DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 574, 576, 579

[Docket No. NHTSA 2001–8677; Notice 3]

RIN 2127–AI25

Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts a regulation that will implement the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to report information and to submit documents about customer satisfaction campaigns and other activities and events that may assist NHTSA to promptly identify defects related to motor vehicle safety.

We are also adopting amendments to NHTSA's general and tire recordkeeping regulations to assure that manufacturers retain relevant information.

The final rule also moves certain existing provisions of NHTSA's regulations to other parts of the Code of Federal Regulations.

DATES: *Effective Date:* The effective date of this final rule is August 9, 2002. *Applicability Dates:* Various provisions of this final rule are applicable on the dates stated in the regulatory text. See 49 CFR 579.28. *Petitions for Reconsideration:* Petitions for reconsideration of the final rule must be received not later than August 26, 2002.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

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I. Summary of the Final Rule

In our notice of proposed rulemaking (NPRM) (66 FR 66190), we proposed to divide manufacturers of motor vehicles and motor vehicle equipment into two groups with different responsibilities for reporting information that could indicate the existence of potential safety-related defects. There was no opposition to this approach, and we are adopting it.

The first group consists of larger manufacturers of motor vehicles, and all manufacturers of child restraint systems and tires. In general, the larger vehicle manufacturers must report separately on four categories of vehicles (if they produced, imported, offered for sale, or sold 500 or more of a category annually in the United States): light vehicles, medium-heavy vehicles and all buses, trailers, and motorcycles.

- *Deaths.* These manufacturers must report certain specified information about each incident involving a death that occurred in the United States that is identified in a claim (as defined) against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in foreign countries that is identified in a claim against the manufacturer involving the manufacturer's product, or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.

• *Injuries.* These manufacturers must report certain specified information about each incident involving an injury that occurred in the United States that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.

• *Property damage.* These manufacturers (other than child restraint system manufacturers) must report the numbers of claims for property damage that occurred in the United States that are related to alleged problems with certain specified components and systems, regardless of the amount of such claims.

• *Consumer complaints.* These manufacturers (other than tire manufacturers) must report the numbers of consumer complaints they receive that are related to problems with certain specified components and systems that occurred in the United States. Manufacturers of child restraint systems must report the combined number of such consumer complaints and warranty claims, as discussed below.

• *Warranty claims information.* These manufacturers must report the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they receive that are related to problems with certain specified components and systems that occurred in the United States. As noted above, manufacturers of child restraint systems must combine these with the number of reportable consumer complaints.

• *Field reports.* These manufacturers (other than tire manufacturers) must report the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems that occurred in the United States. In addition, manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers.

• *Production.* These manufacturers must report the number of vehicles, child restraint systems, and tires, by make, model, and model year, during the reporting period and the prior nine model years (prior four years for child restraint systems and tires).

These manufacturers must separately report the numbers identified above for each model and model year, as the rule defines it (ten years for vehicles and five years for tires and child restraint systems).

A manufacturer or brand name owner of tires will not have to report any information other than information relating to incidents involving deaths for limited production tires and other tires exempted from the Uniform Tire Quality Grading Standards pursuant to 49 CFR 575.104(c)(1). In addition, tire manufacturers need only report incidents involving deaths for tires other than passenger car tires, light truck tires, or motorcycle tires. (Manufacturers should note these exclusions in reviewing the reporting requirements under this rule, as we may not repeat it in all instances in which it may apply).

The second group of manufacturers consists of all other manufacturers of motor vehicles and motor vehicle equipment, i.e., vehicle manufacturers insofar as they produced, imported, or sold in the United States fewer than 500 light vehicles, medium-heavy vehicles (including buses), motorcycles, or trailers annually, manufacturers of original motor vehicle equipment and manufacturers of replacement motor vehicle equipment other than child restraint systems and tires. These manufacturers must report the same information about incidents involving deaths as the first category, but are not required to report any other information.

In addition, all vehicle and equipment manufacturers in both groups must provide copies of all documents sent or made available to more than one dealer, distributor, owner, purchaser, lessor or lessee, in the United States with respect to customer satisfaction campaigns, consumer advisories, recalls, or other activities involving the repair or replacement of vehicles or equipment.

Reports must be submitted electronically, in specified formats. The components and systems on which reporting is required will vary, depending on the type of product involved. Documents such as consumer advisories must be submitted electronically or in hard copy.

With respect to the information required to be submitted under this rule, there will be four reporting periods each calendar year of three months each. The first such report will cover the second calendar quarter of 2003. Reports, including copies of field reports, will be due not later than 30 days after the end of a calendar quarter, except for the final three calendar quarters of 2003, when we are allowing a period of 60 days after the end of the calendar quarter. Documents other than field reports that are required to be submitted under this final rule (those documents currently required under 49 CFR 573.8), will be due not later than 5 working days after the end of the month in which they are generated by the manufacturer, beginning with April 2003.

To help NHTSA identify trends that could indicate potential safety problems, manufacturers will be required, on a one-time basis, to report the number of warranty claims or adjustments and the number of field reports for each calendar quarter during the three-year period from April 1, 2000 through March 31, 2003, the date preceding the beginning of the first reporting period that is established by the final rule, April 1, 2003. Submission of copies of field reports is not required under this one-time provision.

The early warning reporting requirements will comprise Subpart C of a new 49 CFR Part 579. Following final rulemaking, the foreign defect reporting requirements proposed on October 11, 2001 (66 FR 51907) will comprise Subpart B of Part 579. This rule adopts a Subpart A containing general requirements that will apply to both Subparts B and C, except where otherwise stated.

We are also adopting amendments that extend the recordkeeping requirements of 49 CFR Part 576 to child restraint system and tire manufacturers:

• These manufacturers will now be required to maintain the same types of records that manufacturers of vehicles have been required to keep under 49 CFR Part 576.

• Manufacturers of tires will also be required to retain for five years records of purchasers of tires they manufacture. Manufacturers of motor vehicles will be required to retain for five years records of tires on each vehicle manufactured and the purchaser of each vehicle. Currently, 49 CFR Part 574 requires that these records be retained for three years.

In addition, the record retention requirements have been expanded to require all manufacturers to retain, for five years, the underlying records on which the information they provide NHTSA under the early warning rule is based. (For manufacturers of equipment other than tires and child restraint systems, this is limited to records related to incidents referred to in claims and notices involving deaths.)

The early warning final rule, the final rule pertaining to foreign defect campaigns, and current 49 CFR 573.8 will be codified in 49 CFR Part 579 (2002). Part 573 is being amended to include the provisions of current Part 579 (2001) with respect to defect and noncompliance responsibility. These are

reflected in amendments to the scope, purpose, and definitions of Part 573, and the addition of the substantive requirements of existing Section 579.5 as a new Section 573.5.

The final rule is effective August 9, 2002. The first quarterly reporting period for early warning information begins on April 1, 2003. Quarterly reports for calendar 2003 will not be due until two months following the end of the quarter, (e.g., the first quarterly report will be due on August 31, 2003). Thereafter, beginning with the first quarter of calendar 2004, information is due 30 days following the end of the reporting period. The one-time report of historical information will be due September 30, 2003, approximately 90 days following the end of the first reporting period. The documents that are required to be submitted on a monthly basis will be due five days after the end of the month in which they are generated, beginning with April 2003.

II. Background: The TREAD Act (Public Law 106–414)

The Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act was enacted on November 1, 2000, Public Law 106–414.

The TREAD Act amends 49 U.S.C. 30166 to add a new subsection (m), Early warning reporting requirements. This subsection provides for NHTSA to require manufacturers of motor vehicles and motor vehicle equipment to submit information, periodically or upon NHTSA's request, that includes claims for deaths and serious injuries, property damage data, communications to customers and others, information on incidents resulting in fatalities or serious injuries from possible defects in vehicles or equipment in the United States or in identical or substantially similar vehicles or equipment in a foreign country, and other information that may assist NHTSA in identifying potential safety-related defects.

Sections 30166(m)(3), (4), and (5) address, respectively, the elements to be reported, the handling and utilization of reported information, and periodic review and update of the final rule.

The crux of the early warning provisions is Section 30166(m)(3), which states:

> (3) Reporting elements.
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> (A) *Warranty and claims data.* As part of the final rule * * * the Secretary [of Transportation] shall require manufacturers of motor vehicles and motor vehicle equipment to report, periodically or upon request by the Secretary, information which is received by the manufacturer derived from foreign and domestic sources to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States and which concerns—
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> (i) data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment; or
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> (ii) customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.
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> (B) Other data. As part of the final rule * * *, the Secretary may, to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request.
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> (C) Reporting of possible defects. The manufacturer of a motor vehicle or motor vehicle equipment shall report to the Secretary, in such manner as the Secretary establishes by regulation, all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment in the United States, or in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

The Secretary has delegated to the NHTSA Administrator the authority to carry out 49 U.S.C. Chapter 301 (49 CFR 1.50(a)).

On January 22, 2001, we issued an advance notice of proposed rulemaking (ANPRM) to discuss and to solicit comments on the ways in which NHTSA may best implement these statutory provisions (66 FR 6532). After considering the many comments provided in response to the ANPRM, we followed this with a notice of proposed rulemaking (NPRM), published on December 21, 2001 (66 FR 66190).

On October 11, 2001, we issued a separate NPRM that would implement another provision of the TREAD Act, adding Section 30166(l) to Title 49 (66 FR 51907). Subsection (l) also applies to manufacturers of motor vehicles and motor vehicle equipment; it requires them to notify us of safety recalls and other safety campaigns that they conduct outside the United States, or are ordered by a foreign government to conduct abroad, on vehicles and equipment identical or substantially similar to those sold in the United States. The December 21, 2001 early warning rule NPRM stated that the definitions proposed in Subpart A of that NPRM would apply to the rule regarding notification of foreign safety campaigns.

In response to the NPRM on the early warning rule, we received comments from a variety of sources. Motor vehicle manufacturers and associated trade organizations who commented were Ford Motor Company (Ford), the Truck Manufacturers Association (TMA), the Association of International Automobile Manufacturers, Inc. (AIAM), the Recreational Vehicle Industry Association (RVIA), Harley-Davidson Motor Company (Harley-Davidson), Nissan North America, Inc. (Nissan), Volkswagen of America, Inc. (for itself, Volkswagen AG and Audi AG) (Volkswagen), American Honda Motor Company (Honda), the Motorcycle Industry Council (MIC), Blue Bird Body Company (Blue Bird), General Motors Corporation (GM), Gillig Corporation (Gillig), Spartan Motors Chassis, Inc. (Spartan), Porsche Cars North America, Inc. (Porsche), Fleetwood Enterprises, Inc., (Fleetwood), Utilimaster Corporation (Utilimaster), and the Alliance of Automobile Manufacturers (the Alliance). The tire industry was represented by the Rubber Manufacturers Association (RMA). The Juvenile Products Manufacturers Association (JPMA) represented the child restraint system industry. Other motor vehicle equipment manufacturers and associated trade organizations who commented were the American Motorcyclist Association (AMA), Johnson Controls (Johnson), the Waste Equipment Technology Association (Wastec), the Specialty Equipment Market Association (SEMA), the National Truck Equipment Association (NTEA), the Motor and Equipment Manufacturers Association (MEMA) for itself and the Original Equipment Suppliers Association, the National Automobile Dealers Association (NADA), Delphi Automotive Systems, LLC (Delphi), Webb Wheel Products, Inc. (Webb), and Bendix Commercial Vehicle Systems, LLC (Bendix). We also received comments from Public Citizen (PC), Consumers Union (CU), and a number of individuals concerned about a reference in the NPRM to motorcycle apparel.

These comments have provided us with numerous insights in developing this final rule. This completes the first phase of our early warning rulemaking. Consistent with Section 30166(m)(5), we will periodically review the final rule and consider possible amendments.

III. Manufacturers That Will Be Covered by the New Reporting Requirements

A. Scope of the Term ''manufacturer''

The proposed rule dealt primarily with the information that would be provided to NHTSA. Most of the information to be provided involved activities and events related to motor vehicle safety in vehicles and equipment in the United States; some information would be required with regard to some claims related to deaths in foreign countries involving motor vehicles or equipment that are identical or ''substantially similar'' to vehicles or equipment that are sold in the United States.

The NPRM addressed who was obligated to provide the information required under the proposed rule. We recognized that the information identified in the proposed rule could be maintained within various sub-entities of a multinational corporation. To assure that we received the information and to preclude non-reporting on the basis that the information was held by an entity not covered by the regulation, we proposed to define the covered entity—the manufacturer—inclusively to include corporate parents, subsidiaries and affiliates. Under this formulation, the information identified in the proposed rule would have to be submitted to NHTSA regardless of where it was maintained in a multinational corporation with numerous subsidiaries. At the same time, as a practical matter, we wrote the reporting obligations such that they would most likely be carried out by the entity that has traditionally reported to NHTSA.

In particular, in the NPRM, at Section 579.3(a) (''Application''), we stated ''This part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all vehicles and equipment that have been offered for sale, sold, or leased by the manufacturer, any parent corporation of the manufacturer, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation of the manufacturer.'' In subsection (b), we stated that ''[i]n the case of any report required under this part, compliance by either the fabricating manufacturer or the importer of the motor vehicle or motor vehicle equipment shall be considered compliance by both.'' [1]

Further, at proposed Section 579.4, we stated that the term ''manufacturer'' is used as defined in 49 U.S.C. 30102; however, for purposes of Part 579, it also ''includes any parent corporation of the manufacturer, any subsidiary or affiliate of the manufacturer, any subsidiary or affiliate of any parent corporation of the manufacturer, and any legal counsel retained by the manufacturer.''

In the NPRM, we stated that the TREAD Act expanded manufacturers' responsibilities with respect to foreign events and activities and thus has extraterritorial effect. As we noted, in its comments on the ANPRM, the Alliance recognized that the TREAD Act was clearly written by Congress to apply to persons and activities outside the United States, and that the rule could reasonably require reports from foreign companies manufacturing vehicles for sale in the United States as long as the reports related to issues that could arise in those vehicles. Under the NPRM, foreign entities would be required to provide the same information as we would require for domestic manufacturers, but only with respect to vehicles and equipment that they sell in the United States and to incidents involving death outside the United States that involve identical or substantially similar motor vehicles or equipment. *See* 66 FR at 66193–66194. We explained that, in view of both the definition of manufacturer and the specific provisions of Section 30166(m), we believed that the agency has authority to require a report from the entity that maintains the information, from the fabricating manufacturer, and from the importer of the vehicle or equipment, but that we were proposing to require reporting only by either the fabricating manufacturer or by the importer, because this was consistent with current reporting under 49 CFR Part 573 and with our recent proposals for reporting of safety recalls and other safety campaigns in foreign countries, pursuant to 49 U.S.C. 30166(l). *See* 66 FR at 66193–66194. And we observed that a multinational corporation must adopt practices to ensure that all relevant information on matters for which reports are required is made available to that corporation's designated reporting entity, so that the designated entity timely provides the information to NHTSA. We stated that a multinational corporation would be violating the law if it designated its U.S. importer as its reporting entity but failed to assure that the importer was provided with the information required to be reported. *See id.* at 66194.

In addition, in the preamble to the NPRM, at Section III.D, we explained that we proposed to deem information (such as claims-related information) that is initially received by representatives of the manufacturer (such as their registered agents and outside counsel) to be in the possession of the manufacturer, and thus to require each manufacturer to ensure that entities it has the ability to control furnish it with the information covered by this rule so that the manufacturer may make a full and timely report to NHTSA. However, we also stated explicitly that we were not proposing to require such representatives to report directly to NHTSA. *See* 66 FR at 66194.

Many manufacturers and trade associations commented on various aspects of the scope of ''manufacturer,'' particularly with respect to subsidiaries and affiliates (including law firms). These commenters included AIAM, the Alliance, Delphi, Ford, GM, Harley-Davidson, Honda, Bendix, MEMA, Nissan, RMA, TMA, Volkswagen, and Webb. Ford, GM, Nissan, and Volkswagen also stated that they supported the Alliance's comments; Honda also stated that it supported AIAM's comments. The comments are discussed by issue, below.

1. Proposed Requirements for Reporting About Events in Foreign Countries

Foreign manufacturers that manufacture vehicles or equipment for sale in the United States have long been subject to the reach of the American legal and regulatory system. They are subject to the requirement that they certify that all their vehicles or equipment imported into the United States comply with applicable Federal motor vehicle safety standards. 49 U.S.C. 30115. They are subject to recall provisions. 49 U.S.C. 30117–120. They have been required to provide to NHTSA copies of all notices, bulletins, and other communications to more than one U.S. distributor, dealer, or purchaser regarding defects. 49 U.S.C. 30166(f) and 49 CFR 573.8. They are subject to record keeping and reporting provisions. 49 U.S.C. 30166 and 49 CFR Part 576. The Vehicle Safety Act requires such manufacturers to appoint agents for the service of process in actions involving this agency (49 U.S.C. 30164; see 49 U.S.C. 30102(a)(5)(A)). Both foreign and domestic manufacturers also appoint registered agents for the service of judicial process in general; these may be, but are not

[1] The text of proposed subsection (b) directly parallels the existing Code of Federal Regulations provision that governs the responsibilities of fabricating manufacturers and importers with respect to the filing of reports informing NHTSA of defective and noncompliant motor vehicles and motor vehicle equipment and of the progress of recall campaigns. *See* 49 CFR 573.3(b).

required to be, the same agents who register with NHTSA. Furthermore, foreign manufacturers that have U.S. subsidiaries do not rely exclusively on their American subsidiaries to conduct business before this agency. Rather, both Asian and European manufacturers have routinely participated in meetings at NHTSA headquarters in defects investigations, and even appear in litigation involving this agency.

As acknowledged by the Alliance in its comments on the ANPRM, the TREAD Act was clearly intended by the Congress to apply extraterritorially. The Alliance stated that this creates a ''whole new body of law and potential regulation'' in the area of gathering and reporting of information from persons overseas on their overseas activities.

In the NPRM, we focused primarily on information involving events or activities in the United States and to a lesser degree on certain foreign claims involving vehicles and equipment that are identical or substantially similar to those sold in the United States. As noted above, we proposed, at Section 579.3(a) and Section 579.4(a), to adopt a single, broad definition of manufacturer to assure that we received this information, be it in the possession of a domestic or foreign component of the manufacturer.

Several commenters, including the Alliance, Nissan, VW, and AIAM, objected to the breadth of our proposed definition of manufacturer. The Alliance and Nissan asserted that the proposed definition impermissibly failed to articulate a nexus between the covered manufacturers and the United States, and that in the absence of such a nexus, the proposed definition amounted to an attempt to assert extraterritorial jurisdiction in violation of international law. VW stated that NHTSA appeared to have recognized in the preamble to the NPRM that reporting obligations must be limited to foreign entities that manufacture vehicles or equipment for export to the U.S. (citing 66 FR 66193), but that NHTSA had failed to incorporate this recognition into the proposed regulatory text.

In our opinion, the proposed regulations were based upon and incorporated an adequate nexus to the United States. In addition to addressing events and acts in the United States, consistent with the TREAD Act, we required the submission of relatively limited information about claims for deaths in foreign motor vehicles that are ''substantially similar'' to vehicles that are sold in the United States. The substantial similarity of those foreign vehicles to their American counterparts creates a sufficient nexus to the United States.

As we indicated in the preamble to the NPRM (*see* 66 FR at 66193), we dealt with the nexus issue in the provisions governing the substance of the reports, rather than in the definition or ''application'' sections. However, to put this matter to rest, in response to the comments from the Alliance and others, we have decided to modify proposed Section 579.3(a), Application, by inserting, after the word ''leased,'' the phrase ''in the United States'' and by inserting, at the very end, with respect to vehicles and equipment offered for sale, sold or leased in foreign countries, the phrase ''substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States.'' This will not make a substantive change in what we proposed.

We note further that we did not receive any comments on this aspect of the NPRM from any other branch or office of the U.S. government or from any foreign government.

2. Assertion that extending the definition of ''manufacturer'' to include subsidiaries and affiliates exceeds our statutory authority

Some commenters challenged the breadth of coverage of proposed Sections 579.3(a) and 579.4(a) based on the assertion that we lack statutory authority to include subsidiaries and affiliates within the definition of ''manufacturer.'' They contended that our proposal to do so violates congressional intent to limit the early warning requirements to those entities that fall within the literal Safety Act definition of the term—a person manufacturing or assembling vehicles or equipment, or importing same for resale (49 U.S.C. 30102(a)(5)(A), (B)). This position was presented in the abstract, without any presentation of where the parent companies' headquarters, importing and exporting subsidiaries, and assembly operation subsidiaries are located, and without any showing whether or how, under their view of the proper definition of manufacturer, NHTSA would be assured of receiving information specifically covered by section 3 of the TREAD Act; e.g., information on foreign safety recalls and other foreign safety campaigns and information on incidents in foreign countries involving fatalities alleged or proven to be caused by a possible defect in a motor vehicle that is identical or substantially similar to one offered for sale in the United States. *See* 49 U.S.C. 30166(l),(m)(3)(C). Implicit in their view was that, if information on foreign recalls, foreign deaths, or other TREAD Act categories was in the possession of a subsidiary that was not a manufacturer, assembler, or importer for resale, as referred to above, there would be no legal obligation to report such TREAD Act-related information to NHTSA.

We disagree with this assertion. Our proposal to include the parent and subsidiaries and affiliates within the term ''manufacturer'' was derived from our authority to implement 49 U.S.C. 30166(l) and (m). These sections invest NHTSA with substantive rulemaking authority and require that we exercise it. One element of this authority to issue substantive rules is the ability to construe the statute. This includes interpreting statutory provisions, such as the definition of ''manufacturer.'' Moreover, our interpretation is entirely consistent with congressional intent. The manifest intent was that NHTSA have the information to assist in promptly identifying safety-related defects. In contrast, under the industry commenters' position, multinational companies would not have to report foreign recall and early warning information if it was not held by entities that fit squarely into their definition of manufacturer—the assembler or the importer for resale. This is inconsistent with the TREAD Act.

The TREAD Act was enacted in the context of substantial numbers of deaths that occurred in the United States after defect-related deaths had occurred in South America and the Middle East. The multinational corporations that made and sold the vehicle (Ford Explorer) and equipment (Firestone tires) were aware of assertions that their products had caused these deaths and had conducted safety campaigns in foreign countries. They had not informed NHTSA of these matters and NHTSA was not aware of them until after it opened a formal defect investigation in the spring of 2000. Congress sought to correct this reporting deficiency, among other things.

Congress was aware that the vehicle and tire industries are comprised of multinational corporations, most of which have their principal place of business abroad, with numerous operations and subsidiaries around the world. With increased globalization and efforts to lower labor costs, this includes assembly operations in numerous countries. Of the larger light vehicle manufacturers, only two (GM and Ford) are based domestically, and they have numerous international subsidiaries. The remainder, including Honda, Nissan, Toyota, Volkswagen, DaimlerChrysler AG, and BMW, are

headquartered abroad, with one or more U.S. subsidiaries.[2] Similarly, the major tire producers are multinational corporations. Bridgestone/Firestone and Michelin are headquartered abroad, with U.S. and other subsidiaries.

Safety-related information could be maintained in a variety of locations by a variety of corporate parents and subsidiaries. For example, consider a recall in Venezuela conducted by a multinational corporation based in Europe of vehicles that are substantially similar to those that are assembled by a subsidiary in Mexico and imported by a U.S. subsidiary. Information on that foreign recall ordinarily would not have been directed to these assembling and importing subsidiaries. To interpret the legislation as applying only to assemblers and importers would be to eviscerate the TREAD Act, as it would amount to acceptance of non-reporting. In enacting the TREAD Act, Congress did not differentiate based on corporate structure and location. Congress likewise did not expect us to do so.

