry. Our members work hard to design, produce and make available to consumers and professional installers the safest and highest quality automotive equipment available.

In order to ensure that the intent of TREAD is fully realized, NHTSA should develop an efficient and targeted approach to obtaining an early warning of possible safety-related defects. While it is perhaps understandable to respond to the Firestone situation by attempting to obtain every possible piece of information, doing so would severely tax the Agency's resources and likely not produce a corresponding increase in safety. We believe the public would be better served if NHTSA utilized its considerable experience to target the highest risk areas for monitoring and response.

Finally, AAIA implores the Agency to consider the aftermarket as a partner in the quest for vehicular safety and in doing so remain sensitive to the very real issues of confidentiality, fear of litigation and cost of compliance.

Again, thank you for this opportunity to present our views and perspectives on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Lowe". The signature is fluid and cursive, with the first name "Aaron" being more prominent than the last name "Lowe".

Aaron M. Lowe  
Vice President, Government Relations