Moreover, while the TREAD legislation was being formulated, Jacques Nasser, then the CEO of Ford and as the representative of the automobile industry, agreed that the industry would notify NHTSA of recalls in foreign countries involving vehicles sold in the United States. S. Rep. No. 106–423 at 2–3. Also, the Alliance member companies (BMW, DaimlerChrysler, Fiat, Ford, General Motors, Isuzu, Mazda, Mitsubishi, Nissan, Porsche, Toyota, Volkswagen, and Volvo) sent a letter to NHTSA in which they committed to report to NHTSA their safety recalls and other safety campaigns that are conducted in a foreign country on a vehicle or component part that is also offered for sale in the United States. They did not limit this commitment to recalls and campaigns documented in the hands of corporate entities that are assemblers of the products or U.S.-based subsidiaries that are importers. In light of Mr. Nasser's statement and the Alliance members' commitment, which did not suggest a narrow meaning of the word manufacturer, there was no need for the Congress to more expressly legislate NHTSA's authority.

The commenters' views are even narrower than, and not consistent with, the definition of manufacturer in Section 30102(a)(5). Under that section manufacturer means a person—(A) manufacturing or assembling motor vehicles or equipment or (B) importing them for resale. To give meaning to all words, particularly the word manufacturing, manufacturer must be broader than mere assemblers and importers. The term manufacturer includes an enterprise. *See* American Heritage Dictionary (4th ed.)(manufacturer is ''a person, an enterprise, or an entity that manufactures something.''). This is consistent with our longstanding interpretation of the Vehicle Safety Act, which, in the course of numerous amendments, Congress has not rejected. For example, under 49 U.S.C. 30115, a ''manufacturer'' must certify that the vehicle complies with standards. Under our implementing regulations, the term manufacturer covers more than the assembler or importer. Under 49 CFR 567.4(g)(1)(i), for example, if a vehicle is assembled by a corporation that is controlled by another corporation that assumes responsibility for conformity with the standards, the name of the controlling corporation may be used as the manufacturer, even though it is not the assembler. See NHTSA interpretation of October 13, 1981 regarding PACCAR. This would allow, for example, parent Volkswagen of Germany to certify vehicles made by a Mexican subsidiary and imported into the U.S., DaimlerChrysler AG of Germany to certify M Class sport utility vehicles (SUVs) assembled by a subsidiary in Alabama, and Isuzu Motors Ltd. (of Japan) to certify Isuzu Rodeos assembled in Indiana. The commenters' position on the meaning of manufacturer is inconsistent with 49 CFR 567.4(g)(1)(i).

The enterprise view of a manufacturer is consistent with recent case law. *See Daimler-Benz Aktiengesellschaft* v. *Olson,* 21 S.W. 3d 707; 2000 Tex. App. LEXIS 3985 (2000), *cert. den. sub nom. DaimlerChrysler* v. *Olson,* _S.Ct._, 70 U.S.L.W. 3707 (2002) (rejecting allegation by Daimler-Benz that the court lacked jurisdiction over it because it is a German corporation not doing business in Texas, and stating that ''[o]ur review of this evidence shows Daimler-Benz as a company devoted to selling its cars worldwide. To achieve this goal, Daimler-Benz has established subsidiaries in important markets around the globe * * *'' 21 S.W.3d at 722–723).

Also, our approach to requiring information from multinational organizations is consistent with case law in which in a multinational corporate context, foreign parent, subsidiary and affiliate corporations of a party corporation have been required to provide information in litigation. *E.g., In re Richardson-Merrell, Inc.* (Bendectin Product Liability Litigation), 97 F.R.D. 481 (S.D. Ohio 1983) (compelling discovery from multinational drug manufacturer's domestic and foreign subsidiaries). Courts have applied a broad, multifaceted view of control sufficient to compel responses to discovery. For example, courts have held that subsidiary and affiliate corporations responsible for the sale of products in the United States have sufficient control over their parent's documents in order to be compelled to produce them. *See, Cooper Industries, Inc.* v. *British Aerospace, Inc.,* 102 F.R.D. 918 (S.D. N.Y. 1984) (ordering defendant that distributed and serviced airplanes in the U.S. and was a wholly owned corporate affiliate of plane manufacturer British Aerospace Public Limited Co. to produce documents believed to be in its British affiliate's files); *Afros S.p.A.* v. *Krauss-Maffei Corp.,* 113 F.R.D. 127 (D. Del. 1986) (ordering subsidiary to produce German parent corporation's documents where subsidiary was a wholly owned sales arm of parent and operating as exclusive seller of parent's products in the U.S.); *Ferber* v. *Sharp Electronics Corp.,* 1984 U.S. Dist. LEXIS 24861, *8, 40 Fed. R. Serv. 2d 950 (S.D.N.Y. 1984) (requiring wholly owned subsidiary of Japanese corporation that acted as parent's U.S. distributor and seller with respect to calculators that allegedly infringed patent to produce information held by parent); *In re Uranium Antitrust Litigation,* 480 F. Supp. 1138, 1153 (N.D. Ill. 1979) (party not required to have actual managerial power over the foreign corporation, but rather that there be a close coordination between them); *see also, Camden Iron and Metal, Inc.* v. *Marubeni America Corp.,* 138 F.R.D. 438 (D.N.J. 1991) (requiring U.S. based subsidiary corporation to produce Japanese parent's documents where parent had participated in negotiations over contract which became subject of present litigation) citing, *Gerling Int'l Ins Co.* v. *Commissioner of Internal Revenue,* 839 F.2d 131 (3d Cir. 1988); *Uniden America Corp.* v. *Ericsson Inc.,* 181 F.R.D. 302, 307 (M.D. N.C. 1998) (ordering party corporation to produce responsive records of sister, non-party corporation where companies were owned by same parent, which had

[2] For example, Toyota Motor Corporation is the Japanese parent. Its U.S. sales arm is Toyota Motor Sales U.S.A., Inc. Its public relations are under Toyota Motor North America, Inc. Toyota Motor Manufacturing, North America, Inc. oversees manufacturing companies in North America. Toyota Camrys and Avalons are assembled by Toyota Motor Manufacturing, Kentucky, Inc. Toyota pickup trucks are assembled by Toyota Motor Manufacturing, Indiana, Inc. Toyota Motor Manufacturing Canada Inc. in Ontario assembles Corollas, which are imported. Toyota's agent is Toyota Technical Center, U.S.A., Inc., which also submits certificates of conformity under the Clean Air Act.

power over them, shared information regularly, and sister corporation had provided party corporation documents to assist in present litigation); *Alimenta* v. *Anheuser-Busch Co.,* 99 F.R.D. 309, 313 (N.D. Ga. 1983) (sister corporations acted Aas one'' in transaction); *Soletanche and Rodio, Inc.* v. *Brown & Lambrecht Earth Movers, Inc.,* 99 F.R.D. 269, 272 (N.D. Ill. 1983) (requiring production of foreign parent's documents in patent infringement case where French, non-party, corporate parent had potential benefit in wholly owned, American subsidiary's winning offensive litigation); *First Nat'l City Bank* v. *I.R.S.,* 271 F.2d 616, 618 (2d Cir. 1959) (upholding subpoena requiring New York City bank to produce records located in its office in Panama).

Finally, our approach to requiring a multinational corporate enterprise to provide reports is consistent with the current regulatory practice of some agencies regarding reporting on foreign and domestic safety-related matters by multinational corporations. *See, e.g.,* Food and Drug Administration (FDA) rules regarding post-marketing reporting of adverse events following FDA approval (21 CFR 314.80) and reporting adverse events associated with investigational new drugs awaiting FDA approval (21 CFR 312.32); EPA Office of Pesticide Programs, PRN 98–3 (*www.epa.gov/opppmsd1/PR Notices/index*).

To make our conclusions clear, we are defining ''manufacturer'' in Section 579.4(c), where other terms used in the early warning rule are defined.

3. Nexus to the Motor Vehicle Industry

Another frequent comment was that the proposal to include subsidiaries and affiliates lacked the required nexus to the automotive industry. The Alliance asserted that the proposal would impose reporting requirements on unrelated subsidiaries (such as insurance providers, financing providers, or car rental companies) as well as on companies that have established limited business relationships with each other. GM stated that it was unnecessary and unduly burdensome to require reporting by some 1,000 unrelated subsidiary corporations that apparently would be required to report consumer complaints or notices of deaths or injuries if reported to an employee. Nissan characterized the proposed inclusion of subsidiaries and affiliates as arbitrary and capricious, and commented that the proposal would likely trigger undesirable reporting requirements that were unintended by Congress.

We believe that the industry commenters have exaggerated the burdens that the proposed reporting rule would place on them, their subsidiaries, and their affiliates. We did not propose to require a vehicle manufacturer to search the records of its automobile-financing subsidiary for information responsive to the early warning requirements. Also, we did not propose to require reporting by such entities. However, if a vehicle manufacturer decided for any reason to move the location where it receives or stores relevant vehicle safety-related records, including its information management system, to such a subsidiary or affiliate, then the early warning rule would require a search of that subsidiary's or affiliate's records.

Thus, Honda Power Equipment Manufacturing, Inc., which makes lawn mowers and related equipment, would not have to search its records or report, even though it is a subsidiary of American Honda Motor Co., Inc. General Motors Corporation would not have to search the records of General Motors Acceptance Corporation (GMAC) if the manufacturer in the usual course of business does not keep early warning information in the files of the automobile-financing subsidiary. However, if GM decided to change its current practice and store relevant safety information in the files of GMAC, GM would be required to search that subsidiary's records when preparing its early warning reports.

To further clarify matters, we have decided to add a new Section 579.3(c), which specifies that, in obtaining the information to be submitted under the early warning rule, manufacturers, including parents, subsidiaries, and affiliates, need only review information and systems where information responsive to Subpart C of Part 579 is kept in the usual course of business. This clarification, which incorporates language from Rule 34 of the Federal Rules of Civil Procedure, will eliminate questions of unintended and unnecessary burdens of reporting on affiliates and subsidiaries that are not involved in the areas for which reporting is required.

4. Duplicate Reporting

A number of commenters complained that the proposed rule would likely result in duplicate reporting of the same events by more than one entity and thus and cause the early warning information we receive to be inaccurate. As we made clear in the NPRM, duplicate reporting was not required. We proposed to allow reporting by either fabricating manufacturers or importers, so long as the multinational corporation assures the reporting entity is provided with information in sufficient time for the reporting entity to submit it NHTSA in a timely manner. *See* 66 FR at 66194 and proposed 49 CFR Section 579.3(b). ''In the case of any report required under this part, compliance by either the fabricating manufacturer or the importer of the motor vehicle or motor vehicle equipment shall be considered compliance by both.'' We thought that this provision would eliminate duplicate reporting from separate elements of a multinational corporation.

The comments did not discuss this provision directly, but instead, addressed the subject of duplicate reporting more generally. Nevertheless, we have considered this provision further in light of those comments. We believe that there was considerable flexibility under the proposed rule. We address situations involving complex structures and multinational corporations below, to explain that duplicate reporting is not required and to provide guidance on allowed reporting mechanisms.

Some situations involve joint ventures and production agreements. In a joint venture, two manufacturers of motor vehicles establish a separate corporation whose products each of the manufacturers sells under its own brand name. In the production agreement, one manufacturer agrees to produce vehicles for another under the second manufacturer's brand name. An example of a joint venture is New United Motor Manufacturing Inc. (NUMMI), owned jointly by GM and Toyota, which produced the Toyota Corolla and the Geo Prizm. Examples of production agreements are those between Ford and Nissan in which Ford produced the Nissan Quest as well as the Mercury Villager, and between Isuzu and Honda, under which Isuzu produced the Isuzu Rodeo as well as the Honda Passport. A term used for a vehicle such as the Passport is a ''re-badged vehicle.'' In either case, the agency's certification regulation requires NUMMI and Ford or Isuzu, as the ''actual assembler of the vehicle,'' to certify compliance of the vehicles they fabricate, even if sold by another company. *See* 49 CFR 567.4(g)(1).

As indicated in the Alliance's comment, NUMMI is strictly a fabricator, with no sales outlets or repair facilities of its own. Instead, its products are sold through Toyota and Chevrolet dealerships. The Alliance feared that the proposed rule might oblige Toyota to report on claims and complaints received by GM about GM vehicles, and GM to report on those received by Toyota about Toyota vehicles. Such duplicate reporting is not required

under the rule. Reports may be submitted by Toyota as to Toyotas, and GM as to Chevrolets or Geos. Alternatively, Toyota, GM, or NUMMI may report as to all such vehicles.

The situation is similar with respect to vehicles manufactured under production agreements. For example, assume that Isuzu received consumer complaints about a brake problem in Rodeo vehicles and Honda received complaints about the problem in Passport vehicles. Both Isuzu and Honda may report to us the information that they possess about the vehicles under their own brand names, or the assembler (Isuzu) may report fully for both companies. Honda is not excused from reporting the complaint and other relevant information in its information systems about the Passport on the theory that Honda is not the assembler or importer of the vehicles.

Although the likelihood is that the brand name owners, rather than the fabricator (if other than a brand name owner), will receive consumer contacts about these vehicles, and that the tire brand name owner will be contacted rather than the tire fabricator, we have decided to add a provision to Section 579.3(b), similar to Section 573.3(b), that permits an election between the fabricator and the brand name owner with respect to early warning reporting for vehicles and equipment. We are adding a definition of ''brand name owner'' to the Terminology section of the rule, to mean ''a person that markets a motor vehicle or motor vehicle equipment under its own trade name whether or not it is the fabricator or importer of the vehicle.'' (This is similar to the definition of ''new tire brand name owner'' in 49 CFR 574.3(c)(3)). If the fabricator is the reporting entity, it must identify each company that is a brand name owner covered by the report (*see* new Section 579.28(h)), and every identified company must provide its information to the fabricator in a sufficiently timely fashion to permit the reporting company to file timely and accurate reports. The obverse is also true; i.e., if a brand name owner is reporting for itself, it must identify each fabricating manufacturer covered by the report.

Another scenario involves a situation where the domestic subsidiary of a foreign corporation assembles a vehicle that also is assembled abroad and imported. For example, in some years, Toyota manufactured some Corolla vehicles in Japan that it exported to the United States and an American subsidiary manufactured other Corollas in the United States. Under our rule, due to the parent-subsidiary relationship, each company may report early warning information to us separately without duplication, or one or the other may report on behalf of both (we would prefer a combined report, regardless of which entity actually submits it).

The next such situation involves foreign subsidiaries of U.S. corporations that manufacture vehicles that are sold in the U.S. For example, GM owns Saab of Sweden. Ford owns Volvo, Jaguar, Land Rover, and Aston Martin. This rule does not regulate corporate structure, and it does not matter whether the U.S. importer of these brands is a subsidiary of the foreign corporation or of the U.S. parent (or some other entity). We understand that consumer contacts about U.S. activities and events involving these vehicles are reported to addressees in the United States, whereas communications about foreign events involving the same or substantially similar vehicles are sent to addressees abroad. We had assumed that ordinarily the domestic parent or domestic subsidiary or subsidiaries (separate ones for, e.g., Volvo and Jaguar) would have the records about the domestic activities and events and would report to us about both the domestic and the foreign events after having obtained relevant information from the records maintained by the foreign entity. We are not requiring duplicate reports and are not requiring separate reports from the foreign entities, either limited to the foreign events, or including both foreign and domestic events. Moreover, the time may come when brands such as these are assembled by new subsidiaries in foreign countries, which would add another entity to the mix. We have decided to permit an election for parents and subsidiaries, similar to that proposed for fabricators and importers in proposed Section 579.3, and subject to the same provisos with respect to timeliness and completeness of reporting.

Finally, we consider foreign vehicles that are not exported to the U.S. but that are substantially similar to vehicles sold in the U.S. For example, Ford of the U.K. and Vauxhall Motor Co. Ltd. (owned by GM) [3] manufacture cars for the U.K. market. Although at present, these cars generally are not exported to the U.S., some of the U.K. models are substantially similar to domestic models (our decision with respect to defining ''substantially similar'' is discussed below). Assume, for example, the first-generation Mondeo, which was manufactured and sold in the U.K., is substantially similar to the Ford Contour and Mercury Mystique, which recently were sold in the U.S. Likewise, assume that the U.K. Vauxhall Omega and the German Opel Omega are substantially similar to the Cadillac Catera, which GM previously sold in the U.S. The assembler is a foreign company. Information about the Mondeo in the files of Ford of the U.K., and information about the Omega in the files of Vauxhall or Opel, is likely in Europe. There is no importer of the vehicle into the U.S. Nonetheless, we would allow Ford (U.S.) [4] and GM (U.S.) to obtain and report information about covered claims for deaths in the Mondeo or the Omega from the files in the U.K. or Germany. If there were such full reporting, we would not want duplicate reporting by a foreign company. To address this scenario, we will allow reporting of claims involving deaths in foreign countries by either the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer or brand name owner of the motor vehicle or motor vehicle equipment, and that shall be considered compliance by all persons. Thus, Section 579.3(b) will read as follows:

(b) In the case of any report required under subpart C of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment shall be considered compliance by all persons.

We believe that the modifications we are announcing today with respect to the definition of manufacturer will resolve any other potential problems related to duplicate reporting and will facilitate reporting in a manner that avoids duplicate reporting.

5. Suggestion to Require a ''control relationship'' Between Manufacturers and Covered Subsidiaries and Affiliates

Several commenters (including the Alliance, Nissan, Honda, Bendix, and MEMA) suggested that it was not appropriate to impose reporting requirements on corporate affiliates or impute to manufacturer information in the possession of affiliates over whom the manufacturer does not have a controlling interest. More constructively, Harley-Davidson stated that it would strive to accumulate early

[3] The GM website (*www.gm.com*) under ''contact us'' refers in its pull down menu to Vauxhalls, as well as Holdens (manufactured in Australia) and Saabs.

[4] Ford's website (*www.ford.com*) reflects its world wide operations. It has a link that states ''find your local website from over 120 countries.''

warning reporting information from companies it does not control and would report such information if it learned of it, but might not be able to compel it from such entities.

The manufacturers did not provide concrete examples. Multinational vehicle manufacturers, in general, own all or substantial parts of vehicle manufacturing, importing, and sales subsidiaries. For example, Nissan Motor Co., Ltd. (Japan) owns one hundred percent of Nissan North America, Inc. Honda Motor Co., Ltd. owns American Honda Motor Co., Inc., a subsidiary of which, Honda of America Mfg., Inc., assembles Hondas in Marysville, Ohio. Volkswagen AG owns VW of America. DaimlerChrysler AG owns DaimlerChrysler Corp. (manufacturer of Chrysler, Dodge, and Jeep vehicles), Mercedes-Benz USA, Inc. (importer of Mercedes-Benz passenger cars, formerly known as Mercedes-Benz of North America, Inc.), and Mercedes-Benz U.S. International, Inc. (assembler of M Class SUVs in Alabama). However, there are other situations where there is partial ownership. For example, Ford owns a substantial portion of Mazda Motor Corp. and DaimlerChrysler A.G. of Mitsubishi Motors Corp.

MEMA proposed a ''bright line test'' in which reporting requirements would be imposed only in situations in which the manufacturer has an equity ownership of at least 50 percent in the affiliate or subsidiary. MEMA did not state the basis for its proposed ''50% ownership'' test. We do not see any reason to adopt a ''50% ownership'' test in the context of early warning reporting. It is entirely possible to for one entity effectively to control another with an ownership share of far less than 50 percent. It is too difficult to generalize as to the percentage of ownership that is required for the ability to control. Moreover, there may be multiple corporations above one another in a hierarchy and the multinational corporation may not be structured in a strictly vertical mode; there may be horizontal relationships. The concept of control is adequately addressed by the terms we used. For example, a parent corporation is defined in Black's Law Dictionary ''as a corporation that has a controlling interest in another corporation.'' A subsidiary corporation is defined as a ''corporation in which the parent corporation has a controlling share.'' *Ibid.* An affiliate of or person affiliated with a specified person means a person that directly, or indirectly through one or more intermediates, controls or is controlled by, or is under common control with, the person specified. Ordinarily, the persons are corporations. Securities and Exchange Commission regulation 17 CFR 230.405; *see also,* 17 CFR 240.10b–18(a)(1). We have adopted this definition.

To the extent that further interpretation of these matters is needed, we will address them in the context of concrete facts in the exercise of program administration and discretion.

As indicated earlier in this preamble, we have decided to permit joint venture manufacturers, rebadging manufacturers, and others to elect a reporter. As a practical matter, this flexible approach will enable reporting requirements to be met without resolution of control issues. Based on our experience with reporting of noncompliances and defects under section 573.3, we believe that this approach is workable.

6. Proposed Application to Outside Legal Counsel

We proposed in the NPRM to include within the term manufacturer ''any legal counsel retained by the manufacturer.'' *See* proposed Section 579.4(a). However, we did not propose to require reporting by outside counsel to manufacturers. *See* 66 FR 66194.

Our proposal to include legal counsel in the definition resulted primarily from our perception that certain ''minimum specificity'' information that is a precondition to reporting claims for death or injury may not be found in manufacturers' information systems. Initial claims may be very limited in detail, and it is possible that claims will not be ''perfected'' until outside counsel have become involved. To report, manufacturers will need information necessary to satisfy our ''minimum specificity'' requirement, such as the model year of the vehicle involved in a claim. Manufacturers may need to obtain this factual information from their outside counsel after those counsel receive that information.

The provision of this type of fundamental information would not violate the attorney-client privilege or present other ethical dilemmas to outside counsel. We are seeking only basic factual allegations.

Many commenters objected to our proposal to include retained legal counsel in the definition of manufacturer, and none supported it. The negative commenters included the Alliance, Nissan, Ford, GM, AIAM, Webb, Harley-Davidson, and RMA. Essentially, they asserted that inclusion of legal counsel in the definition was unnecessary because, in virtually all cases, basic relevant information known to outside counsel was made known to them by the manufacturer that retained them; that it would be unduly burdensome for outside counsel to be required to search their records periodically for such information; and that the requirement to divulge such information might pose ethical problems or conflicts of interest for lawyers or otherwise violate proscriptions against divulging privileged information or require disclosure of attorney's work product. Specifically, Nissan observed that, if the agency is concerned about abuse of claims of privilege, it could deal with this potential problem by cautioning against improper privilege claims rather than by redefining the term ''manufacturer.'' Ford requested that the term manufacturer be modified to exclude documents contained in litigation files.

We do not agree that the proposal would impose the sorts of burdens referred to by the commenters. However, to clarify the matter, we are adding a sentence to Section 579.28(d) to specify that in situations involving a claim for death or injury where the manufacturer does not possess all the information required for ''minimum specificity,'' and the matter is being handled by outside counsel, the manufacturer must attempt to obtain the missing information from the outside counsel. In light of this adjustment, we are eliminating outside counsel from the definition of manufacturer contained in Section 579.4(c). Where the corporate manufacturer has the information, which the Alliance claims is virtually always the case, there will be no obligation to inquire and no burden. In view of this modification, we believe that it is unnecessary to address separately the concerns raised by Nissan and Ford.

7. Constructive Notice of Information Received by Agents

In the preamble to the NPRM, we stated that we proposed to deem information that is received initially by representatives of manufacturers (such as their registered agents and outside counsel) to be information in the constructive possession of the manufacturer, and to require each manufacturer to ensure that entities it has the ability to control furnish it with relevant early warning information so that the manufacturer could make a complete and timely report to NHTSA. We also stated that we did not propose to require the representatives to report directly to NHTSA. *See* 66 FR 66194; *see also id.* at 66213—66214. However, while we addressed this subject in the

preamble, it did not appear in the proposed regulatory text.

Many commenters challenged our statements regarding constructive possession, arguing that we lack statutory authority to interpret the term ''possession'' in 49 U.S.C. 30166(m)(4)(B) and claiming that they cannot require entities that they do not control to provide them with information. We disagree. As discussed above, by virtue of our authority to conduct substantive rulemaking to implement the early warning reporting requirements, we are empowered to interpret statutory terms and promulgate a rule containing our interpretation.

The Vehicle Safety Act itself provides at Section 30164 for foreign manufacturers to appoint agents for the service of notices and process in administrative and judicial proceedings, and specifically states that ''service on the agent is deemed to be service on the manufacturer.'' *Id.* at 30164(b). Likewise, a common requirement under state law is the appointment of registered agents, and corporations are deemed to be served upon service on the registered agent. Therefore, we have concluded that, as in Section 30164(b), it is appropriate to impute the information contained in such claims to the manufacturer who is served via the appointed agent. Accordingly, in this final rule, we are adding a specification (Section 579.28(e)) stating that receipt of a claim by an agent of a manufacturer registered under State law or designated under the Vehicle Safety Act by a manufacturer offering vehicles or equipment for import shall be deemed received by the manufacturer. However, upon further consideration, we have concluded that it is not necessary to refer to the concept of constructive possession in the terminology or application sections of this rule. The provisions of this rule that require reporting of information in the possession of manufacturers and their subsidiaries, parents, and affiliates with respect to vehicles and equipment that they offer for sale in the United States and foreign vehicles or equipment that are substantially similar to such vehicles or equipment will suffice to ensure that we receive relevant early warning information from appropriate sources.

B. Manufacturers of Motor Vehicles

The TREAD Act provides for the agency to require manufacturers of motor vehicles [5] to submit information that may assist in the identification of safety-related defects. We must decide which manufacturers of motor vehicles would be required to submit reports under this rule, and whether different reporting requirements should apply to various categories of manufacturers. Section 30166(m)(3) does not exempt any manufacturer of motor vehicles from its coverage. On the other hand, it provides substantial discretion to the agency. The word ''may'' is used at several points in the statute. In addition, the agency's ability to use the information submitted is a statutory concern.

One of the threshold questions in this rulemaking is whether the agency should exercise its discretion to defer the imposition of some or all potential early warning reporting requirements on some classes of manufacturers. The early warning regulation will be a new regulation, and inevitably the agency and regulated entities will face some issues in implementing it. It would be counterproductive to require the submission of more information than we could beneficially review or to impose impracticable requirements, particularly on small manufacturers. We have concluded that we should phase in the early warning reporting requirements and that, for the most part, it would be appropriate to focus first on larger volume manufacturers and on information regarding incidents and activities in the United States, as contrasted to those occurring in foreign countries.

Vehicles produced in small quantities have a smaller overall impact upon safety than large production vehicles, as we have frequently noted in providing temporary exemptions from one of more of the Federal motor vehicle safety standards under 49 U.S.C. 30113. Although we would not expect the volume of reports from any individual small volume manufacturer to be overwhelming if we were to require comprehensive reporting by smaller manufacturers, there would be some burden on them. More important, our interactions with, and review of submissions by, the large number of small manufacturers would divert the agency's resources from reports submitted by high volume manufacturers involving potential safety defects that could affect a far greater number of vehicles and thus have a greater impact on safety.

The final rule excludes from most of the reporting requirements any vehicle manufacturer that manufactures for sale, offers for sale, imports, or sells, in the United States, fewer than 500 vehicles of each specified category in the year of the reporting period and in each of the two calendar years preceding the reporting period. This exclusion will apply to most manufacturers of multistage vehicles and alterers since the vast majority of them manufacture or sell fewer than 500 vehicles annually.

We are also excluding registered importers (RIs) of vehicles not originally manufactured to comply with Federal motor vehicle safety standards from most of the reporting requirements. RIs ordinarily would not have information that would be useful because most import limited numbers of vehicles, most of which are manufactured by companies who generally report to us, and the owners of most of these vehicles probably would not report problems to the RI.

However, these small-volume manufacturers and RIs are not exempt from the requirements, addressed below, to report to us certain specified information regarding incidents involving death(s) occurring in the United States that are identified in claims against and received by the manufacturer or that are identified in notices sent to the manufacturer where the notice alleges or proves that a death was caused by a possible defect in the manufacturer's vehicle, together with information on deaths occurring in foreign countries that are identified in claims against the manufacturer involving a vehicle that is identical or substantially similar to a vehicle that the manufacturer has offered for sale in the United States. With respect to all such reported deaths, all manufacturers will have to provide certain information regarding the underlying incident, as described in greater detail below. All manufacturers will also have to provide copies of documents related to customer satisfaction campaigns, consumer advisories, recalls, and other safety activities under new Section 579.5. As discussed in Section III.A.4 above, duplicate reporting is not required. The commenters on the NPRM did not object to the concept of limited reporting by small-volume vehicle manufacturers.

For those motor vehicle manufacturers that are not excluded from full reporting based on low levels of sales in the United States, we are establishing separate reporting requirements based on the category of vehicle produced. We proposed five categories of vehicles: light vehicles, medium-heavy vehicles, buses, motorcycles, and trailers. In the final rule, we are adopting four; the final rule combines the proposed categories of

[5] The term ''motor vehicle'' is a broad one. The statutory definition of ''motor vehicle'' (49 U.S.C. 30102(a)(6)) has been the subject of numerous interpretations since 1966.

medium-heavy vehicles and buses into one category. Each category has components and systems that distinguish it from the other three categories, and which may develop safety-related problems unique to that category. Therefore, we shall require different information regarding each category of vehicle, which will help to reduce the burdensomeness of the rule.

Under the rule, a light vehicle is any motor vehicle, except a bus, trailer, or motorcycle, with a gross vehicle weight rating (GVWR) of 10,000 lbs. or less. Medium-heavy vehicles include trucks and multipurpose passenger vehicles with a GVWR over 10,000 lbs., and buses regardless of GVWR (including school buses). Trailers are separately categorized regardless of GVWR. Motorcycles include any two- or three-wheeled vehicle meeting the definition of motorcycle in 49 CFR 571.3(b).

We asked for comments on whether an annual aggregate production, importation, or sales of 500 vehicles in the United States is an appropriate figure upon which to base this distinction, whether a manufacturer's eligibility for these lesser reporting requirements should be determined based upon its production in the two calendar years preceding the report or whether a shorter, longer, or different period would be appropriate, and whether small-volume vehicle manufacturers should be required to provide other data and information in addition to that relating to deaths.

RVIA commented that recreational vehicle (RV) manufacturers should be exempt from all early warning reporting, or, at most, only those requirements that are adopted for manufacturers of fewer than 500 motor vehicles. NTEA, Gillig, and WASTEC commented that the threshold should be 10,000 vehicles per year, the same as that governing eligibility to apply for temporary exemptions under Part 555 on grounds that compliance would cause substantial economic hardship, which they did not demonstrate, or, alternatively, 2,500 vehicles per year, the same as that governing eligibility to apply under Part 555 for other kinds of temporary exemptions. The rationale for these suggestions is that many companies producing multi-stage trucks and RVs in quantities greater than 500 are nevertheless ''small businesses'' by the criteria of the Small Business Administration (SBA) (13 CFR 121.201 (2000)).

We have considered these comments and have concluded that the 500 units is an appropriate demarcation point between larger and smaller manufacturers. We recognize that some manufacturers of more than 500 vehicles will be ''small businesses'' under the SBA criteria. However, that does not in itself provide a basis for exempting them from the more comprehensive reporting requirements. We have conducted investigations into alleged defects in products manufactured by relatively small businesses that have led to safety recalls and we believe that it is appropriate to obtain full early warning information from companies producing 500 or more vehicles. If experience shows that we do not get valuable information from relatively small vehicle manufacturers, we can and will adjust the threshold in the future.

We also received comments on our proposed five categories of vehicles. Utilimaster commented that it, like other delivery van producers, manufactures vehicles in both the over and under 10,000 lb. GVWR categories. It commented that ''commercial delivery vans under 10,000 lbs. GVWR have little in common with cars, sport utility vehicles and pickup trucks,'' and should not be in the same reporting category as these vehicles. It believed that if the final rule is adopted as proposed, it would be difficult to try to conform the company's internal records systems and reporting obligations to the discrete systems and component codes and differences in parts specified in the light and medium-heavy reporting categories. It argued that ''there should be only one set of failure codes and related numerical reporting.''

The use of GVWR to delineate the applicability of requirements adopted by NHTSA, other Federal agencies, and state governments is a common practice that has stood the test of time. In any event, the coding of systems and components and related numerical reporting for light and medium-heavy vehicles are very similar, as is discussed below. In our view, this similarity will avoid, or at least minimize, any problems that companies such as Utilimaster might have had.

RVIA also argued that reporting should be limited to the chassis portion of a RV and exclude living quarters. We disagree. If we adopted such a limitation, fires that arose in the living quarters would not be reported. We note that the Vehicle Safety Act provides that ''motor vehicle safety'' includes ''nonoperational safety of a motor vehicle.'' 49 U.S.C. 30102(a)(8).

C. Manufacturers of Motor Vehicle Equipment

The TREAD Act also provides for the agency to require manufacturers of motor vehicle equipment to submit early warning reporting information that may assist in the identification of safety-related defects. ''Motor vehicle equipment'' is defined in 49 U.S.C. 30102(a)(7), and consists of ''original equipment'' (OE) and ''replacement equipment.'' These two terms are currently defined in 49 CFR 579.4. We are not changing the definitions, but we are simplifying the previous language in new Section 579.4(c) to make it more readable.

1. Original Equipment

There are approximately 10,000 to 14,000 individual items of OE in a contemporary passenger car. Some are fabricated by the vehicle manufacturer, some by independent parts manufacturers, and some parts are incorporated into systems or modules assembled by various suppliers. There is a growing trend to packaging individual parts into a single unit, or module. For example, a steering wheel assembly may include an air bag, horn control, turn signal control, wiper control, ignition switch, cruise control, lighting controls, as well as associated wiring. Many of these units are assembled by a supplier, often with components from various manufacturers. Each of these fabricators or assemblers is also a manufacturer of motor vehicle equipment.

When a component or module installed as OE on a vehicle fails, generally vehicle owners will complain or file a claim with the entity that has manufactured and warranted the vehicle, rather than the assembler of the module or the manufacturers of the individual parts, who in most instances are unknown to the vehicle owner. In view of this, in their comments to the ANPRM, the Alliance, Ford, and AIAM specifically supported exclusion of OE manufacturers (OEMs) from early warning reporting requirements. OEMs, however, are not exempt from defect reporting requirements. Pursuant to 49 CFR 573.3(f), if an OEM sells an item of OE to more than one vehicle manufacturer and a defect or noncompliance is decided to exist in that OE, the OEM is required to notify us (as are the manufacturers of the vehicles in which the OE is installed). If the defective OE is used in the vehicles of only one vehicle manufacturer, the OEM may notify us on behalf of both itself and the vehicle manufacturer (Section 573.3(e)) in either case, the OEM may also be the party remedying the safety defect or the noncompliance). Thus, OEMs can and do make determinations that OE contains safety-related defects, and they will have some information of the type that the TREAD Act authorizes us to

require, such as claims alleging failures of their products. For this reason, we did not propose to totally exempt OEMs from early warning reporting.

We tentatively decided for the NPRM that most meaningful information about possible defects is more likely to come to the attention of the vehicle manufacturer earlier than it would to the OEM. However, we wanted to be certain that we obtain information regarding deaths attributed to OE. Accordingly, in the NPRM, we proposed that OEMs be exempt from all reporting requirements regarding OE they manufacture, except for reporting to us regarding deaths in the same manner as small volume vehicle manufacturers, discussed above. Of course, the vehicle manufacturer would be required to report fully in its capacity as a vehicle manufacturer, even if the vehicle manufacturer believed that the problem was the responsibility of the OEM.

NTEA suggested that, in the case of work-related equipment that is installed as original equipment, defects or alleged defects only be reported if they are ''germane to the operation of the motor vehicle.'' It gave, as an example, defects occurring in the operation or design of work-producing equipment such as a ladder or crane. Because such a defect ''has nothing to do with the safe operation of the vehicle,'' it should not have to be reported to NHTSA.'' We disagree. As noted above, the statutory term ''motor vehicle safety'' includes ''nonoperational safety of a motor vehicle.'' There are certain work-performing items of equipment whose failure can have serious safety consequences. For example, a dump truck's dump body hydraulic control valve may malfunction while the truck is moving and the dump body move up, scattering materials on the roadway and blocking the driver's rearward view of the road. Such a malfunction could lead to a death, yet under the NTEA approach, it would not be reported to NHTSA because the control valve does not relate to the operation of the dump truck as a motor vehicle. Also, a falling crane could hit a vehicle or create a dangerous distraction. It is not possible to define for the many types of specialty trucks and vehicles what work-performing equipment should not be included; any attempt to exclude an item of equipment will inevitably lead to confusion as to what should be reported. In any event, in view of the limited reporting required, NTEA has not shown that including the rule would impose much of a burden.

2. Replacement Equipment

Replacement equipment comprises an even broader universe of parts than OE. It includes all motor vehicle equipment other than OE. Not only does the term have the literal meaning of equipment that is intended to replace OE, it also includes accessory equipment and ''off-vehicle equipment'' that is not part of a motor vehicle, such as jacks and most child restraints. Manufacturers of replacement equipment are within the scope of the early warning reporting provisions of the statute.

Some replacement equipment items are critically important from a safety perspective, while others have less of a safety nexus. Child restraints and tires are critical safety items. Therefore, we proposed that all manufacturers of child restraints and tires be required to provide the full range of information and documents proposed.

There is a large number of manufacturers of other types of replacement equipment. Much of this equipment is imported by or for auto parts houses such as J.C. Whitney, retailers such as Pep Boys, or general merchandisers. An importer for resale is considered a manufacturer under the statute. *See* 49 U.S.C. 30102(a)(5)(B). A large universe of entities would be subject to multiple requirements if we were to fully apply early warning reporting requirements to all fabricators and importers of replacement equipment.

Therefore, at least for purposes of this initial rulemaking, we proposed that, as with smaller volume vehicle manufacturers and original equipment manufacturers, manufacturers of other types of replacement equipment only be required to report to us claims regarding deaths and in notices regarding deaths allegedly due to possible defects in their products. We are adopting our proposal. However, we may revisit these limitations under our periodic review of the rule.

In the preamble to the NPRM, we cited retroreflective motorcycle rider apparel as an example of off-road motor vehicle equipment. The Motorcycle Rider Foundation posted a notice on its website urging readers to ''Fight NHTSA's Bid For Clothing Control!,'' claiming that ''NHTSA has no statutory authority for this power grab.'' Contrary to the Foundation's claim, ''motor vehicle equipment'' has been defined by statute (currently 49 U.S.C. 30102(a)(7)(C)) since 1966 to include ''any * * * apparel * * * that is not a * * * part * * * of a motor vehicle and is * * * intended to be used only to safeguard * * * highway users against risk of accident, injury, or death.'' We have not, and we do not intend to, prescribe standards or requirements for motorcycle apparel other than protective headgear, which has long been subject to FMVSS No. 218. The proposed rule would not, and the final rule does not, control motorcycle clothing. It is extremely unlikely that any such apparel would be the subject of a claim involving a death.

3. Tires

Tires, of course, are essential items of motor vehicle equipment, and tire manufacturers have the duty to conduct notification and remedy campaigns and to address defective or noncompliant tires, whether sold in the aftermarket or installed on new vehicles (*see* current 49 CFR 579.5(b)). Tire brand name owners (e.g., house brands) are also considered manufacturers (49 U.S.C. 30102(b)(1)(E)) and have the same defect and noncompliance reporting requirements as the actual fabricators of the tires (49 CFR 573.3(d)). We proposed that tire brand name owners be required to report, as well as tire manufacturers.

RMA asked that the final rule clarify that, where the tire brand owner is not the fabricating manufacturer, only the tire brand owner need report. We concur with this suggestion; the type of information and data we are seeking for early warning purposes is not likely to be received by the fabricating manufacturer when tires are marketed under the name of the tire brand owner. Accordingly, as adopted, Section 579.3(b) reads in pertinent part: ''In the case of any report required under this part, compliance by either the fabricating manufacturer * * * or brand name owner of the * * * motor vehicle equipment shall be considered compliance by all persons.''

4. Definition of ''Equipment''

We proposed to retain the existing definitions of Part 579 for ''original equipment'' and ''replacement equipment,'' in slightly edited form. These definitions of original equipment and replacement equipment are based on 49 CFR 579.4 (as it appears in 49 CFR Parts 400–999, revised as of October 1, 2001) and are many years old. We are adopting them as proposed.

The definition of ''original equipment'' includes ''equipment installed by the dealer or distributor with the express authorization of the motor vehicle manufacturer.'' Harley-Davidson observed that it has more than 2,000 suppliers and stated some items manufactured as original equipment or replacement parts for its motorcycles may find their way into the production

of other motorcycle brands or the general stream of commerce. Harley-Davidson also observed that its catalog runs several hundred pages with thousands of separate replacement and custom parts. It expressed the belief that NHTSA would not want production reports on each and every one of these, and that it would not make sense to submit reports on these items unless claims involving them were actually received. Accordingly, the comment recommended that a manufacturer not be required to list all production in its reports, or report at all except when a reportable incident has occurred.

We believe that the proposed rule was clear. Any manufacturer of motorcycles, original motorcycle equipment, and motorcycle replacement equipment is responsible for reporting incidents involving deaths based on claims it receives and on notices it receives alleging a defect in its product. But it is only with respect to motorcycles themselves that the manufacturer is responsible for reporting additional and specific categories of information to NHTSA under Section 579.23. Also, the motorcycle manufacturer is not responsible for reporting regarding equipment that is not original equipment, that is to say, equipment installed by a dealer without the manufacturer's express authorization.

With regard to replacement equipment, under the rule, manufacturers of replacement equipment are required to report any claims or notices of death allegedly due to a defect. In its role as a manufacturer of replacement equipment, Harley-Davidson would not have to report an incident unless it receives a claim or notice. *See* Section 579.27.

IV. Information That Must Be Reported

Section 30166(m)(3)(A) provides for NHTSA to require manufacturers to report information which concerns data on ''claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment,'' and on ''customer satisfaction campaigns, consumer advisories, recalls or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.'' Section 30166(m)(3)(B) authorizes us to require manufacturers to report other ''such information'' that may assist in the identification of safety defects. Finally, Section 30166(m)(3)(C) provides for reporting of incidents, of which the manufacturer receives actual notice, involving deaths or serious injuries which are alleged or proven to have been caused by a possible defect in the manufacturer's vehicle or equipment in the United States, or in a foreign country when the possible defect is in a vehicle or equipment identical or substantially similar to that sold in the United States.

A. Production Information

For each reporting period, we proposed to require manufacturers that manufactured for sale, offered for sale, imported, or sold in the United States 500 or more vehicles of specified categories, and all manufacturers of child restraint systems and tires, to provide information on the volume of production of their products. Production numbers are needed because the agency's trend analyses frequently are normalized to rates, such as the number of claims per unit of production. We proposed to require these manufacturers to submit the following information with respect to each model and model year of vehicle manufactured in the calendar year of the reporting period and the nine model years prior to the earliest model year of the reporting period, including models no longer in production: the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the current model year production to the end of the reporting period, and the total model year production for all model years for which production has ceased. *See* 66 FR 66194.

Under the NPRM, for each model of vehicles that are manufactured with more than one type of fuel system, and for each model of medium-heavy vehicles with more than one type of service brake system, the information required by this subsection would have been reported separately. In the final rule, this distinction between types of fuel systems has not been adopted for light vehicles, and applies only to medium-heavy vehicles including buses. The final rule distinguishes between gasoline powered, diesel powered, and other. The distinction between types of service brake systems (hydraulic and air) applies to medium-heavy vehicles including buses, and trailers.

In its analysis of potential defects, ODI has found it useful to compare problems in similar types of vehicles. The reporting category of ''light vehicles'' covers more types of vehicles than are defined in 49 CFR 571.3(b). For example, ''light vehicle'' includes passenger cars, various types of multipurpose passenger vehicles (e.g., minivans, vans, SUVs), and some trucks. Therefore, we have concluded that, in addition to identifying the make and model of a vehicle, manufacturers of light vehicles must also indicate the type classification of the vehicle as defined in Section 571.3(b) (i.e., passenger car, multipurpose passenger vehicle, or truck) that appears on the vehicle's label pursuant to Section 567.4(g)(7) certifying compliance with all applicable FMVSS. Manufacturers would also report production data for incomplete light vehicles. An ''incomplete light vehicle'' is an incomplete vehicle as defined by Section 568.3 which, when completed, will be a light vehicle. For similar reasons, we are requiring each light vehicle manufacturer to identify the ''platform'' of the vehicle, using its own nomenclature, as discussed in Section IV.H.1.

Similar considerations apply to child restraint systems. Therefore, we are requiring manufacturers of those products to indicate the ''type'' of child restraint system in their production reports. We are establishing three separate categories, as follows: ''Rear-facing infant seat'' means a child restraint system that positions a child to face in the direction opposite to the normal direction of travel of the motor vehicle and is designed to hold children up to 20 pounds; ''Booster seat'' means, as defined in S4 of FMVSS No. 213, ''either a backless child restraint system or a belt-positioning seat;'' and ''Other'' encompasses all other child restraint systems not included in the first two categories.

We recognize that manufacturers of medium-heavy trucks, buses, and trailers generally do not specify ''model years'' for their products. For purposes of this rule, to avoid confusion, we are defining the term ''model year'' for those vehicles to mean the year the vehicle was produced if no model year has been assigned to it. For equipment, ''model year'' will mean the calendar year the item was produced. We are using the term ''produced'' rather than ''manufactured'' to make it clear that we are not referring to the year a product was imported into the United States.

With respect to tires and child restraint systems, production data would only need to be submitted for a period of five years (i.e., the year of the reporting period and the four previous years). The ten-year period would still apply to vehicle manufacturers.

B. Definition of ''Claim''

Section 30166(m)(3)(A) refers to claims data. The ANPRM stated that, in order to achieve the goals of the TREAD

Act, the term ''claim'' must be construed broadly and provided some examples.

We researched the definition of claim, considered comments received in response to the ANPRM, and considered our investigatory experience with requests for claims information when we issued the NPRM.

As noted in the NPRM, case law provides interpretations of the word ''claim'' in various contexts. In a Federal law context, '' ''claim'' is something more than mere notice of an accident and an injury. The term 'claim' contemplates, in general usage, a demand for payment or relief.'' *Avril* v. *U.S.,* 461 F.2d 1090, 1091 (9th Cir. 1972). See also, *Conoco, Inc.* v. *United States,* 39 Env't. Rep. Cas. (BNA) 1541 (N.D. La. 1994)(written request for compensation for damages or costs); 31 U.S.C. 3729(c) (claim involves request for demand for money or property).

State case law also provides a definition of the word ''claim.'' For example, *Fireman's Fund Insurance Co.* v. *The Superior Court of Los Angeles County,* 65 Cal. App. 4th 1205, 1216 (1997), noted that a claim encompasses more than a suit:

> ''claim'' can be any number of things, none of which rise to the formal level of a suit—it may be a demand for payment communicated in a letter, or a document filed to protect an injured party's right to sue a governmental entity, or the document used to initiate a wide variety of administrative proceedings.

Other state law cases have further addressed the meaning of ''claim.'' *Safeco Surplus Lines Co.* v. *Employer's Reinsurance Corp.,* 11 Cal. App. 4th 1403, 1407 (1992), held that a ''claim'' is ''the assertion, demand or challenge of something as a right; the assertion of a liability to the party making it do some service or pay a sum of money.'' *Phoenix Ins. Co.* v. *Sukut Construction Co.,* 136 Cal. App. 3d 673, 677 (1982), stated that ''a claim both in its ordinary meaning and as interpreted by the courts, is a demand for something as a right, or as due and a formal lawsuit is not required before a claim is made.''

We explained that the definition of claim should be broad, and meet our needs under the TREAD Act. We proposed the following definition for claim (at 66 FR 66195–96):

> A written request or demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or a fire. Claim includes but is not limited to a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. The existence of a claim may not be conditioned on the receipt of anything beyond the document stating a claim.

The proposed definition of claim addressed the nature of a reportable claim and the subject matter that was covered. This was set forth in one definition to simplify matters and avoid to the extent possible complex definitional structures. First, a reportable claim would be a written request or demand for relief, including money or other compensation, assumption of expenditures, or equitable relief. It would include, but not be limited to, a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim would exist regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. Finally, the existence of a claim could not be conditioned on the receipt of anything beyond the document stating a claim. The last two sentences of our proposal were designed to assure that all relevant claims are provided to us. This would preclude attempts, similar to those that have been made by some manufacturers in our investigations, to evade reporting claims by conditioning them on receipt of parts, or their own assessments of the merits of claims. Second, as to the subject matter, we referred to a motor vehicle crash, accident, component or system failure, and a fire, as these are events that have safety implications. The proposed definition would exclude, for example, events with which the rule is not concerned, such as injuries in manufacturers' factories. Finally, the definition did not address what the claim must involve, allege or contain, as those matters are not parts of a definition of a claim. They are addressed below, as are warranties.

PC, CU, the Alliance, AIAM, Nissan, Honda, JPMA, RMA, and Harley-Davidson provided comments on this definition.

PC expressed approval of the proposed definition, with the caveat that the agency should also require the submission of basic information concerning lawsuits, such as the date the complaint was filed, the alleged injury, and the eventual disposition of the case. The additional information proposed by PC would not be necessary for early warning screening. The date the complaint was filed and the eventual disposition of the matter are not important to NHTSA for early warning purposes. NHTSA is concerned with the incident and using the basic information about the incident to identify a potential defect trend, not the outcome of litigation, which often occurs years later.

The Alliance recommended an alternative definition for a claim. It suggested a claim means:

> a written request or written demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or fire originating in a motor vehicle, that is sent to the manufacturer from the claimant or his/her authorized representative. Claim includes a demand in the absence of a lawsuit, an assertion or notice of litigation, or a subrogation request.

In support of its definition, the Alliance commented, and RMA concurred, that the definition of ''claim'' must specify more clearly that a claim must be in writing, regardless of whether it is a ''request'' or a ''demand.'' Furthermore, the Alliance stated that the definition should limit fire-related claims to those allegedly originating in a motor vehicle, to avoid the need to report claims related to fires in factories or offices of a manufacturer. The Alliance suggested that the definition must clarify that the claim must originate outside the company by the claimant or the claimant's authorized representative. The Alliance added that some of the types of activities included in NHTSA's proposed definition seemed inappropriate, such as ''settlement,'' or ''covenant not to sue,'' which is not a claim and will not be processed or coded as a claim by the manufacturer's ordinary claims-processing functions. It noted that a ''claim'' precedes a ''settlement'' or ''covenant not to sue,'' so it saw no need to include those terms in the definition. Finally, the Alliance submitted that a class action suit should be reported as one claim, rather than per member, because there is no way to ascertain the size of the class.

Harley-Davidson observed that the proposed definition of ''claim,'' unlike the proposed definition of ''warranty claim,'' is not necessarily limited to claims presented to the manufacturer, and should be revised accordingly.

JPMA requested the agency clarify that manufacturers need not report requests for free replacement components, such as harness clips,

broken in collisions where the claim does not allege or suggest that the broken component had anything to do with the injuries sustained in the collision.

We have carefully considered these comments. The Alliance and RMA suggested that NHTSA clarify that the claim be made in writing. The proposal defines a claim in part as ''a written request or demand for relief.'' The Alliance asked whether a ''demand'' also has to be in writing, asserting that some may conclude that only a ''request'' has to be in writing. We meant that ''written'' applies to and modifies both requests and demands, but since there appears to be some confusion as to our intent we are adding ''written'' before ''demand.''

The Alliance, RMA and Harley-Davidson also suggested that a claim must be one that is sent to the manufacturer from the claimant or the claimant's authorized representative. As noted in the definitions of claim from cases cited above, transmission of the claim is not part of the definition of claim. We believe that it is implicit that a claim would not have to be reported if it had not been received by the manufacturer or its registered agent. Nonetheless, we are adding to the reporting requirements the element that the claim must be one that is received by the manufacturer.

A third suggestion submitted by the Alliance is for NHTSA to delete the terms such as ''settlement,'' or ''covenant not to sue,'' because a manufacturer would have to receive a claim prior to these types of activities being undertaken. We disagree with this assertion. A settlement agreement or a covenant not to sue may have been preceded by only an oral demand upon the manufacturer. Oral demands need not be reported. Thus, the exclusion of settlements or covenants not to sue could result in underreporting.

The Alliance also suggested that a class action suit be counted as one claim because it is impossible to determine the size of the class. We agree in part with this comment. Rarely are class action suits brought where the claims are based on fatalities or injuries. In any event, for such class actions, each separate class action suit would be considered as a single claim, at a minimum. However, if a class action suit against a manufacturer does identify specific persons (excluding John and Jane Does) who died or were injured, the manufacturer should report on each of these claims separately. Similarly, in instances where there is a class action involving property damage, each identified class representative should be reported as presenting a separate claim.

We have considered cross-claims and third-party claims. A manufacturer would not need to report any claim, including a cross-claim, if it had already reported a claim involving the incident. However, it would have to report a third-party claim against it if it had not previously reported the incident. This would assure that we receive the information about the incident underlying the claim. For example, the original defendant might be an automotive dealership that third-partied the manufacturer as a defendant to a suit.

The vehicle manufacturers also raised comments on whether claims arising out of some fires should be reported. The Alliance commented that the inclusion of ''fire'' in the definition could be construed as covering claims received by a manufacturer related to fires that did not originate in motor vehicles. The intent of NHTSA's proposed definition was that the fire must relate to a motor vehicle or item of motor vehicle equipment; we did not intend to require reports on office or factory fires. Nonetheless, to clarify reporting of claims due to a fire, we are modifying the proposal to specify that it includes fires originating in or from a motor vehicle or a substance that leaked from a motor vehicle. This would cover, for example, fires from gasoline that spilled in a crash.

We also received comments on environmental claims. In general, NHTSA does not address issues involving alleged injury due to long-term environmental exposure. However, there can be overlaps between vehicle safety and environmental issues, and therefore we are not excluding all environmentally-related claims. For example, a vehicle fuel-release problem may be cognizable under the Clean Air Act, tort law, and the Vehicle Safety Act. Unfortunately, the comments we received on this issue lacked detail and did not suggest how to exclude irrelevant claims, although some examples were provided. For example, Nissan and the Alliance stated that exposure to asbestos in brake linings could lead to a claim related to environmental exposure. We are also aware of issues related to emissions of volatile organic compounds from vehicle interiors and of end-of-life environmental claims such as those related to disposal. This could include claims associated with the disposal of tires, batteries and mercury-containing components, as well as other vehicle residuals such as in junkyard operations (e.g., incineration). We have decided that these types of claims do not have to be reported to NHTSA under the early warning rule and are adding an exclusion to the definition of ''claim'' to reflect this. The reason is that these claims do not relate to the safety of a motor vehicle that is or may be operated. They would not aid in spotting a defect trend and are not the basis of past Vehicle Safety Act recalls.

JPMA, which represents child restraint manufacturers, commented that NHTSA should clarify that manufacturers of this equipment need not report requests for free replacement components, such as harness clips, broken in collisions where the claim does not allege or suggest that the broken component had anything to do with deaths or injuries or property damage. This comment is not consistent with the structure of the rule. Under the rule, manufacturers are required to report claims in the absence of an allegation of a specific failure of a component or causation. As discussed in the NPRM, many claims do not include specific allegations, but merely include general allegations of product failure. This is a type of information that NHTSA is seeking to help it identify defect trends. We believe that by requiring the reporting of all claims that fall within the definition, NHTSA will capture the information most likely to identify a potential defect trend. Of course, if the consumer's request was not related to a crash, such as a statement that a component was lost and the consumer requested a free replacement, the manufacturer would not report that request.

Therefore, based upon the foregoing we are defining ''claim'' as:

> A written request or written demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or a fire originating in or from a motor vehicle or a substance that leaked from a motor vehicle. Claim includes, but is not limited to, a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. The existence of a claim may not be conditioned on the receipt of anything beyond the document(s) stating a claim. Claim does not include demands related to asbestos exposure, to emissions of volatile organic compounds from vehicle interiors, or to end-of-life disposal of vehicles, parts or components of vehicles, equipment, or parts or components of equipment.

C. Definition of ''Notice''

Section 30166(m)(3)(C) provides for the reporting of ''all incidents of which the manufacturer receives actual notice,'' involving fatalities or serious injuries that are alleged or proven to have been caused by a possible defect in its products. The term ''actual notice'' is extremely broad. To avoid impractical requirements, we proposed to require reporting of incidents of which a manufacturer receives or obtains documentation (e.g., in written or electronic formats). 66 FR 66196. We tried to avoid overlapping the definition of claim, which, as noted above, includes a written request or written demand for relief. In this context, we proposed to define ''notice'' in the context of an applicable incident to mean ''a document received by or prepared by a manufacturer that does not include a demand for relief.'' This would include, for example, a letter advising a manufacturer of a crash in which there was a death or injury and an allegation of a defect in the vehicle where there was no claim for monetary or other relief. In the preamble to the proposed rule, we noted that newspaper articles or other media reports would not, in themselves, constitute ''notice,'' unless either they were provided to the manufacturer, such as by an owner, or actions taken by the manufacturer reflect that it had received notice of the incidents in question.

The Alliance, Nissan, MEMA, PC, Bendix, and RMA provided comments. PC agreed with NHTSA's proposed definition.

The manufacturer commenters (Alliance, Nissan, MEMA, Bendix, and RMA) argued that the proposed definition of ''notice'' was too broad and over inclusive. More particularly, Nissan and RMA stated that the language ''prepared by the manufacturer'' was a concern. RMA observed that the agency did not provide examples of what type of document ''prepared by the manufacturer'' would be included within the definition of ''notice,'' and recommended that this category be eliminated in the absence of further guidance and clarification on the issue. Thus, RMA recommended that the definition of ''notice'' be ''a document received by a manufacturer that does not include a demand for relief.''

All the manufacturers complained that the proposed definition would be construed to include all newspaper articles and media reports discussing the manufacturer and asserted that this would impose a tremendous burden on the manufacturers. Nissan was concerned as to what actions taken by a manufacturer can transform a mere article into a reportable notice.

Several commenters submitted alternate proposals for the definition of notice. The Alliance suggested that notice be defined as a written communication sent to a manufacturer alleging that a defect in a motor vehicle or item of motor vehicle equipment by that manufacturer caused an injury or fatality to the person originating the communication or to the person on whose behalf the notice is sent, but that does not request relief from the manufacturer. Notice does not include newspaper articles, publicly available Internet bulletin board postings or other materials in the public domain.

Nissan recommended that the definition of notice exclude situations where a manufacturer would have to report on ''actions'' in connection with media reports and be limited to those that, on their face, are presented to manufacturers for the purposes of notifying them of a potential vehicle defect. MEMA suggested that ''notice'' be defined as ''a document received by a manufacturer that (a) does not include a demand for relief, and (b) does not consist of unconfirmed media or other unconfirmed reports.''

Finally, Bendix suggested that requests for information that manufacturers receive from other government agencies, such as the NTSB, should be excluded from the definition of notice. We have considered these comments and have modified the proposed definition of ''notice'' to reflect them.

The Alliance recommended without explanation that the definition of notice include an element of death or injury. This was not included in MEMA's suggested definition. We are not adopting the Alliance's proposal. The definition of notice characterizes the essential nature of the notice. The elements that must to be set forth in the notice to trigger reporting are separate from the definition and are addressed under the regulatory requirements.

Next, under the definition in the NPRM, a document ''prepared by a manufacturer'' that does not include a demand for relief would be a ''notice.'' As noted above, several commenters expressed concern over the potential breadth of the language ''prepared by the manufacturer.'' In consideration of these comments, we are not adopting this phrase as part of the final definition. Before adopting such a requirement, we need to consider further the obligations that such a requirement would impose and the associated burdens.

Several manufacturers expressed concern that they would have to review and scan every news medium for reports discussing their products. This does not follow from a fair reading of the preamble to the NPRM. As we stated, newspaper articles and other media reports would only be reported when sent to the manufacturer by an owner or in situations where the manufacturer itself acknowledges, through its actions, that it received notice of the actual incident that was the subject of the media report. Furthermore, under the proposed rule, to trigger reporting, notices of death and injury had to allege or prove that the fatality or injury was caused by a possible defect in the manufacturer's vehicle or equipment and the vehicle had to be identified with minimal specificity.

Nonetheless, to reduce burdens that might be associated with review of newspaper articles, the definition of ''notice'' in the final rule requires reporting only of letters and other documents sent to the manufacturer (including those sent in electronic form) that on their face include the elements of the rule regarding notices of deaths and injuries, without regard to the content of any enclosed or attached newspaper article. This is expressed in the final rule by the phrase ''other than a media article.'' In general, newspaper articles do not have the required elements for reporting, including an allegation of a death or injury alleged or proven to have been caused by a defect, and minimal specificity regarding the vehicle or equipment. We believe that this resolution will result in very little unreported information and that it will reduce burdens associated with the asserted need to review newspapers or magazines for articles that may involve reportable incidents. This approach is similar to the first part of MEMA's proposed definition. However, we believe the definition suggested by the Alliance is too narrow. The Alliance would limit reporting of notices to those sent to a manufacturer by a customer or his/her representative. We would want reporting of notices by others, such as an injured non-owner passenger or eyewitness, and reporting where the legal status of a person as a representative is not specified, as it might not be in a letter written by a non-attorney.

Finally, we agree with Bendix that requests for information from other government agencies would generally not constitute a ''notice.'' However, we will not exempt all communications from such agencies, since they could relate to a problem that the agency or one of its employees had with a vehicle

or an item of equipment. This is most obvious with respect to communications from the General Services Administration, which manages many Federal vehicles, but also can apply to other agencies. To avoid unnecessary burdens, however, we will exempt communications from NHTSA, since we would already have the information included in such a communication.

Therefore, ''notice'' is defined in the final rule as ''a document, other than a media article, that does not include a demand for relief and that a manufacturer receives from a person other than NHTSA.''

D. Identification of the Product in Claims and Notices

To be covered by these early warning requirements, a claim or notice, as well as other matters addressed below, would have to identify the vehicle or equipment item involved in at least a minimal way. Otherwise, it would not be possible to identify what vehicle or equipment was involved, and the information would not help us to identify potential defects. In the context of identification, we proposed to use the term ''minimal specificity'' and to define it to mean ''(a) for a vehicle, the make, model and model year, (b) for a child seat, the model (either the model name or model number), (c) for a tire, the model and size, and (d) for other motor vehicle equipment, if there is a model or family of models identified on the item of equipment, the model name or model number.''

We proposed to define ''model year'' for this and all other early warning reporting purposes, for vehicles, to include the year that a vehicle was manufactured if the manufacturer has not assigned a model year to the vehicle covered by the report. For equipment, we proposed that ''model'' mean the name that its manufacturer uses to designate it. '' Model year'' would mean the calendar year in which the equipment was manufactured.

We asked for comments on the clarity and inclusiveness of these proposed definitions.

Johnson asked the agency to confirm that an incident involving an item of equipment need not be reported by its manufacturer unless the manufacturer has knowledge of the assembly part number or the component part number of the equipment item involved. The comment did not elaborate on why model name or model number would be inadequate and why an equipment item would have to be identified with this level of specificity for its manufacturer to comply with the proposed early warning reporting requirements. In view of the lack of information in the comment, we have no basis to modify our proposed definition. Adoption of such a suggestion could result in underreporting of claims of death.

RMA commented that, for a tire, the minimal information required should be the ''manufacturer, tire line, tire size, and tire identification number (TIN).'' According to RMA:

> the term ''tire line'' is the preferred term used by the tire manufacturers to designate their products, and, in most cases, is synonymous with the term ''tire model.'' The ''tire line'' name appears on the tire sidewall and is readily identifiable by consumers. Examples of ''tire line'' names are: Grabber AP, Discover A/T, Scorpion A/S, Firehawk LH, Energy MXV4 and Wrangler HT.

Accordingly, NHTSA will adopt the RMA recommendation to use the term ''tire line'' rather than ''model,'' and to define it as ''the entire name used by a tire manufacturer to designate a tire product, including all prefixes and suffixes as they appear on the sidewall of the tire.''

RMA asserted that that a reporting manufacturer should verify that it was, in fact, the manufacturer of the tire and that tire line, size, and TIN are needed for a precise identification of the tire. We disagree with respect to the TIN. To require a TIN would result in underreporting. If a tire is involved in a death, for early warning purposes it is sufficient that we know the tire manufacturer, tire line, and tire size, whereas the TIN may not be known at the time that the manufacturer initially receives the claim or notice. Timeliness is of the essence. Thus, we have decided that minimal specificity for tires is the manufacturer, tire line, and tire size.

With regard to claims, notices, and other reporting obligations discussed below, for vehicles, we proposed to define ''model'' to mean ''a name that a manufacturer applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type.'' ''Make,'' in turn, would mean ''a name that a manufacturer applies to a group of vehicles.'' The proposed definition of ''make'' was identical to the definition of ''make'' used in 49 CFR Part 565, *Vehicle Identification Number Requirements* (*see* Section 565.3(g)). The proposed definition of ''model'' is the definition the VIN regulation uses for ''[vehicle] line'' (*see* Section 565.3(f)). We requested comments on this approach and how our definition may achieve it. We did not receive any.

Our objective is to obtain reports by commonly-understood designations. For example, manufacturers must submit separate reports for pickup trucks and sport-utility vehicles built on a similar frame, since the submission of more narrowly defined data sets provides enhanced analytical capabilities, the vehicles are subject to different uses and stresses, and the vehicles have numerous different components. We would receive separate reports for identical vehicles of different ''makes'' (such as Chevrolet and GMC pickups, or Ford Taurus and Mercury Sable passenger cars). In addition, manufacturers would submit separate reports for different basic models of pickup trucks, such as the Ford F–150, F–250, and F–350, but within each such model, they would not submit separate reports for two-door and four-door versions, or versions with different engines, transmissions, or trim packages. Moreover, manufacturers would not report separately for two-wheel drive and four-wheel drive versions of the same vehicle, since this distinction is normally not critical in an early warning context.

If an otherwise covered claim or notice as initially received by the manufacturer does not identify the allegedly defective product with minimal specificity but a subsequent communication does, it would become a covered claim or notice at the time of the subsequent communication, and the manufacturer would be required to report it in its next report to NHTSA. *See* Section 579.28(d).

E. Claims and Notices Involving Death

1. Whether to Define Death

We did not propose to define death or fatality because we did not believe that it is necessary or appropriate to do so. Our reason was simple: the subject matter of this category of information is claims involving deaths and notices of incidents involving fatalities. As we explained, proof of death is not necessary, nor does it matter when death occurred.

2. Claims Involving Death

We proposed that every manufacturer be required to report certain information about each incident involving a death identified in claims it received during each reporting period, if the claim identified the product with minimal specificity. This would apply to claims regarding fatal incidents in foreign countries as well as the United States. We will discuss the comments related to this issue in the next section.

3. Notices Involving Death

We also proposed that manufacturers be required to report similar information about each incident involving a death

that occurred in the United States that is identified in a notice (as defined above) in which it is alleged or proven that the fatality was caused in whole or in part by a possible defect in such manufacturer's vehicle or equipment, received during each reporting period, if the product is identified with minimal specificity. Information about incidents referred to in such notices would be combined with information about claims involving deaths on the same report, which would be submitted in electronic form, as discussed below.

CU, the Alliance, Nissan, AIAM, and Delphi commented on our proposals with respect to incidents involving death. CU supported the proposal as written. The Alliance requested clarification on the reporting of incidents involving a death in another manufacturer's vehicle, or the death of a pedestrian. The remaining commenters expressed concern that the proposed requirements could result in the submission of reports on the same incident by more than one manufacturer, or could burden manufacturers with the need to update reports in the event that a person initially reported as injured later dies.

Delphi expressed concern with possible duplication in the reporting requirements. Its comment noted that, under its interpretation of the proposed rules, it is possible that both the vehicle manufacturer and the manufacturer of a system or component used in the vehicle could report the same incident to NHTSA. Delphi recommended that the database have a key-relational column that could be used to identify redundancy. Delphi asserted that the name of the person who died is the only information that would be generally available for this purpose. Accordingly, it suggested that the agency acquire and maintain that information but not make it public.

While we recognize that there is a possibility of redundancy (i.e., that an incident involving a death could be reported by a vehicle manufacturer and a supplier), we believe that it is vitally important that we maximize the information about such incidents that is presented to us. Also, reports by a component manufacturer could be of importance either to the vehicle manufacturer or NHTSA in detecting potential defects when the same component is used in the vehicles of another manufacturer that has not yet received claims and notices involving deaths and injuries. As reported by the Alliance, the total number of claims received by its members (plus Honda) in 2000 for both death and injury was 9,200. It is likely that we will be able to identify most duplicate reports by considering the date of the incident and the location. Thus, there is no need to require manufacturers to submit the names of persons who died in the incidents.

Delphi also recommended that a means be provided for a manufacturer to update information that it previously submitted. For example, a manufacturer may receive notice of a death during a reporting period and subsequently receive notice of another death attributable to the same incident. Delphi suggested that the process for updating this type of information be defined. As discussed in Section IV.O, below, we have decided to limit the amount of required updating of information about incidents previously reported to us.

The Alliance asked NHTSA to clarify how a manufacturer should handle claims or notices identifying incidents involving a death (or injury) in another manufacturer's vehicle, or the death (or injury) of a pedestrian. The comment explained that this may occur, for example, in cases where the claim alleges that the striking vehicle, in which no death or injury occurred, had brake failure. The Alliance recommended that the manufacturer should report these incidents to NHTSA, even though it may result in some overcounting if the manufacturer of the other vehicle involved submits a report on the same incident. We agree.

Nissan stated that the proposed rule contained an omission in that it did not expressly limit the reporting of incidents involving deaths in foreign countries to those alleging that the death was caused by a possible defect in the manufacturer's product. As noted in the NPRM's preamble, this approach to reporting was intentional. Under the proposed rule, manufacturers would be required to report incidents involving one or more deaths or injuries occurring in the United States that are identified in claims against the manufacturer or in notices to the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. *See,* e.g., proposed Section 579.11(b). The condition that there be an allegation or proof that the death was caused by a possible defect applied to notices but not to claims. For incidents involving one or more deaths occurring in foreign countries, a manufacturer would only need to report claims against it involving its product or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States, but not notices of such deaths. *Id.* The agency explained in the preamble of the NPRM that because of problems and costs anticipated for the collection, categorization, translation, and analysis of foreign data, it had ''decided not to require at this time any information about incidents that occur in foreign countries except for those based on claims involving deaths.'' *See* preamble at p. 66215. The agency further explained in the preamble that because the assertion of a defect or malfunction is implicit in most ''claims,'' ''for early warning reporting purposes, a claim need not specifically allege or describe a defect.'' *See* preamble at p. 66199. For those reasons, as well as the realization that causation may not be required under foreign legal systems, the agency will not limit the reporting of incidents involving deaths in foreign countries identified in claims to those specifically alleging that a death was caused by a possible defect in the manufacturer's product.

4. Information About Deaths

We proposed that the information about deaths to be reported would contain, for each incident, the make, model, and model year of the vehicle or equipment, the date of the incident, the number of deaths that occurred in the incident, the name of the State in the United States or the foreign country in which the incident occurred, and the identification of each component or system that allegedly contributed to the incident or the death reported. We are adopting this proposal and adding a requirement to report the VIN of the vehicle, or the TIN of the tire, as applicable. The VIN is needed to allow us to fully identify the vehicle in question and compare it to relevant peers and to utilize other relevant information that may be available (e.g., FARS data). The TIN is needed to confirm related information about the tire in question.

We are also limiting the number of components or systems that need to be identified to five. It is unlikely that any claim or notice would identify more than five components or systems as having contributed to an incident. If the incident involved fire or rollover, these events are included in the limitation of five.

However, given the large and varying universe of motor vehicle equipment, manufacturers of original equipment and of replacement equipment other than tires and child restraint systems would describe the systems or components involved in their own words, based on the claim or notice. We proposed this approach to make reporting by these manufacturers simpler than it would otherwise be if they had to use designations with which

they are not familiar. We are adopting this approach.

F. Claims and Notices Involving Injuries

1. The Definition of ''Injury''

The preamble of the NPRM identified an assortment of problems encountered by the agency in considering whether to define ''serious injury,'' and stated that in view of those problems, ''we are proposing to require certain categories of manufacturers to report each incident in which persons are injured in the United States that is identified in a claim or notice alleging or proving that the injury was caused by a defect in the manufacturer's product, if the claim or notice identifies the product with minimal specificity.'' 66 FR 66198. The NPRM noted that even though pertinent statutory provisions at 49 U.S.C. 30166(m)(3)(A) and (C) make reference to ''serious injury,'' the agency is authorized under Section 30166(m)(3)(B) to require the reporting of claims and notices involving all injuries. The proposed rule would require manufacturers to submit ''[a] report on each incident involving one or more deaths or injuries occurring in the United States that is identified in claim(s) against the manufacturer or in notice(s) to the manufacturer alleging or proving that the death or injury was caused by a possible defect in the manufacturer's [product] * * *''

The Alliance, AIAM, Nissan, Honda, MIC, Spartan, Utilimaster, JPMA, and CU provided comments.

Notwithstanding NHTSA's explanation of its reasons for requiring reports of incidents involving all injuries as opposed to serious injuries, several manufacturers (Honda, Utilimaster, and Spartan) continued to argue that NHTSA should develop a clear, easy-to-apply definition to limit the reporting of serious injury claims. Honda contended that Congress recognized the potential pitfalls of mandating the collection of too much data by specifying the data to be collected in TREAD Act (Section 3(b)(m)(3)(a)(i)) as ''data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment.'' As an alternative, Honda proposed to define serious injury as ''one that normally requires treatment by medical professionals,'' to reduce the analytical skill level necessary to categorize injuries.

Several manufacturers (the Alliance, AIAM, Nissan and Honda) commented that NHTSA should exclude claims for non-physical injuries, such as emotional distress, loss of consortium, and long-term environmental exposure. They asserted that these claims do not add any value to spotting a defect trend.

We do not agree with Honda's suggestion that serious injury be defined as ''one that normally requires treatment by medical professionals.'' This definition is vague. Honda's definition would require us to define what ''normally requires treatment by medical professionals,'' a daunting task for the vast array of potential injuries. Honda did not define ''normally requires,'' ''treatment,'' or ''medical professionals.'' Honda's suggestion raises the concerns we addressed in the NPRM concerning an objective definition of ''serious injury'' in the context of the AIS system. NHTSA chose not to define ''serious injury'' because of difficulties in objectively defining ''serious injury,'' concern about manufacturers' delays in reporting the information as a result of the need to assess seriousness in the absence of necessary information, and the need for subjective determinations on the part of the manufacturers. We also wanted to ease manufacturers' fears that their decisions would be second-guessed and reduce the burden on them that continued monitoring to consider newly received information would require. In addition, Honda's suggestion would require manufacturers to hire expert staff to make assessments.

The concern expressed most often by industry commenters in regard to reporting on claims and notices involving injuries is that the definition of injury should exclude non-physical injuries such as emotional distress and injuries related to environmental conditions. In our view, practical considerations dictate that distinguishing between physical and non-physical injuries is not appropriate in the context of early warning reporting. In many cases, claims for injury are not very specific as to the type of injury alleged. Most states have very liberal pleading requirements for stating a cause of action in a complaint initiating a lawsuit. Some merely require that the complaint allege a general cause of action and that as a result the plaintiff sustained injury. Some states, such as California, use generic pleading forms for certain types of causes of action, such as motor vehicle accidents, general negligence, and product liability. These pleading forms do not require that a claimant indicate the precise or detailed type of injury. Instead, the claimant merely checks a box that indicates whether he or she is claiming compensatory damages. In these instances, where there were general allegations, unless it performed continued monitoring of claims (which most manufacturers resisted on grounds of burden), a manufacturer would be unable to distinguish between a claim alleging a physical injury and a claim alleging a non-physical injury.

Furthermore, if we were to embark on an exclusion of ''non-physical injury claims,'' we would have to define the term. This is ill advised for the same reasons set forth above regarding the reasons why we chose not to define ''serious injury;'' e.g., reporting delays, subjective determinations of manufacturers, second-guessing manufacturer decisions, easing burdens, etc.

We have considered the commenters' concern that reporting incidents involving non-physical injuries may indicate the existence of a defect trend when there is none. However, the comments have not demonstrated that non-physical injuries would necessarily not be indicative of a defect trend. At a minimum, we believe the reporting of some non-physical injuries may be desirable under the early warning rule. Consider for example a situation where an inadvertent air bag deployment did not cause physical injury but there is an alleged emotional injury. The inadvertent air bag deployment would be of interest to NHTSA since it could lead to physical injuries in other incidents. In another instance, a tire tread might separate, causing the driver to lose control of the vehicle and go off the road. The only injury may be an alleged emotional injury that is brought to the attention of the tire manufacturer through a claim. If we followed the suggestion of some commenters, these matters could go unreported. However, these claims are important to NHTSA because they may be indicative of a vehicle or component problem.

Several manufacturers raised concerns regarding claims related to environmental exposure to toxic substances, such as asbestos. We have addressed those concerns in our discussion of the definition of ''claim.''

2. Reporting of Incidents in Which Persons Were Injured, Based on Claims and Notices

We proposed to require manufacturers (other than those covered by proposed Section 579.28) to report each incident in which one or more persons are injured in the United States that is identified in a claim or notice, if the product was identified with minimal specificity and, as to notices, it was alleged or proved that the injury was

caused by a possible defect in the product. For these manufacturers, the report would be combined with the reporting of incidents involving fatalities and include the same types of information. This would limit the number of reports and avoid duplication that could be associated with separate reports of deaths and injuries stemming from the same incident. We are adopting this approach for the reasons discussed above.

G. Other Possible Conditions on Reporting of Deaths and Injuries

In the NPRM, we recognized that some commenters to the ANPRM suggested that, to be covered under the reporting provisions, a claim or notice must also specifically allege that the fatality or injury was caused by a possible defect. The allegation of a defect is not statutorily required under Section 30166(m)(3)(A) or (B). Moreover, such a limitation would lead to under-reporting. In a lawsuit, which is one type of a claim, a defect need not be alleged if the pleading requirements of the relevant jurisdiction do not require such an averment. For example, in some states such as California, the claim/pleading requirements for complaints do not require the plaintiff to allege the existence of a defect. Moreover, with respect to claims, the assertion of a defect is implicit, since ordinarily there would otherwise be no reason to make the claim. Therefore, we proposed that, for early warning reporting purposes, a claim need not specifically allege or describe a defect. It is enough if the claim contains information indicating that a death or injury has allegedly occurred, and it is alleged or proven that the manufacturer's product is responsible.

Different considerations apply to those incidents of which the manufacturer receives notice that does not amount to a claim, since Section 30166(m)(3)(C) provides for reports of incidents of which the manufacturer receives notice which involve fatalities which are alleged or proven to be caused by a possible defect. Thus, for such notices, we proposed to require an allegation of a defect. Otherwise, the manufacturer would be required to report incidents as to which no one believes that the manufacturer's product contributed to the death or injury; e.g., a fatal crash due to high speed or drunk driving. However, an allegation of defect would not have to identify the specific component or system that allegedly led to the incident.

In the NPRM, we addressed the suggestion by some manufacturers that the allegation that a vehicle component is involved should have to be confirmed before an incident would have to be reported. We rejected this suggestion, since the litigation process is lengthy, and it may be months or years before the involvement of a component is confirmed, if at all. The vast majority of cases settle without findings and of those that do not, many may not identify the defective component in jury resolutions. Also, the earlier that information arrives at the agency, the earlier we will be able to determine whether a formal investigation needs to be opened.

We also addressed the suggestion by some manufacturers that the reportable incidents be limited to failures of or problems with certain vehicle systems. As discussed in the preamble to the NPRM and below, we believe that this approach is appropriate for certain types of information. However, while deaths and injuries are relatively rare, they are so significant that we want our information to be as complete as possible. Therefore, we proposed to require reporting of all deaths and injuries in the United States based on claims and notices, regardless of the implicated components.

Section 30166(m)(3)(A) refers to claims ''derived from foreign and domestic sources.'' In the same vein, in addition to incidents in the United States, Section 30166(m)(3)(C) refers to the reporting of certain incidents of which the manufacturer receives actual notice that occur in a foreign country, when the vehicle or equipment is identical or substantially similar to products offered for sale in the United States. Thus, the TREAD Act reflects Congressional intent that manufacturers submit information involving foreign deaths. In an effort to minimize the burdens associated with gathering information about incidents in foreign countries simply involving notice, in this phase of rulemaking we proposed to require only reporting of such claims involving fatalities occurring in a foreign country. See, for example, proposed Section 579.21(b)(1). We did not propose to require reports about incidents in foreign countries that resulted in non-fatal injuries. In light of the anticipated robustness of the domestic data, we did not believe that our early warning capabilities would be adversely affected. We recognize that the final rule will require manufacturers including their subsidiaries and affiliates to review foreign information bases, but believe the seriousness of fatalities associated with potential defects warrants this requirement. No comments objected to the proposal to report on claims involving death outside the United States, and we are adopting the proposed provisions.

H. Identical or Substantially Similar Motor Vehicles or Equipment.

Under Section 30166(m)(3)(C), manufacturers of vehicles or equipment must report:

> * * * incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment * * * in a foreign country when the possible defect is *in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.* (emphasis added)

For the reasons discussed in the preamble to the NPRM, we conclude that ''identical'' vehicles and equipment are at least substantially similar, and therefore there is no need to define that term. There were no comments in response to this proposal, and we are adopting it here.

1. Substantially Similar Motor Vehicles

We expect that there will be a limited number of reports involving substantially similar vehicles because the question only arises in the context of reporting claims for deaths occurring outside the United States. Our communications with manufacturers lead us to conclude that such claims are far fewer in foreign countries than in the United States. Thus, the burden associated with reporting such claims should not be large.

In the Foreign Defect Reporting NPRM, we discussed at length the issue of ''substantially similar motor vehicles'' and proposed that motor vehicles would be substantially similar to each other if one or more of five criteria were met. *See* 66 FR 51907 at 911–913. We tentatively determined that four of these criteria would be appropriate for Early Warning Reporting as well, and incorporated our views on these criteria by reference in the NPRM. *See* 66 FR 66190 at 199–200. The fifth criterion, relating to safety recall campaigns was inappropriate for early warning purposes where no campaign had been conducted, and was not proposed. Instead, we developed a new criterion, that a vehicle uses the same vehicle platform as a vehicle sold in the United States. Thus, we proposed that motor vehicles would be substantially similar for early warning purposes, as follows:

> (1) A motor vehicle sold or in use outside the United States is identical or substantially

similar to a motor vehicle sold or offered for sale in the United States if—

(i) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;

(ii) Such a vehicle is listed in Appendix A to part 593 of this chapter or determined to be eligible for importation into the United States in any agency decision issued between amendments to Appendix A to part 593;

(iii) Such a vehicle is manufactured in the United States for sale in a foreign country;

(iv) Such a vehicle is a counterpart of a vehicle sold or offered for sale in the United States; or

(v) Such a vehicle uses the same vehicle platform as a vehicle sold or offered for sale in the United States.

As noted above, our approach addressed both identical and substantially similar motor vehicles of all types and sizes ranging from small motorcycles to heavy trucks and trailers. It included five alternate criteria. No one alone was sufficient. Some were more straightforward and required less factual information than others. Some would apply more broadly than others. At least one might not apply to certain types of vehicles. Collectively, they would cover the range of vehicles and extend coverage beyond identical vehicles to a range of substantially similar vehicles.

The first three criteria are self-explanatory and are addressed in the Foreign Defect Reporting NPRM. With respect to the fourth criterion, the preamble of that NPRM did not directly explain what we meant by a ''counterpart'' vehicle. However, by example, a discussion appearing on page 51912 provided an explanation of what, in our view, would be counterpart vehicles: ''An example would be Ford Explorers assembled outside the United States, such as those assembled in Venezuela.'' We added that ''We would appreciate comments on whether this latter class of vehicles needs to be defined with greater specificity,'' warning that that ''in our view the term substantially similar sweeps with a broad brush and is not to be defeated by persons bent on finding or inventing distinctions to evade reporting.'' We proposed a definition of ''counterpart vehicle'' for early warning: ''a vehicle made in a foreign country that is equivalent to one made in the United States except that it may have a different name, labeling, driver side restraints, lighting or wheels/tires, or metric system measurements.'' *See* 66 FR 66200.

As for the fifth criterion, we tentatively concluded that platform-based reporting would be consistent with the breadth of early warning reporting, yet specific enough to provide adequate direction to manufacturers. An example would be the Cadillac Catera, which used the same vehicle platform as the Opel Omega, or the Jaguar S-Class, which shares a platform with the Lincoln LS. We specifically requested comment on our view that foreign and U.S. vehicles would be substantially similar for reporting under Section 30166(m) if they shared a platform. We did not propose a definition for ''platform.'' We invited commenters to suggest a definition if they believed that a definition of this term was necessary. No commenter suggested a definition.

Nissan, AIAM, the Alliance, and GM provided their views on the issue of how to define ''substantially similar.'' The Alliance commented that ''substantially similar'' is relevant only for identifying vehicles for which fatalities must be tracked and reported on a world-wide basis, and concluded that the definition proposed is overly-inclusive of vehicles that have no nexus to the United States. In its view, only a single definition is needed, and the most appropriate definition is one based on vehicle platform, category (v). To that, it would add that the vehicle must also have the same body shell, except for the number of doors. Thus, the Alliance would define a substantially similar vehicle as one that ''uses the same platform and body shell (except for the number of doors) as a vehicle sold or offered for sale in the United States.'' Alliance members Nissan and GM agreed with the Alliance comment and supported a platform-based approach.

The Alliance commented further that, if NHTSA adopted the Alliance's modified definition of category (v), categories (i) and (iii) would be redundant.

NHTSA disagrees with the Alliance and supporting comments. In our view, such a definition would be under-inclusive. A platform-based definition alone falls short for several reasons. First, other criteria are more certain in their application (when applicable). They do not depend on the meaning of the word ''platform.'' While the term platform is commonly used for some types of light and medium-heavy vehicles, it does not have a universal accepted definition. The fact that the Alliance suggested a single platform-based criterion yet failed to respond to our request for a definition suggests that it recognizes the difficulty of prescribing a universal definition.

In addition, the term platform does not apply to numerous types of vehicles. For example, because motorcycles are not built on what are commonly called platforms as the term is used with light and some medium-heavy vehicles, categories (i) and (iii) would not be redundant, contrary to the assertions of the Alliance. In any event, to the extent they are redundant, they would not add to the ''inclusiveness'' of the definition.

Category (i) specifies that a vehicle sold or in use outside the United States will be deemed substantially similar to one sold in the United States if it has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards (CMVSS). For example, a Ford Expedition certified as complying with the CMVSS and used in Saudi Arabia is substantially similar to a Ford Expedition sold in the United States, because of the near identicality of the CMVSS with the FMVSS. Category (iii) specifies that a vehicle sold or in use outside the United States will be deemed substantially similar to one sold in the United States if it is manufactured in the United States for sale in a foreign country. This is because (to the best of our knowledge, and the comments did not show otherwise) there are no makes and models of motor vehicles manufactured in the United States and sold outside the United States that are not also sold in the United States.

As for category (ii) vehicles, the Alliance incorporated by reference its comments on ''substantially similar'' submitted in response to the Foreign Defect NPRM. In those comments, the Alliance stated that reliance on the list of ''gray market'' vehicles in Appendix A of Part 593 was not appropriate as an automatic definition of ''substantially similar'' because the sole purpose of the Appendix is to list the foreign vehicles that can be readily modified to comply with the FMVSS; ''Using this list to cover vehicles outside the U.S. that are not modified is not appropriate.'' On the contrary, we find it most appropriate. In order to be listed in the Appendix, NHTSA is required to have decided that a gray market vehicle is eligible for importation into the United States on one of two bases. The first basis, which covers all but a few vehicles on the list, is that the vehicle is ''substantially similar to a motor vehicle originally manufactured for import into and sale in the United States.'' See 49 U.S.C. 30141(a)(1)(A)(i). These vehicles are listed in the VSA or VSP columns of Appendix A. If there is no substantially similar vehicle, NHTSA must decide that the safety features of the vehicle comply, or are capable of being modified to comply, with the FMVSS. These approved vehicles are listed in the VCP column of the Appendix. Because these vehicles are not

considered ''substantially similar'' within the meaning of 49 U.S.C. 30141(a)(1)(A)(i), we are modifying category (ii) to clarify that a substantially similar vehicle ''is listed in the VSP or VSA columns of Appendix A to part 593'' (note that each relevant vehicle decision notice under Part 593 amends Appendix A even though the revised Appendix is published only once a year). Reference to the Part 593 list should, in fact, make it easier for a manufacturer to determine if a vehicle that is the subject of a foreign death claim is substantially similar to one sold in the United States; if it is listed as a VSP or a VSA, the manufacturer will not have to consider whether the vehicle qualifies under another category.

In sum, our intent in categories (i) through (iii) is to capture vehicles that are identical or substantially similar in significant respects of design and safety-related parts to vehicles that are sold in the United States.

We next consider the qualifying phrase ''and body shell (except for the number of doors)'' in the Alliance's suggested platform-based definition of substantially similar vehicle. According to Automotive News, ''a platform is typically defined as the basic structure of a vehicle. Different vehicles built off the same platform commonly share several structural elements, such as the floorpan, door pillars, and subframes.'' A commonly-used platform in recent production has been the ''C/K'' series upon which GM has built numerous models including the Cadillac Escalade, the Chevrolet Silverado, Suburban, and Tahoe, and the GMC Sierra, Suburban, Yukon/Denali and Yukon XL vehicles (Source: 2000 *Market Data Book,* Automotive News, May 2000, p. 20; no similar information provided in 2001 or 2002 editions of *Market Data Book*). The Silverado and Sierra vehicles are pickup trucks, with bodies intended primarily for carrying cargo. The other models are sport utility vehicles (SUVs) and have bodies intended primarily for carrying passengers. Thus, there is no common body shell though the platform is common. Historically, both pickup truck and SUV vehicles built on this GM platform have many common components such as brakes and airbags. Most recalls involving the pickups have also covered the SUVs. Yet, C/K SUV vehicles would not be substantially similar to the C/K pickup trucks under the Alliance's restrictive criterion because they do not have the same bodies. However, as noted in Automotive World (September 1999), a platform includes the majority of the floor pan and engine compartment and is a unit that has no impact on the vehicle's outer skin. In view of the above we are adopting, as a criterion, category (v) as proposed. For clarity, we are adopting the following definition of ''platform,'' as

> the basic structure of a vehicle including, but not limited to, the majority of the floorpan or undercarriage, and elements of the engine compartment. The term includes a structure that a manufacturer designates as a platform. A group of vehicles sharing a common structure or chassis shall be considered to have a common platform regardless of whether such vehicles are of the same type, are of the same make, or are sold by the same manufacturer.

Examples of vehicles sharing a common platform are the Chrysler Group's Plymouth, Dodge, and Chrysler minivans, the Volkswagen Golf and Beetle and Audi A3 and TT passenger cars, and Toyota Camry vehicles (including Toyota Camry and Avalon passenger cars, Toyota Sienna minivans, Toyota Highlander SUVs, Lexus ES 300 passenger cars, and Lexus RX 300 SUVs).

TMA pointed out that manufacturers of medium-heavy vehicles, buses, and trailers generally do not use the term ''platform'' to describe their products. Nor do manufacturers of motorcycles. The terminology used by manufacturers is not determinative in this context. In addition to reporting on the basis of a structure that a manufacturer designates as a platform, we expect these manufacturers to report foreign deaths involving vehicles built with a structure similar to those used in the United States. To guard against possible underreporting of such incidents, we are including the word ''chassis'' in the definition of ''platform'' in this rule.

We note that category (v) will have an extraterritorial application. For example, we understand that Volkswagen uses a common platform for some of its range of Volkswagen, Audi, Seat, and Skoda passenger cars. Although the latter two marques are not certified for sale in the United States, some models may be ''substantially similar'' to Volkswagen and Audi models built on a common platform and sold in the United States.

As for category (iv), the Alliance stated that it did not know what it means for a vehicle to be ''equivalent'' to one manufactured for sale in the United States; two vehicles could be dissimilar in the structural and performance attributes that should matter for reporting requirements. AIAM had a similar criticism of category (iv), and urged NHTSA to adopt a ''simple, objective definition.'' We have reviewed these comments, and believe that any vehicle that might qualify for this category would also qualify under at least one of the other four categories that we are adopting. The final rule, then, omits proposed category (iv) (proposed category (v) becomes (iv) under the final rule).

If a manufacturer has ceased to export any certified vehicles to the United States (such as Alfa Romeo), its early warning reporting obligations will also cease after ten years (i.e., assuming that Alfa Romeo exported no certified vehicles to the United States after the 1995 model year, its early warning reporting obligation would terminate in 2005).

2. Substantially Similar Motor Vehicle Equipment Other Than Tires

We also proposed that:

> An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, regardless of whether the part numbers are identical.

We commented in the preamble to the NPRM that the breadth provided by this definition seemed necessary given the nature of claims, which often do not identify particular problematic components. Thus, we would regard foreign child restraint systems as substantially similar (if not identical) to U.S. child restraint systems if they incorporate one or more parts that are used in models of child restraints offered for sale in the U.S., regardless of whether the restraints are designed for children of different sizes than those sold in the U.S. and regardless of whether they share the same model number or name. For example, if buckles, tether hooks, anchorages, or straps are common throughout a manufacturer's range of models, the child restraints would be substantially similar even though the buckles, hooks, anchorages, or straps might be used on a variety of add-on, backless, belt positioning, rear-facing or booster seats produced by the manufacturer.

In light of the foregoing, we requested comments on the appropriate formulation of test(s) for determining whether foreign motor vehicle equipment is substantially similar to U.S. equipment.

JPMA generally supported the proposed definition but asked that the preamble and the final rule make clear that ''the reporting requirement applies only when the same component or system that gave rise or contributed to the fatality is used in foreign and U.S. models manufactured by that

manufacturer.'' Otherwise, the definition would give rise to two problems. We shall discuss each asserted problem separately.

The first problem as JMPA sees it is that ''absent clarification, the reporting obligation could be construed to apply to foreign child restraints incorporating common components with U.S. child restraints manufactured by another, unrelated manufacturer with whom the foreign manufacturer shares a supplier.'' JPMA observes that ''Since the manufacturer of the foreign child restraint may not even know that the model shares components with U.S. models manufactured by unrelated companies, it cannot be NHTSA's intention to hold manufacturers responsible for information they do not possess.'' That is correct.

The second problem, according to JPMA, is that

> without clarification that a report is required only when a fatality is associated with the same component as one used on a model sold by that manufacturer in the U.S., the reporting requirement could result in fatality reports that have no reasonable chance of predicting possible defect trends in the U.S. because they involve components that are not common to U.S. models.

JPMA thus raises the possibility that a manufacturer will report a fatality attributable to a component other than one that makes two child restraint systems ''identical or substantially similar.''

In this situation, we would read the word ''equipment'' both as the completed item of motor vehicle equipment and as each individual component that comprises the item. The statute provides for a report ''when the possible defect is in * * * motor vehicle equipment that is identical or substantially similar * * *'' The child restraint systems are identical or substantially similar equipment because they share a common component. We will not relieve the manufacturer of reporting because the claim may not identify the problematic component; the identification of the component will result in delay and may be disputed. We have decided, however, that a claim would not have to be reported if it specifically identifies a non-common component as the defect. Although this issue was raised by an equipment manufacturer, it applies equally to vehicles. Thus, new Section 579.28(g) applies to all manufacturers.

MIC commented that, ''as proposed, equipment that has one or more components or systems that are the same regardless of whether the part numbers are identical is considered substantially similar.'' It asked ''if the only commonality is a single type of fastener that neither failed nor contributed to the incident, are the components or equipment substantially similar? It would be our view that they are not.'' For the reasons expressed in the paragraph above, the equipment incorporating the fasteners would be substantially similar for early warning reporting unless the claim specifically identified a non-common component as the source of the failure.

MEMA stated that the definition should not only be component or system specific, but application specific as well. It cited a remark in the Foreign Defect NPRM preamble to the effect that a bolt with a given part number may perform in substantially different ways depending on how and where it is used, as well as citing a comment by Breed to the ANPRM that a component may be used in a variety of applications but fail in only one. MEMA recommended adopting application language to the definition:

> An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system has the same application requirements in vehicles sold or offered for sale in the United States, regardless of whether the part numbers are identical.

AIAM recommended as a definition ''equipment that is identical, except for labeling, markings, or such features as displayed metric vs. U.S. units of measure, and performs the same function in the respective vehicles.''

The issue raised by MEMA and AIAM is analogous to that raised by JPMA, but instead of a defect occurring in a non-common component, it posits a defect occurring in a common component not used in a common manner. As such, it does not address the issue raised by JPMA. Further, it appears to restrict the definition to on-vehicle original and replacement equipment, and not to include equipment that is not part of a motor vehicle such as child restraints.

If two items of equipment utilize the same component but that component is not used to perform the same function, the failure of the component in one context might have no bearing on the likelihood of its failure in the other context. However, it might not be clear at the time the claim is filed whether the component is performing the same function or not. Therefore, we are reluctant to add this exemption. We emphasize, however, that we expect to receive very few reports of claims from equipment manufacturers involving foreign deaths.

We are therefore adopting as new Section 579.4(d)(2):

> An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system performs the same function in vehicles or equipment sold or offered for sale in the United States, regardless of whether the part numbers are identical.

3. Substantially Similar Tires

We proposed that:

> A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same model and size designation, or if it is identical in design except for the model name.

RMA was the sole commenter on the proposed definition. In its opinion, NHTSA's definition would include tires that are, in fact, substantially different. It noted that two tires of the same tire line and with the same size designation could include tires constructed of different materials. One tire could have a casing made of steel carcass plies, while another's might be of fabric carcass plies. RMA argued that comparisons between these tires, for early warning reporting, would be meaningless, and stated that ''construction'' is the factor that would best aid in early warning. ''Construction'' to RMA means ''the same number of plies and belts, ply and belt construction and materials, placement of components, and component materials.'' RMA proposed the following definition:

> A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range (for light truck tires) and construction irrespective of plant of manufacture or tire line name.

NHTSA has decided to follow RMA's recommendation in part. We are integrating the definition of ''construction'' into the text, so that the regulation (Section 579.4(d)) reads as follows:

> (3) A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range, number of plies and belts, and similar ply and belt construction and materials, placement of components, and component

materials, irrespective of plant of manufacture or tire line name.

We have added the word ''similar'' before ''ply and belt construction and materials'' to assure that minor differences in dimensions, construction, or materials would not allow tire manufacturers to avoid reporting of foreign claims involving deaths.

I. Claims Involving Property Damage

Section 30166(m)(3)(A)(i) provides for reporting of ''aggregate statistical data on property damage'' from alleged defects in the manufacturer's products.

1. Definition of ''property damage''

In the preamble to the NPRM, we discussed the proposed definitions of property damage recommended by commenters on the ANPRM. On the basis of our own review and these comments, we proposed to require only reporting of claims information and not reporting of incidents involving only property damage of which a manufacturer receives notice. *See* 66 FR 66200.

For purposes of this rule, we proposed that property damage means ''physical injury to tangible property.'' Our proposed definition of ''property damage claim'' would include damage to the vehicle or other tangible property, but exclude equipment failure and matters solely involving warranty repairs. For example, if the brakes failed and there were no physical consequences other than the need to repair the brake system, there would be no property damage. If there was a brake failure and the vehicle hit an object, there could be property damage to the vehicle or object or both. Accordingly, ''property damage claim'' would mean:

A claim for property damage, excluding that part of a claim, if any, pertaining solely to damage to a component or system of a vehicle or an item of equipment itself based on the alleged failure or malfunction of the component, system, or item, and further excluding matters addressed under warranty.

Comments were submitted by the Alliance, Nissan, VW, AIAM, the JPMA, RMA, TMA, Spartan, Utilimaster, and CU.

Nissan stated that the proposed definition of property damage claim was overly inclusive and potentially difficult to understand. The comment argued that the proposed definition did not exclude claims pertaining solely to damage to a component or system of a vehicle based on the alleged failure. Similarly, Spartan recommended that the category be redefined to exclude allegations of simple failure or breakage of a component (such as mechanical breakdown typically covered by a manufacturer's warranty), since such incidents would likely be picked up under other categories. Nissan's comment also noted that the proposed definition does not address damage to one system caused by another system under normal use, and whether or not the damage occurred within the warranty period. The company recommended that the proposed definition of ''property damage claim'' be modified to read: ''a claim that a part, component or system failure led to crash damage or body damage to a vehicle or damage to the property of a third party.''

We do not understand Nissan's assertion that the proposed definition does not exclude claims pertaining solely to damage to a component or system of a vehicle based on its alleged failure or Spartan's suggestion that such matters be excluded, because we believe that they are excluded. Nissan also commented that the proposed definition does not address damage to one system caused by another system under normal use, but it does. Damage is excluded from property damage claims if the damaged component, system, or equipment item has damaged itself, but not beyond that.

CU expressed concern that a loophole in the reporting requirement will be created if the definition of property damage does not include damage to the vehicle component itself. For example, if the brakes failed after the vehicle warranty had expired and there is no physical damage to the vehicle other than the need to repair the brakes, NHTSA would have no way of knowing about this incident. With regard to CU's comment, the agency notes that the NPRM stated its intention to include in the definition of property damage ''damage to the vehicle or other tangible property, but exclude equipment failure and matters solely involving warranty repairs.'' *See* p. 66201. The preamble elaborated on this by stating: ''For example, if the brakes failed and there were no physical consequences other than the need to repair the brake system, there would be no property damage.'' *Id.* The ''loophole'' identified by CU was therefore an intentional part of the proposed rule, which assures that property damage claims are not diluted by matters involving worn out parts without other consequences. Of course, these matters would normally be reported to us as complaints, and sometimes as warranty claims.

Spartan recommended that the category be limited to incidents involving a collision, tire failure, or fire occurring in the United States in which a defect is alleged in one of the critical safety systems (brakes, steering, occupant restraint, fuel) and that the reporting requirement should apply only to claims submitted to the manufacturer in writing. Spartan provided no rationale for its recommendation that the category should be limited to the number of such incidents involving a limited number of safety-related systems. For each of the covered vehicle classes, the NPRM listed separate systems and components the alleged failure of which would trigger the reporting requirements. As the agency explained, in selecting these systems and components, it ''attempted to identify, for each category of vehicle, for child restraint systems, and for tires, those systems and components whose failures are most likely to lead to safety recalls.'' *See* preamble at p. 66207. Spartan has not explained why this approach should be abandoned in favor of one that would require, for all vehicle classes, reports on only brake, steering, occupant restraint, and fuel system failures. Finally, because the term ''claim'' would be defined in the proposed rule as ''a written request or demand for relief,'' Spartan's recommendation that the reporting requirement should apply only to property damage claims submitted to the manufacturer in writing has already been addressed in the proposal.

The Alliance recommended that the proposed definition of ''property damage'' be modified to read: ''(1) physical damage, including damage by fire, to tangible property of a third party caused by a collision or an alleged failure or malfunction of a component, system or item, or (2) body or fire damage to a vehicle caused by an alleged failure or malfunction of a component, system or item.''

The Alliance's recommended changes would introduce elements of causation into determinations whether to report. This information might not be presented in a claim and, thus, the Alliance's formulation could result in under-reporting. *See* 66 FR 66195, 66199. Moreover, in the NPRM, the reporting requirement was based on the term ''property damage claim,'' which is defined separately from and incorporated the definition of ''property damage.'' Because the proposed definition of ''property damage claim'' contains language linking the reportable claims to those alleging malfunctions of components or systems, or to specific events, it would be redundant if this qualification were also to be included in the definition of ''property damage,'' as the Alliance has proposed. Finally, if the Alliance's recommended changes were adopted, physical damage to the

property of a third party caused by means other than a collision or an alleged failure or malfunction of a component or system or to specific events, and physical damage to a vehicle, other than body or fire damage, would not be reportable. The Alliance provided no justification for the changes it recommended in the proposed definition or reasons why those limiting changes should be adopted. Moreover, it did not show how the changes would help effectuate the purposes of the early warning reporting rules.

RMA stated that it did not object to the definition if it can be interpreted to mean ''* * * a claim for monetary compensation in excess of the value of the tire.'' Nevertheless, it urged NHTSA to adopt a separate definition for clarity, to read as follows:

> A claim for property damage for motor vehicle equipment means a claim for property damage, excluding that part of a claim, if any, pertaining solely to damage to the item of motor vehicle equipment itself, based on the alleged failure or malfunction of the item of motor vehicle equipment, and further excluding matters under warranty.

RMA did not explain why a separate definition was needed. We note once more that the definition proposed in the NPRM would exclude claims pertaining solely to damage to an equipment item based on the alleged failure or malfunction of that item. Creating a separate definition for equipment items may increase the burden for manufacturers by requiring analysis of individual claims to ascertain whether they alleged the failure or malfunction of an equipment item itself, as opposed to the failure or malfunction of a ''component, system, or item.'' We further note that eliminating the reference to vehicle components and systems could increase the reporting burden on manufacturers by narrowing the scope of claims excluded by definition. In light of these circumstances, we do not believe that there is a need to separately define ''property damage claim'' for motor vehicle equipment items, and will retain the reference to vehicle components and systems within the definition we are adopting.

The property damage information that we will require manufacturers to submit is limited to the number of claims involving a limited number of systems or components, fire, and rollover (to be discussed later). Thus, the information to be submitted will be ''aggregate statistical data.'' Therefore, we do not see a need for a separate regulatory definition of this term.

Finally, as noted above, the proposed definition expressly excludes ''matters addressed under warranty.'' Nissan faults the agency for failing to address whether or not the damage occurred within the warranty period. The reason for this exclusion was simple; it was to eliminate a burden that would amount to double counting. So long as the matter is covered by warranty (including an extended warranty or good will program conducted by the manufacturer, as addressed below), it will be subject to being reported to the agency as a warranty claim. If the incident leading to a claim occurs beyond the warranty period (including the terms of any applicable extended warranty or good will program), and thus is not covered by warranty, it must be reported as a property damage claim if the elements for such reporting are met.

For the reasons discussed above, we are adopting the definition of ''property damage claim'' that we proposed.

2. Reporting of Property Damage Claims; Whether To Establish Dollar-Value Thresholds

Unlike reporting of claims and notices of incidents involving deaths and injuries, which are required even in the absence of information identifying underlying systems or components, we will require reporting of property damage claims only when one or more specified vehicle components or systems has been identified as giving rise to the incident or damage, or there was a fire (originating in or from a vehicle or a substance that leaked from a vehicle) or rollover. We concluded that adding a category such as ''other'' would not provide us with usable information. These components and systems were selected based upon their connection to safety recalls in the past, as described in Section IV.N below. They vary depending on the type of vehicle or equipment that is the subject of the report.

If the incident that allegedly led to the property damage also resulted in a death or injury, the manufacturer need only report the incident as one involving a death or injury, and it will not be required to report the incident under the property damage requirement. However, if several separate property damage claims are filed arising out of the same incident (e.g., because a vehicle damaged property owned by several individuals), each claim must be included in the report.

Reports of property damage claims will be submitted in the same manner as the number of consumer complaints, warranty claims, and field reports, discussed later. The information will be reported separately for each make, model, and model year and would be submitted in electronic form, as discussed in Section VI below. Manufacturers are not required to submit documents reflecting the extent of the property damage or the details of the incident that allegedly led to the damage. (As discussed below, we can require the submission of such documents or information in a separate request if we decide that further detail is needed.)

With respect to manufacturers of motor vehicle equipment, we proposed to require only manufacturers of tires to report property damage information, noting that it is extremely unlikely that a child restraint system would contribute to significant property damage.

The preamble to the NPRM stated that the agency was proposing ''that a vehicle manufacturer need not include in its report property damage claims that are for $1,000 or less, on the ground that this would exclude minor matters and reduce reporting burdens.'' See preamble at 66201. However, the proposed regulatory text in the NPRM did not include a dollar-value threshold for reporting. The NPRM requested comments on whether it is appropriate to establish such an exclusion, and if so, what the level should be. *Id.*

The Alliance stated that there should be a threshold to filter claims. The comment stated that the threshold should be $2,500 to filter out the minor fender bender type accidents, and that NHTSA should periodically raise the threshold to consistently filter minor claims. AIAM also recommended a $2,500 threshold to exclude minor claims, and stated that NHTSA should consider periodic review of the threshold to account for inflation and other relevant changed circumstances. Volkswagen also supported a $2,500 threshold to exclude de minimis claims. Nissan stated that the threshold amount should be higher than $1,000.

TMA stated that the threshold for reporting property damage claims needs to be related to the purchase price of the vehicle rather than a fixed price for all vehicles. The comment observed that a $1,000 threshold would not be appropriate for medium and heavy-duty trucks, which often cost in excess of $100,000. The comment recommended a $5,000 threshold for these vehicles. The comment also recommended that the reporting threshold not be relegated to the preamble of the final rule, but instead be incorporated into the regulatory text.

Utilimaster also stated that the proposed $1,000 threshold for the submission of property damage claims

''is too low to avoid sweeping in minor matters NHTSA seeks to avoid.'' The comment stated that the threshold should be raised to $5,000 to provide the agency with meaningful data on significant incidents. Spartan also recommended that a dollar threshold be set (at perhaps $2,500) to limit the reporting of minor claims.

With respect to claims involving tires, the NPRM noted that ''[t]ire manufacturers have historically kept records of all property damage claims, without regard for the amount of the claim, and that this information has proven to be very valuable in identifying potential tire defects.'' *See* preamble at p. 66201. As a consequence, the agency stated that it was ''proposing to require tire manufacturers to report all property damage claims, regardless of the amount of the claim.'' *Id.* As noted above, the RMA stated that it would not object to the proposed definition if it were interpreted to mean a claim for monetary compensation in excess of the value of the tire.

AIAM commented that according to insurance industry data, approximately half of all physical loss payments by insurers are for $1,000 or less. After accounting for the common $500 deductible, the actual median damage loss is $1,500. Accordingly, AIAM recommended that NHTSA select a higher threshold, specifically $2,500, and that that threshold be stated in the definition of ''property damage claim.''

After thoroughly considering the comments, we have concluded that we should not adopt any dollar-value threshold for the reporting of the number of property damage claims, and note that no such criterion is imposed by the TREAD Act. Although the final rule will result in a higher number of property damage claims being reported to the agency than there would have been under the proposed threshold of $1,000, manufacturers will be relieved of the burden to evaluate property damage claims to determine whether the dollar-value threshold had been met. This could entail a considerably greater commitment of resources than if the manufacturer were simply required to report the raw number of property damage claims it received. Many claims do not include a dollar value, so if a dollar-value threshold were established, the follow-up on and reporting of such claims or those that referred to damage in other than dollar terms would have to be addressed. This also resolves the knotty issues of whether we should establish different dollar-value thresholds for different types of vehicles such as motorcycles and heavy trucks, and how we should do so. However, we may revisit the issue in a future rulemaking.

With regard to property damage claims involving tires, the RMA stated that it would not object to the proposed definition if it were interpreted to mean a claim for monetary compensation in excess of the value of the tire. The agency notes that under the proposed definition, a tire manufacturer would not be required to report a property damage claim relating solely to damage to a tire that is based on the alleged failure or malfunction of the tire. Moreover, any claim for damage to the tire itself is likely to be handled within the manufacturer's adjustment program, and as such, would not be separately reportable to the agency as a property damage claim.

Tire manufacturers have historically kept records of all property damage claims, without regard for the amount of the claim, and this information has proven to be very valuable in identifying potential tire defects. For these reasons, we proposed, and will require, that tire manufacturers report all property damage claims, regardless of the amount of the claim.

J. Consumer Complaints

We proposed to require submission of information about certain ''consumer complaints'' as ''other data'' under Section 30166(m)(3)(B).

1. Definition of ''consumer complaint''

In the NPRM we proposed a definition of ''consumer complaint'' that included relevant matters and did not overlap with our proposed definition of ''claim.'' We proposed to define ''consumer complaint'' as follows:

> a communication of any kind made by a consumer (or other person) to a manufacturer expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but not including a claim of any kind or a notice involving a fatality or injury.

We explained that the term ''a communication of any kind'' would primarily include communications that are written but it would also include oral complaints, such as made through a telephone call, that a manufacturer memorializes in a document, including an electronic information system. Our proposed definition would also include communications in which the owner of a vehicle or item of equipment that is subject to a defect or noncompliance recall asserted that the remedy failed to correct the defect or noncompliance.

Our approach was to set forth a multifaceted definition of consumer complaint and then to limit reporting to safety-related aspects of vehicles, tires, and child restraint systems. The facets of the definition included expressions of dissatisfaction with a product or its performance, and an assertion of a defect or that an event was caused by a defect. Based on our past experience during defect investigations, we did not believe that it would be appropriate to simply require reporting of ''safety-related'' problems, since manufacturers often have a narrower view of what constitutes a safety-related problem than we do. As we explained, we would reduce the likelihood of reporting consumer complaints about non-safety matters by listing the specific safety-related components and systems with respect to which complaints must be reported. Finally, the primary distinction between a ''consumer complaint'' and a ''claim'' is that the former would not seek monetary or other relief.

Ten comments were submitted on the proposed definition of ''consumer complaint.'' These were from AIAM, the Alliance, GM, CU, Volkswagen, Nissan, NADA, JPMA, Spartan, and Utilimaster. CU favored the proposed requirement for the collection of consumer complaint information. The remaining comments were either opposed to the collection of this category of information in its entirety, or opposed the collection of certain types of information within the proposed definition.

2. The Rationale for Requiring Reports of Consumer Complaints

As we have explained, over the years, NHTSA's Office of Defects Investigation (ODI) has made productive use of consumer complaints to manufacturers in its investigations of alleged defects. The problem experience of owners or operators in the real-world use of their vehicles and equipment, as reflected in their communications to manufacturers, has indicated failures of components and systems that can have an impact on safety. While a given level of complaints regarding some components or systems may not indicate the existence of a defect, a higher level might. (This level would vary, depending on the component or system involved.) Because we have no way to measure directly, or to count, all failures in the field, the frequency of consumer complaints (which complement warranty claims and field reports) can provide valuable indications of possible safety problems warranting further investigation. Consumer complaints were discussed in the Congressional hearings that led to the TREAD Act. See,

e.g., Firestone Tire Recall: Hearing before the Subcommittee on Telecommunications, Trade and Consumer Protection and the Subcommittee on Oversight and Investigations of the House Committee on Commerce, (H. Rpt.106–165; September 6, 2000) (Statement of Dr. Sue Bailey, Administrator, NHTSA).

After reviewing the comments received on the ANPRM and assessing the value of consumer complaints to an early warning system, we proposed requiring manufacturers of 500 or more vehicles as well as all child restraint system manufacturers to provide aggregated consumer complaint information to us on a periodic basis, but not to require copies of such complaints. NHTSA relies heavily on consumer complaint information in initiating and conducting defect investigations. More than 75 percent of the investigations conducted by ODI are opened on the basis of complaints that we receive from individual consumers, or that are furnished to us by interested third parties, such as consumer groups, police departments, State vehicle inspectors, and school bus and other fleets.

After it opens investigations, ODI routinely asks manufacturers to provide information and copies of consumer complaints on the ''subject defect;'' also, ODI often asks manufacturers to update complaint information during the course of the investigation. This sort of information is very valuable in evaluating whether a defect related to motor vehicle safety exists in a given vehicle or equipment item. Since our first litigated defects enforcement case, *United States* v. *General Motors Corp.,* 518 F.2d 420, 438 (D.C. Cir. 1975), which held that a *prima facie* case of defect can be made by showing a significant, ''non de minimis number'' of failures of a critical part that is expected to last for the life of the vehicle, the federal courts have recognized that consumer complaints can be a valuable source of evidence of the existence of a safety-related defect in motor vehicles.

ODI's experience has shown that consumers are more likely to report a problem to the manufacturer than to NHTSA. Historically, the number of consumer complaints to the manufacturer (either directly or through dealers) that NHTSA obtains after opening a defect investigation usually exceeds by a substantial amount the number of complaints that NHTSA had received directly from consumers prior to opening the investigation. Also, many consumers do not complain to NHTSA until after they have complained (unsuccessfully) to the manufacturer. Although there is no single threshold of consumer complaints about a particular component or system that will automatically trigger a defect investigation, it is likely that if it were aware of a relatively large number of consumer complaints to a manufacturer, ODI might well open investigations earlier. To the extent that such an investigation led to a recall, opening it earlier would likely have led to corrective action at an earlier date and the avoidance of some additional incidents.

Consumer complaints to child restraint system manufacturers have also consistently far outnumbered those to NHTSA about particular problems. For example, in November 1996, ODI opened an investigation into the breakage of harness release buttons in certain infant car seats. ODI had received four consumer complaints when it opened the investigation. After writing to the manufacturer and requesting complaint information, ODI learned that the company had received 328 complaints about the harness release button in those seats. Similarly, in May 1998, ODI opened an investigation of harness buckle failure in infant car seats on the basis of two consumer complaints. After writing to the manufacturer, ODI learned in July 1998, only two months later, that the company had received 92 complaints. Both of these investigations led to corrective action by the manufacturers.

We believe that NHTSA's ability to identify potential defects in a timely manner, and to identify and understand emerging defect trends, would be greatly strengthened if the agency were to receive information about consumer complaints relatively shortly after the manufacturer does. At present, ODI's decisions as to which products should be investigated are often based on limited information from consumers.

We did not propose to require tire manufacturers to report the number of consumer complaints. We had concluded, from our experience with conducting tire investigations, that consumer complaints to tire manufacturers generally do not contain useful information for analysis of the alleged problem. For example, tire complaints do not consistently have full information describing the tire model, size, and date of manufacture. Without this identification, an analysis of failure rates and trends is not possible. Far more useful for analysis of potential defect trends is the tire manufacturer's adjustment (warranty) and claims data. The adjustment and claims data contain complete identification of the tire make, line, plant, and date of production. We have received such data in response to information requests issued during our defect investigations and find that these data are far superior than that contained in complaints.

We therefore proposed to require larger motor vehicle manufacturers, and all child restraint system manufacturers, to report the number of consumer complaints that the manufacturers have received about designated components and systems of their vehicles or equipment during each reporting period. Vehicle manufacturers would also report complaints about fire. The designated components and systems would be the same as those on which property damage claims are reported.

We did not propose to require reporting of consumer complaints from outside the United States at this time. We observed that there are a number of issues related to foreign complaints, such as manufacturer review of potentially large numbers of complaints in foreign languages and NHTSA follow-up use, which dictate against requiring reporting, at least for the present.

In commenting on the NPRM, a number of commenters repeated their comments on the ANPRM, which we had previously rejected. AIAM expressed the opinion that consumer complaints are not valuable; i.e., that they should be excluded from the reporting rule on the basis that they do not provide objective information regarding vehicle safety performance and that they would be expected to provide little, if any, useful information for an early warning reporting system. The organization contended that the overwhelming majority of the complaints received by its members do not relate to safety information, and that the need to filter this material to provide the agency with safety-related information would place an unreasonable burden on manufacturers. The Alliance also questioned the value of consumer complaints in identifying a defect trend. It contended that consumer complaints are not technically reliable because they are based on the subjective observation of a problem by a consumer, and are collected by personnel who lack sufficient technical training or knowledge to translate the information provided by consumers into meaningful or accurate component or system codes.

Several manufacturers offered similar comments. Volkswagen questioned the reliability of consumer complaints to establish the existence of a defect trend. The comment urged the agency to exercise caution in drawing any conclusions from the raw, unfiltered consumer complaint numbers that

manufacturers would be required to provide under the proposed rule, especially since manufacturers would not be given the opportunity to rebut those numbers. Nissan expressed the opinion that consumer complaints are often subjective, not technically precise, and difficult to code for the purpose of providing the agency with meaningful early warning information because they are generally not linked to identifiable components or systems, and are not received by technical personnel. Spartan observed that consumer complaints could cover a large volume of material that does not affect safety, and are often of questionable validity, requiring extensive screening to identify useful information at a considerable expense to the manufacturers. The comment contended that what useful information there is in this category is likely to overlap one of the other reporting categories.

The comments that questioned the value of consumer complaints in identifying potential defect trends did not address the justifications set forth in the NPRM that we have summarized above. Significantly, none of the comments on the NPRM refuted the rationale in the NPRM. As far as the agency is concerned, the utility of consumer complaints for early warning purposes is not diminished by the fact that they are based on the observations of vehicle users as opposed to persons with technical training or experience. Such observations are often what first alerts the agency to the possible existence of a safety-related defect, especially when warranty coverage is not or no longer available. As such, consumer complaints about safety-related systems and components constitute an essential part of the proposed early warning reporting system. If the agency were to overlook consumer complaints in anticipation of receiving a more technically developed analysis of a potential safety problem from a manufacturer, an entire mechanism for early warning would be eliminated.

NADA asserted that NHTSA has no need to obtain consumer complaint information from manufacturers as it has direct access to this kind of information from complaints made to the agency's Website and to the Auto Safety Hotline. AIAM also noted that NHTSA already receives consumer complaint information as militating against the need for manufacturers to submit this information to the agency. AIAM contended that the agency's database is a better source of early warning information than the manufacturer's database because consumers are less likely to complain to NHTSA about non-safety-related problems. GM commented that if NHTSA were to eliminate the need for manufacturers to report on consumer complaints, it could still obtain this information from vehicle owner's questionnaires (VOQs) that are submitted to the agency.

As stated in the NPRM, ODI's experience has shown that consumers are more likely to report a problem to the manufacturer than to NHTSA, and that many consumers do not complain to NHTSA until after they have complained unsuccessfully to the manufacturer. *See* NPRM at p. 66203. The NPRM further noted that we have observed that the number of consumer complaints to the manufacturer usually exceeds by a substantial margin the number of complaints made directly to the agency before the investigation is opened. *Id.* The agency observed in the NPRM that its ''ability to identify potential defects in a timely manner, and to identify and understand emerging defect trends, would be greatly strengthened if the agency were to receive information about consumer complaints relatively shortly after the manufacturer does.'' *Id.* For these reasons, although the agency will continue to receive complaints through the agency's website and the Auto Safety Hotline, manufacturer complaint data will provide a valuable additional tool for assessing whether a potential safety-related defect exists.

Other comments questioned the need for consumer complaints to be separately reported to the agency, on the basis that the information in this category would duplicate that in other categories manufacturers would be obligated to report. GM contended that because the proposed rules define the term ''claim'' so broadly, requiring the separate reporting of consumer complaints is unnecessary, and increases the chances of duplicate reporting. GM observed that a single incident could involve a consumer complaint, a warranty claim, and a lawsuit, all of which would be required to be reported under the proposed rule. The Alliance also observed that the consumer complaint database is likely to have redundancies with other information in other databases. As a consequence, the comment suggested the agency could establish the early warning rule without requiring the reporting of consumer complaint information, and adopt this requirement at a later date if still had a need for the information.

GM's contention about the overlapping breadth of the definition of ''claim'' is erroneous. In both the NPRM and the final rule a ''claim'' is limited to a written communication seeking some form of relief from the manufacturer. Thus, a ''claim'' is considerably narrower than the proposed definition of ''consumer complaint,'' which would encompass ''a communication of any kind * * * expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product.'' Moreover, the proposed definition explicitly excluded claims, to avoid double counting.

The agency is unwilling to adopt the recommendation that the complaint must allege a safety-related defect, as this would unduly limit the reporting of consumer complaint information that NHTSA is seeking to collect through the early warning reporting rule. As stated in the NPRM, based on its past experience with defect investigations, the agency does not ''believe that would be appropriate to simply require reporting of 'safety-related' problems, since manufacturers often have a much more narrow view of what constitutes a safety-related problem that we do.'' *See* preamble at 66202. If the term ''consumer complaint'' were limited to complaints specifically alleging a safety-related defect, communications expressing dissatisfaction with a product or relating that the product did not perform in a satisfactory manner would not necessarily be reported to the agency. Such communications may be equally indicative of a potential safety-related defect as ones specifically alleging the existence of such a defect.

If we were to adopt such a restrictive definition for the term ''consumer complaint,'' we would deprive ourselves of information that could be of considerable value in identifying a defect trend. Moreover, by adopting such a definition, the process of reviewing consumer complaint information to respond to the reporting requirement would be transformed for manufacturers into little more than a search for specific phrases such as ''safety-related defect'' in the communications they receive, and equip them with the means to potentially evade the reporting of legitimate complaints. However, we note that reporting would only be required if the communication expressing dissatisfaction related to unsatisfactory performance, related to any actual or potential defect, or any event that allegedly was caused by any actual or potential defect in a product. Also, it

must relate to one of the reporting areas (e.g., service brakes). Thus, contrary to the suggestions of a commenter, consumer complaints on stain resistance alone are not to be reported.

The Alliance and JPMA recommended that the proposed definition of ''consumer complaint'' be changed to eliminate any reference to those expressing ''general dissatisfaction'' with a product. JPMA contended that including complaints such as these would distort the data because they would have to include everything from complaints about the shell or pad color, the comfort of the handle, stain resistance of the fabric, or other general consumer complaints that involve one of the reportable categories, but can have no possible bearing on a possible defect trend. The Alliance recommended that if the consumer complaint reporting requirement is retained, it should be limited to complaints addressing a problem with a motor vehicle. Similarly, Utilimaster asked the agency to clarify, either in the preamble of the final rule or in its regulatory text, that mere suggestions for product improvements, without reference to a current product deficiency, will not be considered reportable consumer complaints. The company noted that many of the consumer complaints that it reviews do not relate to safety issues or concerns, and that the submission of this type of information would ''clutter the agency's data bank with irrelevant material.''

The thrust of these comments is unclear, as they appear to address, at least in substantial part, matters on which reporting would not have been required under the NPRM. As the agency noted in the NPRM, the fact that manufacturers would only need to report consumer complaints relating to specific safety-related components, systems or events (e.g., fire) will assure that only potential safety-related problems are included in numerical reports to the agency. *See* preamble at 66202. This does not include shell or pad color or similar matters. With regard to Utilimaster's comment, we note that the proposed definition of consumer complaint would not encompass communications suggesting a product improvement that do not refer to a product deficiency. For example, a communication that a third seat in a minivan should fold down as opposed to being capable of being removed would not have to be reported. Accordingly, there is no need to modify the proposed definition in response to that comment.

GM and Nissan commented that if NHTSA were to require the submission of consumer complaint information, it should limit the reporting requirement to complaints that are made to the manufacturer's office designated to handle consumer complaints. Nissan observed that this would assure that manufacturers do not have to poll every employee on a quarterly basis who might have heard from a friend, neighbor or stranger about some dissatisfaction with a product that might fall within the proposed definition. GM contended that the proposed reporting requirement would be unworkable if it required a manufacturer to memorialize every consumer contact with any of its employees.

The agency is accepting the recommendation by GM and Nissan that it limit the areas in which a manufacturer must search in ascertaining the number of complaints it has received. In our view, this includes communications addressed to the office designated in an owner's manual, written communications to the corporation that in the ordinary course are routed to the office that ordinarily processes complaints, oral communications to offices, such as consumer relations telephone lines, that ordinarily receive complaints, and electronic communications to the corporation's web site or to its general e-mail address/account that ordinarily receives complaints, and, of course, all complaints actually received by the office that handles such complaints. We have, accordingly, modified the proposed definition of ''consumer complaint'' to specify that the reportable communications are those made ''to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer website that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit of the manufacturer that receives consumer inquiries or complaints, including telephonic complaints * * *.'' The agency wishes to emphasize that this definition encompasses written complaints addressed to the manufacturer generally or to an officer of the company (e.g., to ''XYZ Company'' or to ''President'' or to the president by name) and telephonic complaints that, in the normal course of business, are directed or routed to the office that receives consumer inquiries or complaints. If we find that this modification leads to abuses by manufacturers, we will take appropriate action in the future.

NTEA, representing final stage manufacturers, in its comment to the ANPRM said that manufacturers should be required to report only about components for which they are responsible, rather than about all components in a vehicle about which they may have received complaints. Since the final rule only requires reporting from manufacturers of 500 or more vehicles per year (other than incidents involving fatalities), it is likely that few NTEA members will have to submit consumer complaint information. However, for these that are covered, we note that the issue of which manufacturer's product is ''responsible'' often is disputed and is not determinative for early warning purposes. Moreover, the final stage manufacturer is often the only entity with which an owner deals. For example, a consumer who experiences a fuel leak in a vehicle is more likely to complain to the manufacturer of the completed vehicle than to the manufacturer of the chassis. To assure that important information is submitted, we are adopting our proposal to require that each vehicle manufacturer covered by the regulation report on all consumer complaints (and other specified information) that it receives.

Separate questions arise with respect to child restraint systems. We proposed ''to require * * * all child restraint system manufacturers, to report the number of consumer complaints that the manufacturers have received about designated components and systems of their * * * equipment during each reporting period.'' *See* NPRM at p. 66203. We also stated that we were proposing to require ''all child seat * * * manufacturers to report aggregated warranty claims data from the U.S. on certain specified components and systems.'' See p. 66205. The implication of these statements was that child restraint system manufacturers, like other manufacturers subject to the proposed reporting requirements, would separately report consumer complaint and warranty claims data. Despite the preamble statements, text that would require the submission of consumer complaint and warranty claims data was inadvertently omitted from the proposed regulatory text of Section 579.26, specifying the reporting requirements for manufacturers of child restraint systems.

After JPMA brought this discrepancy to our attention, we orally confirmed that the preamble statements proposing to require child restraint system manufacturers to submit both consumer complaint and warranty claims data reflected the agency's intent, and that the agency contemplated that this

information would be separately reported. Thereafter, in its comments, JPMA recommended that child restraint manufacturers be allowed to combine the reporting of consumer complaints and warranty claims because most of these manufacturers routinely treat both categories of information the same, and therefore capture it in a single database that cannot reasonably be segregated. To avoid the need to impose an additional sorting burden on child restraint system manufacturers, we are requiring reporting on the combined number of consumer complaints and warranty claims that they receive. Accordingly, for manufacturers of child restraint systems, we are modifying the text of proposed Section 579.26 (Section 579.25 in the final rule) by designating proposed paragraph (c) as paragraph (d), and adding a new paragraph (c) covering the submission of the combined number of consumer complaints and warranty claims.

K. Warranty Claims Information

We proposed to require submission of information about certain ''warranty claims'' as ''other data'' under Section 30166(m)(3)(B).

1. Definitions of ''warranty,'' ''warranty claim,'' and ''warranty adjustment''

We proposed definitions of warranty and warranty claim. After reviewing various definitions of ''warranty,'' and comments on the issue, we proposed a definition of warranty based on the definition of written warranty in the Moss-Magnuson Act, 15 U.S.C. 2301(6), to which manufacturers are subject. Under that Act, a ''written warranty'' means:

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

We tailored that definition to the subject matter at issue and proposed to define ''warranty'' as:

Any written affirmation of fact or written promise made in connection with the sale or lease of a motor vehicle or motor vehicle equipment by a manufacturer, distributor, or dealer to a buyer or lessee that relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time (including any extensions of such specified period of time), or any undertaking in writing in connection with the sale or lease by a manufacturer, distributor, or dealer of a motor vehicle or item of motor vehicle equipment to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

The normal practice is for dealers to perform the repair or to provide the replacement and then to submit a claim for reimbursement to the manufacturer. Accordingly, we proposed that ''warranty claim'' means ''any claim presented to a manufacturer for payment pursuant to a warranty program, extended warranty program, or good will.''

The Alliance, NADA, Honda, RMA, MIC, Nissan, RVIA, Harley-Davidson, and Spartan provided comments on this issue.

The Alliance commented that the term ''warranty'' is a term of art that has significance for other statutes and regulations, so that it is important not to include in the definition factors that are not part of a manufacturer's existing warranty system, and it recommended three changes to NHTSA's proposed definition.

First, it asserted that the definition needs to specify that a warranty is provided by a manufacturer ''without separate consideration'' in order to capture what is considered to be a ''warranty'' in the ordinary course of business, and to exclude certain ''insurance-type'' products that can be purchased separately by an owner. This could reduce the number of warranty claims manufacturers must report, as it would appear to limit warranty reporting to the basic warranty offered with the vehicle, rather than include the optional warranties offered on motor vehicles and motor vehicle equipment. The Alliance was concerned with ''insurance type'' products that can be sold separately.

Second, the Alliance contended that the portion of NHTSA's proposed definition referring to ''repair, refund, or replace'' should be deleted because it is unclear and appears to include remedial activity, which the Alliance asserted is not part of the warranty process. It asserted that including reports on safety or emissions recall activity would contaminate the system and devalue its ability to predict possible defect trends.

Finally, the Alliance argued that the reference to ''dealers and distributors'' should be deleted because they do not have the authority to alter the terms of a manufacturer's warranty. This would clarify that repairs under independently provided service contracts are not reportable. Similar comments were made by NADA, Nissan, Harley-Davidson and MIC. Nissan added that reporting activities under a warranty offered by someone other than a ''manufacturer'' would not be appropriate and would create confusion and unnecessary complications. Harley-Davidson stated that a warranty claim based upon a warranty representation or extended service plan offered by a person other than entities over which the manufacturer has control should be excluded. In sum, the manufacturers argued that only those warranties authorized and offered by a manufacturer should be reported.

Thus, the Alliance suggested an alternate definition for ''warranty:''

Any written affirmation of fact or written promise provided without separate consideration in connection with the sale or lease of a motor vehicle or motor vehicle equipment by a manufacturer to a buyer or lessee that relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time (including any extensions of such specified period of time), but does not include any written materials related to a notification and remedy campaign conducted in accordance with Parts 573 and 579.5 of this Chapter.

As for the Alliance's first point, in our view, NHTSA's proposed definition already excludes third-party ''insurance type'' products. The definition states that the warranty has to be made ''by the manufacturer.'' Unless a manufacturer (including one of its subsidiaries or affiliates) has provided such products, it will not have to report on them. Furthermore, we see no difference between a warranty that is offered without separate consideration and one that does. We realize that there are warranties offered by the manufacturer for an additional price that offer more coverage than a basic warranty. Information on claims under such supplemental warranties would be valuable to NHTSA in spotting a potential defect.

The Alliance's second point concerns the latter part of our proposed definition of ''warranty'' which would include:

Any undertaking in writing in connection with the sale or lease by a manufacturer, distributor, or dealer of a motor vehicle or item of motor vehicle equipment to refund,

repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

This language, with only minor alterations to tailor it to the Vehicle Safety Act, was taken from the language of the Moss-Magnuson Act's definition of ''warranty.'' As stated in the preamble to the NPRM, we believe that most manufacturers should be familiar with this definition because of the Moss-Magnuson Act's applicability to their warranties. As a result, we disagree with the Alliance's assertion that this is unclear. The Alliance offers no basis for disputing the clarity of the second half of the definition of ''warranty'' that we proposed.

We agree with the Alliance that it would not be appropriate to report recall work that is accounted for under a manufacturer's warranty system. Manufacturers should remove those claims that relate only to work performed under a recall campaign that has been reported to NHTSA under 49 U.S.C. 30118 and 49 CFR Part 573 (or performed pursuant to emissions-related recalls under the Clean Air Act).

As for the Alliance's third point, we agree that manufacturer-provided warranties are distinguishable from other service-oriented products offered by dealers. A manufacturer is the person responsible for its warranty on its products. Reimbursement under a service contract offered by a dealer or a distributor not backed up by a manufacturer need not be reported to NHTSA. Accordingly, the final definition of ''warranty'' contains no reference to distributors or dealers.

RMA suggested that tire manufacturers should be required to report ''warranty adjustments,'' rather than warranty claims, to more accurately reflect the tire industry's practices and terminology. ''Warranty adjustments'' would be defined to mean ''payment or other restitution made by a tire manufacturer to a consumer, or to a dealer in reimbursement for payment or other restitution made to a consumer, pursuant to a warranty program, extended warranty program, or good will. In RMA's view, ''When NHTSA seeks warranty information from tire manufacturers, the data it seeks and reviews is ''warranty adjustment'' data in our terminology, not 'warranty claim' data as defined in the NPRM.'' We believe that RMA's comment is valid, and we are defining ''warranty adjustment'' as follows:

Any payment or other restitution, such as, but not limited to, replacement, repair, credit, or cash refund, made by a tire manufacturer to a consumer, or to a dealer in reimbursement for payment or other restitution to a consumer, pursuant to a warranty program offered by the manufacturer.

2. Reports Involving Warranty Claims

In the ANPRM, we indicated that we believed that information about warranty claims can often provide relevant information that indicates the possible existence of a safety defect. Manufacturers commented on this. After reviewing these comments and assessing the value of warranty claims data to the early identification of possible safety defects, we discussed in some detail in the preamble to the NPRM how, in the past, warranty information has helped us to detect defects. We have often found warranty claims to be more valuable than customer complaints because the customer has identified a problem, a repair facility (often a manufacturer-franchised dealer) has performed a repair, and the manufacturer has paid for some of or all the repair. This information is valuable to NHTSA as an early warning tool in assessing whether a defect potentially exists. The principal limit on the value is that after the expiration of the warranty (often three years or 36,000 miles), this information is no longer generated. However, at times these programs are extended when there are problems with the product and at times manufacturers also pay for repairs under ''good will'' programs. We have found that ''good will'' actions provide valuable information in that manufacturers may choose to address a perceived problem by extending or liberalizing the terms of a warranty rather than by conducting a full recall, or by formally extending the warranty period. In order to aid in the early discovery of potential defects, the agency believes that the number of good will claims should be reported along with more ''traditional'' warranty claims.

The NPRM would have required manufacturers of 500 or more vehicles annually and all child restraint system and tire manufacturers to report aggregated warranty claims data from the United States on certain specified components or systems and fire (as described below). We proposed defining ''warranty claim'' as ''any claim presented to a manufacturer for payment pursuant to a warranty program, an extended warranty program, or good will.'' Thus, warranty claim reporting would comprise the number of repairs and/or replacements performed free of charge under warranties, as well as those under formal or informal extended warranties and good will. We proposed to define ''good will'' as ''the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty.'' This can occur because the terms of the warranty have expired, or the issue is outside the terms of the warranty, for example, when the manufacturer pays or participates in voluntary buy-backs and Lemon Law buy-backs of vehicles or motor vehicle equipment.

One suggestion made in the comments was that manufacturers should only report on warranty claims that were paid by the manufacturer. We agree with this suggestion. Manufacturers receive some incomplete warranty claims and do not pay them. They generally do not retain information on warranty claims that are presented to them and not paid. Thus, unpaid warranty claims would not be within a manufacturer's database and a manufacturer cannot report information that it does not have. Furthermore, the TREAD Act precludes NHTSA from requiring manufacturers to maintain or submit records respecting information not in their possession. *See* 49 U.S.C. 30166(m)(4)(B). Since some manufacturers do not keep records on unpaid warranty claims, NHTSA is constrained from requiring them to do so. To address this issue, the final rule defines ''warranty claim'' as ''any claim paid by a manufacturer, including provision of a credit, pursuant to a warranty program, an extended warranty program, or good will.''

The Alliance, Nissan, and Spartan commented on the inclusion of good will in warranty claims. The Alliance noted that NHTSA would receive a substantial number of good will claims in warranty claims reports because many Alliance members use their warranty systems to process them and had no objection to reporting good will claims that are processed along with warranty claims through the warranty system. Spartan generally opposed reporting certain good will claims because, in its view, good will claims are not good indicators of a problem with a motor vehicle; it contended that claims processed for good will or ''customer satisfaction'' would not provide NHTSA with an accurate indication of the condition that necessitated the repair. It observed that a high percentage of claims it received for these purposes are based on factors involving subjectivity or customer perception, and when investigated, often result in no problem being found.

The Alliance did not support reporting good will claims processed outside the normal warranty system, such as by direct check reimbursement, because the burden to manually account for and report these claims would outweigh the value of this data. The Alliance would exclude vehicle buy-backs under state lemon laws from good will claims. Spartan raised burden issues as well.

The Alliance also suggested a definition for good will, which was ''the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, any part of which is paid for by the manufacturer through its warranty administration system, when the repair or replacement is not covered under warranty.''

The Alliance's and Nissan's recommendation of limiting good will claims to those processed through a manufacturer's warranty administration system would exclude good will claims based on direct check reimbursement from a manufacturer to an owner not tracked within a manufacturer's warranty administration system and good will claims paid by manufacturers that provide payments and credits to dealers and others but do not record good will claims in their warranty systems. Good will claims not administered through a company's warranty system provide information as valuable as good will claims that are administered through that process. We desire to capture as many good will claims as possible to ensure we have a complete database from which to identify potential defects.

ODI's experience indicates that most manufacturers capture good will claims within their warranty systems. It appears to us, therefore, that the burden of capturing outside good will claims will be limited. Furthermore, all companies must have some means to track their good will claims for financial tracking purposes. Consequently, even if the good will claims are not in a warranty administration system, ordinarily they would be in another computerized system that could be accessed and reviewed without significant difficulty. If they were not entered and maintained in a manner that would provide minimal specificity, they would not be reported. We cannot estimate the burden of such review, since the Alliance did not provide any information about which companies possess good will payments outside their regular warranty system or the number or percentage of such ''outside'' claims.

Therefore, based upon the foregoing we believe that the definition of ''good will'' should include all good will claims regardless where they are processed within the company. We are adopting our proposed definition of ''good will,'' adding the further clarification that the repair or replacement is one that is not covered by a safety recall. Thus, ''good will'' means:

> the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.

Several manufacturers suggested that NHTSA should clarify that it does not expect manufacturers to report lawsuits or claims for breach of warranty. We agree that the rule should be clarified to exclude lawsuits or claims for breach of warranty. As noted above, we are defining ''warranty claim'' as ''any claim paid by a manufacturer * * *.'' Thus, the definition does not include unpaid claims such as lawsuits or claims for breach of warranty. However, if a lawsuit or claim for breach of warranty is resolved with a monetary payment, it would become a ''warranty claim'' under our definition, and would have to be reported.

RVIA suggested that we establish a threshold number or percentage of claims relating to a particular critical system on a given model before any reporting is required. We discussed this concept in the ANPRM, but rejected it because we believe we may lose early information in the early warning stages and do not have the capability to set such thresholds.

RMA stated that not all good will claims will be captured in the categories that tire manufacturers must report on. Therefore, in order to capture all good will claims, RMA proposed the term ''customer satisfaction condition'' to capture those good will claims that do not fit within the categories prescribed by NHTSA. RMA suggested that:

> Tire conditions reported in the category ''customer satisfaction condition'' would include any tire not meeting customer expectations due to adverse operating conditions, cosmetic conditions, ride conditions, wear conditions, customer abuse, conditions not directly related to the tire (e.g. valve lead, bent rim), and the like.

RMA asserted that this category would cover all warranted and non-warranted (good will) adjustment conditions not included in the four component categories: tread, sidewall, bead, and other. Thus, RMA requested NHTSA to add this category to tire manufacturers' reporting obligation for warranty adjustment data. The RMA comments did not provide a clear basis for suggesting this additional reporting requirement, but it subsequently explained that this category would be used in instances where no specific tire failure was involved, such as for the three non-failed tires on a vehicle where the customer insisted on replacing all four tires when only one had failed.

We do not believe that data concerning tires with no failure condition or with cosmetic, ride, or wear concerns will be useful to the early detection of safety-related tire defects. Therefore, the ''customer satisfaction condition'' will not be adopted in the final rule. However, we emphasize that tire failure conditions attributed to ''adverse operating conditions'' or ''customer abuse'' should be counted in the appropriate category set forth in the rule. For example, to the extent that tire tread failures are attributed to road hazards or under-inflation in a manufacturer's warranty adjustment system, the incidents should still be counted under the tire ''tread'' component code.

L. Field Reports

As part of its defect investigations, ODI regularly requires manufacturers to provide ''field reports'' about alleged defects. These include communications received by a manufacturer from the manufacturer's staff, a dealer, an authorized service center, or others, regarding an alleged problem in or dissatisfaction with a product in use. They are usually prepared by someone with technical expertise. There are far fewer field reports than consumer complaints, although practices resulting in the generation of field reports vary widely among manufacturers. Field reports are not specifically mentioned in the TREAD Act, but were addressed in the ANPRM. In the NPRM, we proposed to require submission of the number of field reports, and the submission of certain categories of such reports, as ''other data'' under Section 30166(m)(3)(B).

1. Definition of ''field report''

The ANPRM asked for comments on an appropriate definition of ''field report.'' Two broad themes cut across industry responses. First, respondents stressed the importance of clearly and precisely defining the term ''field report.'' The Alliance requested that the term be defined as technical reports by technical staff involving one or more incidents in the field involving a covered vehicle system on a vehicle that had been sold. According to other respondents, the term has numerous meanings within the medium and heavy-duty truck industry as well as

among equipment manufacturers and is not well defined across the tire industry. We were told that the trailer industry, for example, does not use the term ''field reports.''

The second broad theme in the comments by manufacturers was a recommendation to limit the number and types of field reports to be reported to us. The Alliance would limit it to certain technical reports about an incident (or several similar incidents) that are prepared by technical representatives. The Alliance would exclude unverified reports regarding customer complaints that are passed through to the manufacturer without any technical analysis. Commenters in the tire industry and the heavy trucking industry indicated that many of the communications they refer to as field reports deal with sales, marketing and customer satisfaction programs, which they would exclude. We agreed with this.

In the NPRM, we concluded that the Alliance's suggested restriction of the definition to ''technical reports'' that are prepared by ''technical'' employees was not feasible. It would require a definition of ''technical'' and ''technical report'' and difficult, if not impossible, assessments of whether the author was a technical employee and whether the content amounted to a technical report, which could result in delays, under-reporting, and unnecessary burdens.

There was considerable discussion about whether we should require the reporting of field reports prepared by a dealer's technicians. The Alliance recommended including both types of reports in an early warning system. Some manufacturers, however, felt that reporting of dealer reports should not be required. We believe that it is important for us to receive information about such dealer reports received by manufacturers regarding potential defects because they are a valuable source of relevant information. Indeed, they are one of the primary bases upon which manufacturers become aware of potential defects in their products. We therefore proposed to require reporting of the cumulative number of field reports prepared both by manufacturers' employees or representatives and by dealers, including their employees, involving specified systems and components.

We also proposed to include in our definition of ''field report'' any document received by a manufacturer that was prepared by a person owning or representing one or more fleets of vehicles. For these purposes, a fleet would be defined as more than ten vehicles of the same model and model year. Such reports often contain data on multiple incidents involving vehicles used by delivery companies (e.g., FedEx, UPS), rental companies, trucking companies, police departments, and school districts. Fleet vehicles generally accumulate greater miles over a given period of time than non-commercial vehicles and therefore can serve as a valuable source of predictive information for early warning purposes. Most commenters did not dispute this. The few that did (Nissan and TMA) likened fleet reports to customer complaints. They did not demonstrate that fleet vehicles are not subject to extensive use. Therefore we are adopting it as proposed.

Other definitional issues raised by commenters were whether field reports should be limited to written communication and to ''non-privileged'' documents. Under the NPRM, reporting would be required with regard to documented communications (e.g., those in writing, entered electronically, or otherwise converted into a document in the broadest sense of the word). With respect to the issue of privilege, we recognized that a field report truly prepared in anticipation of litigation could be considered as work product, and thus ordinarily be exempt from production in litigation. We believed that the existence of any such reports should be indicated to us, even though privileged and work product documents would not have to be submitted.

We agreed that reports relating to sales, marketing, and dealer-manufacturer relations were not within the definition of field report.

Finally, in addition to proposing that manufacturers report the number of field reports, we proposed that manufacturers would have to submit copies of field reports prepared by their employees and representatives and by fleets. However, manufacturers would not have to submit copies of field reports prepared by dealers or dealer employees.

On the basis of these considerations, we proposed the following definition for ''field report:''

> A communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or by an entity that owns or operates a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced by that manufacturer, regardless of whether the problem is verified or assessed to be lacking in merit.

The Alliance, NADA, RMA, MIC, Ford, GM, Harley-Davidson, and Utilimaster provided comments on these issues.

The Alliance argued that the definition should be limited to reports about incidents that occur ''in the field,'' which, in its view, is generally understood ''to mean incidents involving vehicles in use by consumers and the public.'' Absent this clarification, the proposed definition could be viewed as requiring reporting of incidents involving pre-production prototypes, or results of pre-production consumer evaluation clinics. Harley-Davidson had a similar comment.

The Alliance also commented that the definition should state that subsequent internal correspondence about the field incident is not reportable as another ''field report.'' NHTSA should also state, according to the Alliance, that ''field report'' does not include a contact from a dealer seeking technical assistance from the manufacturer in conducting a repair. For these reasons, the Alliance suggested that ''field report'' be defined as:

> (a) A non-privileged technical report prepared by a manufacturer's technical staff involving (b) a single incident in the field or several similar incidents in the field, (c) a covered vehicle system, and (d) a vehicle (or vehicles) that has been sold to a purchaser for purposes other than resale.

We agree with the comment by the Alliance and Harley-Davidson that it is not our intent to include reports involving prototype vehicles and equipment within the ambit of field reports, and are adding the phrase ''produced for sale,'' which we find clearer than ''in the field.'' As for the Alliance's other recommendations, while ''internal correspondence'' might not fit within the definition of ''field report,'' there can be, and often will be, multiple field reports about a particular incident. The information contained in such subsequent reports can be very valuable in ascertaining whether a possible defect exists. As for contact from a dealer seeking technical assistance in a repair, reports on diagnostics would be included within the definition, but a document reflecting the manufacturer's assistance after the diagnosis when the dealer's question is how to perform a repair would not.

MIC suggested that NHTSA define ''field reports'' ''to include communications received by a manufacturer from the manufacturer's technical staff, a dealer, and authorized service center, or others, regarding an alleged problem in or dissatisfaction with a product in use.'' This is not as clear or as comprehensive as the NPRM

proposed definition, which covered the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced by that manufacturer. Also, the MIC formulation does not include the phrase ''regardless of whether verified or assessed to be lacking in merit.'' It is important that the scope of the definition be set forth inclusively and that a manufacturer not be allowed to avoid reporting by denying an underlying assertion. In the NPRM, we noted that we were reluctant to limit the definition to include only ''technical'' or ''technical reports'' because it would require us to define those terms and require an assessment whether the author was a technical employee and whether the content was a technical report, which could result in delays, under-reporting, and unnecessary burdens. *See* 66 FR 66205. With regard to the MIC comment, the term ''technical staff'' would be equally problematic, as it is not defined. In any case, there is no need to include the term, since the MIC comment would include reports from ''others.''

Other industry commenters asserted generally that the proposed definition of ''field report'' was overbroad and would include irrelevant and highly sensitive information of no value to early warning. The commenters expressed concern over the scope of information that would be considered a ''field report'' under the proposed definition. The comments suggested a belief that field reports would include dealer issues, personnel information, commercially sensitive information, proprietary information, privileged and non-privileged litigation materials and work product. For instance, NADA emphasized that the definition should not be construed to cover such dealer-to-manufacturer communications such as technician assistance, electronic vehicle reprogramming, service or parts sales/marketing, customer satisfaction reports, etc. RMA added that the field reports received by the tire industry are more like consumer complaints and contended that the agency has already recognized that consumer complaints are unreliable in judging or predicting tire performance; the comment asserted that the reporting of field reports would be overly burdensome to members of the tire industry, and of little or no benefit to the agency.

The definition of field report that we proposed was intended to capture the basic concept of field reports utilized by ODI for many years. In the course of defects investigations, ODI has obtained information on field reports from manufacturers on a routine and standard basis, pursuant to numerous information requests. These industry comments misconstrue what was covered by the proposal. For example, ''field report'' was not intended to (and, in our view, did not) cover every dealer-to-manufacturer communication. ''Field report'' did not cover routine parts requisitions, marketing, dealer operation and relationship issues, company personnel matters or consumer complaints (which are addressed elsewhere in the rule), and would not include requests for previously-distributed technical support documents, such as instructions on installations of specified parts. ''Field report'' also would not include requests for guidance on how to efficiently perform routine maintenance on difficult-to-access components, or simple requests for towing (without more). As provided by the proposed rule, we would require reporting on the numbers of field reports involving failure, malfunction, lack of durability, or other performance problems for the categories set forth. The comments have not demonstrated that this is inappropriate. With regard to the comment reflecting the belief that field reports would include dealer and personnel issues, we note that dealer-manufacturer issues that do not involve defined problems with vehicles are outside the definition of field report. We have included reports prepared by manufacturers' representatives because manufacturers' representatives in the field often are not employees of the manufacturers in a strict legal sense.

The Alliance argued that reports generated by employees and representatives of a manufacturer that have performed product evaluations or operated ''company-owned''' vehicles for personal use should not be considered as field reports. However, such reports often describe a problem or malfunction and can provide valuable information regarding possible defects. In fact, many manufacturers use them for that very purpose. Therefore, we have decided that if such reports relate to vehicles that were produced for sale, they are encompassed within the definition of field report.

Some manufacturers expressed concern that the production of field reports would require a costly and burdensome review of litigation files and compromise the work product exclusion. Ford and GM asserted that under the proposed definition of field reports, they would be required to produce hard copies of draft and final documents in their litigation files, which would intrude upon the work product exclusion. Furthermore, Ford argued that even if it were only required to report numbers, rather than produce hard copies of field reports in its litigation files, the reporting of these numbers would hamper the ability of car manufacturers to evaluate product liability cases and prepare for trial, since it would reveal case strategy and trial preparation information that would not be disclosed in the litigation itself. We disagree with Ford's assertion. Ford's assertion overstates the NPRM's coverage of litigation documents. Documents created for litigation, such as expert reports, are often not created by a manufacturer's employee or representative. Nevertheless, although we do not believe that the proposed definition would cause the range of problems asserted by Ford and GM, we are concerned about inhibiting the manufacturers' ability to consult with outside counsel. Therefore, we are specifying in the final rule that a field report ''does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint and relates to the vehicle, component, or system at issue in the litigation.''

Accordingly, the final rule defines ''field report'' as

> A communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or by an entity that owns or operates a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the vehicle, component or system at issue in the litigation.

2. Reporting and Submission of Field Reports

We proposed that the number of field reports involving specified components and systems from all sources be reported to us, and that NHTSA be provided with copies of all field reports from sources other than dealers.

With respect to numbers, we proposed that manufacturers of 500 or more motor vehicles and all manufacturers of child restraint systems and tires report the number of field reports originating in the United States regarding the same components and systems as they would be required to report for property damage claims,

consumer complaints, and warranty claims, as specified in the regulation. As with these categories of information, reporting would be done separately for each model and model year, for the ten previous model years. Consumer complaints that were merely forwarded to the manufacturer by the dealer without any comment or assessment would not have to be reported as field reports, but they would have to be reported as consumer complaints.

The proposal to submit copies of some field reports occasioned several comments. Under the NPRM, we proposed to require manufacturers to provide the number of field reports covering only certain vehicle systems or components, and fire. On the other hand, manufacturers would have to provide copies of all field reports that are generated by employees or representatives of the manufacturer or by representatives of fleets of the manufacturers' vehicles (but not from their dealers).

The Alliance objected to the breadth of the proposed document submittal, asserting that this would result in over 45,000 field reports provided to NHTSA from its members alone. The Alliance asked that any requirement that field reports be submitted be restricted to those covering the components and systems for which numbers reporting will be required. We are accepting this suggestion, and are adding language to paragraph (d) of Sections 579.21–579.25 to address this point.

The NPRM proposed to require manufacturers to submit copies of field reports that are generated by employees or representatives of the manufacturer or by representatives of fleets of the manufacturer's vehicles. The NPRM would not require copies of reports that are prepared by dealers or their employees. This reflects an effort to focus on what are now, in general, the more technically rich documents (i.e., the manufacturer—as opposed to dealer—generated documents) and to reduce burdens. Documents in which a manufacturer's representative or employee raises or analyzes a potential problem have often been valuable to ODI in identifying a defect. To clarify matters, the final rule adds language to paragraph (d) of Sections 579.21–579.25 to clarify that manufacturers are required to submit documents assessing possible problems and are not required to submit documents regarding non-safety related issues such as marketing, personnel information, dealer information, and issues such as dealer technician and roadside assistance calls. Thus, the only field reports that are to be submitted are those that contain ''an assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment that is originated by an employee or representative of the manufacturer * * *.''

The Alliance also objected to our proposal to require redaction of field reports. We proposed to require manufacturers to provide two copies of each field report covered by the submission requirements: one complete copy and one from which all personal information about individuals has been redacted. After reviewing the comments, we have decided not to adopt such a requirement. To the extent that redaction is needed, it will be performed by the agency.

Comments raised concerns about commercially sensitive and proprietary information. Utilimaster complained that competitors might use the information submitted to NHTSA against one another to gain a competitive edge. However, manufacturers can request confidentiality for information submitted to NHTSA pursuant to our regulation entitled *Confidential Business Information,* 49 CFR Part 512. Competitive harm is a basis for granting a request for confidentiality.

RMA argued that the field reports received by the tire industry are more like consumer complaints and contended that the agency has already recognized that consumer complaints are unreliable in judging or predicting tire performance. Its comment also asserted that the reporting of field reports would be overly burdensome to members of the tire industry, claiming that ''there is no system available to ''search out'' such a wide variety of documents, let alone place them in appropriate categories (tread, bead, sidewall, other),'' and concluding that ''assuming that a practical and reliable system could be designed, it would be very expensive to implement.'' RMA asked that tire manufacturers be excluded from the requirement to report numbers of field reports.

We disagree with RMA's comment that the agency has deemed consumer complaints unreliable, and that field reports would be of little or no benefit to the agency, as we discussed earlier in this document. However, we have reconsidered our tentative conclusion, as expressed in the NPRM, that tire manufacturers should be required to report numbers of field reports to NHTSA (the NPRM had already proposed to exclude tire manufacturers from providing copies of field reports). On the basis that tire industry field reports are more like consumer complaints, it would appear that the information that might be gained from such reports would be of limited value in detecting safety problems in tires. If a safety problem is developing in a line of tires, we believe that the problem is more likely to be detected through an increase in warranty adjustments than through field reports, which are better suited to detecting emerging problems in motor vehicles. Accordingly, the final rule does not require tire manufacturers to submit either numbers or copies of field reports.

In sum, we are convinced of the utility of field reports as indicators of potential safety defects, and that the definition, as modified and clarified, is properly scoped. Therefore, we are revising proposed paragraph (d) in each of Sections 579.21 and 579.22 to read as follows:

> * * * a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing an assessment of an alleged failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

These sections relate to field reports for passenger cars and medium-heavy vehicles including buses. Paragraph (d) of Sections 579.23 and 579.24 relating to field reports for motorcycles and trailers reads identically except that rollovers are not included. Paragraph (d) of Section 579.25 relating to field reports for child restraint systems reads identically except that neither fires nor rollover are included.

M. Customer Satisfaction Campaigns, Consumer Advisories, Recalls, or Other Activities Involving the Repair or Replacement of Motor Vehicles or Motor Vehicle Equipment

This aspect of the early warning proposed rule related to documentation that all manufacturers of motor vehicles and motor vehicle equipment would have to submit under proposed Section 579.5(b).

This requirement is based upon Section 30166(m)(3)(A)(ii), which provides for submission of information (derived from foreign and domestic sources) that concerns ''customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of

motor vehicles or items of motor vehicle equipment'' (we will use the term ''campaign'' at times hereafter collectively to refer to all such actions by the manufacturer). As we stated in the ANPRM, this new section is broader than 49 CFR 573.8 (2001)(which implements Section 30166(f)), which requires a manufacturer to provide copies of communications to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser regarding ''any defect'' including ''any failure or malfunction beyond normal deterioration in use, or any flaw or unintended deviation from design specifications, whether or not such defect is safety related.''

In the NPRM, we proposed to define the phrase ''customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment,'' to mean:

> Any communication by a manufacturer to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, or owner, whether in writing or by electronic means, relating to (1) repair, replacement, or modification of a vehicle, component of a vehicle or item of equipment, or a component thereof (2) the manner in which a vehicle or equipment is to be maintained or operated, or (3) advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

We included communications related to operation and maintenance because they may relate to a potential defect. For example, a warning sent to owners not to turn on the wipers when the windshield has snow on it may indicate a wiper defect.

The proposed definition would not include routine marketing documents or documents relating to surveys of owner satisfaction. It would include all notifications, product improvement or technical service bulletins, advisories, and other communications regarding the subject matter that are issued to, or made available to, more than one vehicle or equipment dealer, distributor, lessor, lessee, other manufacturer or owner involving any systems or components in the vehicle or equipment, not merely the specified components for which reports must be submitted regarding property damage claims, consumer complaints, warranty claims, or field reports. This would include any category of information relating to the replacement or repair of a vehicle or vehicle component, or the way a vehicle or vehicle equipment item is to be maintained or operated, whether or not there has been any determination by the manufacturer that these actions pertain to or are being undertaken because of a defect or a safety-related concern.

In our view, this requirement is similar to although somewhat broader than the notices, bulletins, and other communications that for years have been required to be submitted by 49 CFR 573.8 (2001). Under Section 573.8, a manufacturer might argue that a condition that was the subject of a communication to dealers or others did not rise to the level of a ''defect'' or ''malfunction,'' and that it therefore did not have to provide copies of such a communication to NHTSA. Under early warning reporting, it would have to provide these related notices regardless of whether a ''defect'' potentially was indicated.

Nevertheless, because of these similarities, we proposed to implement this aspect of early warning reporting by including it in the same section as current Section 573.8, which is being moved to a new Section 579.5. This new Section 579.5 would also apply to all manufacturers of vehicles and equipment, which are currently required to submit copies of similar communications to NHTSA on a monthly basis. We anticipate that there will be relatively few documents covered by this proposal that would not have been covered under Section 573.8. We also proposed to require a cover letter for each monthly submission of documents required to be submitted under proposed Section 579.5 that identifies each communication in the submission by name or subject matter and date.

If a communication falls within the category described in both Section 579.5(a) and Section 579.5(b), it will only have to be submitted once.

MEMA, SEMA, the Alliance, AIAM, NADA, and Utilimaster commented on the proposed definition. All asserted that the definition is too broad.

The Alliance stated that the information that NHTSA obtains under the existing Sections 573.5(c)(9) and 573.8 should be sufficient and would be '' * * * virtually all of the information proposed to be required by the proposed Part 579.5.'' NADA is also concerned that the definition is overly broad, noting that ''the purpose of Section 30166(m)(3)(A)(ii) of the TREAD Act was to require manufacturers to report on service or repair 'campaign' activities beyond those falling within Section 30166(f), not to require every day-to-day manufacturer-dealer service/repair/ and parts communication.'' NADA suggested that the definition be restricted to ''campaigns'' and that ''non-'Campaign' communications involving business information (sales promotions, financials, etc.), normal service and repair information, tools and equipment information, etc. should not be covered.'' NADA would also limit the information to ''safety-related issues,'' commenting that ''Clearly, 'campaign' communications involving radio tuning features or leather seating color fade should not have to be reported.''

We acknowledged the breadth of the definition in both the ANPRM and NPRM (*see* p. 66206), saying that '' * * * this new section is broader than 49 CFR 573.8 (2001) (which implements Section 30166(f) * * * .'' However, we also stated that ''the proposed definition would not include routine marketing documents or documents relating to surveys of owner satisfaction.'' *See* p. 66207.

The first part of the definition, covering repair or replacement of a vehicle or equipment was derived from 49 U.S.C. 30166(m)(3)(A)(ii).

The second part of the definition, ''the manner in which a vehicle or equipment is to be maintained or operated,'' could, as acknowledged in the preamble, cover a number of issues that are not necessarily safety-related. The Alliance, AIAM, Utilimaster, SEMA, and MEMA commented that this might require manufacturers to submit communications on a wide variety of topics that have no safety-related relationship. Utilimaster asserted that instructions to the owners either at delivery of the vehicle such as in an owner's manual or in a follow-up communication, should be omitted. It believes that the agency would become ''* * * an instructional manual repository requiring storage facilities of heroic proportions * * *.'' We agree with a concern expressed in the comment. We do not view the routine provision of instructional documents with new products as a ''communication'' of the kind that would assist in the identification of defects relating to motor vehicle safety. Ordinarily, manufacturers do not knowingly produce defective products and instruct owners in how to avoid triggering the defect. What may be important to safety under the rule are post-sale advisories sent to owners that may run counter to the instructions initially given, such as a change in recommended tire pressures, or a shortened maintenance schedule. MEMA recommended that ''the manner in which a vehicle or equipment is to be maintained and operated'' be revised to address only post-sale conditions and have the following inserted: ''(excluding materials such as promotional information, operating instructions, or

owner's manuals which accompany the vehicle or equipment at the time of first sale).'' We agree with the thrust of this recommendation.

SEMA and MEMA are concerned that equipment manufacturers would have to report many communications that would be of virtually no value. To address this, we are modifying the second part of the definition to apply to only those equipment manufacturers who produce child restraint systems. Instead of the phrase ''the manner in which a vehicle or equipment is to be operated,'' that we proposed, we are adopting the phrase ''the manner in which a vehicle or child restraint is to be operated.''

No one commented specifically about the third part of the definition, the phrase ''advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment,'' and we are retaining it in the final definition.

For the reasons stated above, the final rule contains the following definition of ''customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment:''

any communication by a manufacturer to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, or owner, whether in writing or by electronic means, relating to repair, replacement, or modification of a vehicle, component of a vehicle, item of equipment, or a component thereof, the manner in which a vehicle or child restraint system is to be maintained or operated (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale), or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

N. Components and Systems Covered by Reports.

As discussed in Section III.B above, we proposed five discrete vehicle categories, and are adopting four of them in the final rule, having consolidated buses with medium-heavy vehicles. We attempted to identify, for each category of vehicle, for child restraint systems, and for tires, those systems and components whose failures are most likely to lead to safety recalls. These are the systems and components on which it is most important that we obtain timely information regarding failures, as compared to failures that are not related to safety or those that rarely, if ever, lead to safety recalls.

In identifying these vehicle systems and components, we requested the Volpe National Transportation Systems Center (Volpe) to conduct an analysis of past defect recalls. For each category of vehicle, Volpe looked at, among others, the total number of defect recalls associated with various vehicle-specific systems and components, the number of vehicles covered by those recalls, the number of recalls influenced by ODI investigations, and the number of recalled vehicles influenced by ODI investigations.

The study provided information on different components and systems implicated in recalls for light vehicles, medium-heavy vehicles, buses, motorcycles, and trailers. A copy of the study, which includes a description of the methodology, is in the docket. The underlying data are in NHTSA's DIMS II database, the relevant portions of which can be searched by the public through the NHTSA website. The components and systems are identified below as part of the discussion on reporting requirements.

For light vehicles, we proposed to require manufacturers to separately report the number of problems/incidents related to steering, suspension, service brakes, parking brakes, engine and engine cooling system, fuel system, power train, electrical system, lighting, visual systems, climate control system including defroster, airbags (including but not limited to frontal, side, head protection, and curtains that deploy in a crash), seat belts (including anchorages and other related components), structure (other than latches), seats, engine speed control including throttle and cruise control, integrated child restraint systems, latches (door, hood, hatch), tires, wheels, trailer hitches and related attachments, and the number of incidents in which there was a fire. For incidents of death and injury only, if another system or component is allegedly involved or if the system or component is not specified in the claim or notice, the incident would be included, and ''other'' would be specified.

For medium-heavy vehicles and for buses/school buses, we proposed to require manufacturers to separately report the number of problems/incidents relating to steering, suspension, service brakes, parking brake, engine and engine cooling system, fuel system, power train, electrical system, lighting, visual systems, climate control system including defroster, airbags (including but not limited to frontal, side, head protection, and curtains that deploy in a crash), seat belts including anchorages and other related components, structure (other than latches), seats, engine speed control including cruise control, latches (door, hood, hatch), tires, wheels, trailer hitches and related attachments, engine exhaust system, the number of incidents in which there was a fire, and, for incidents of death only, if another system or component is allegedly involved or if the system or component is not specified in the claim or notice. Because manufacturers of medium-heavy vehicles and buses would be required to report problems with the same identified components, we have decided to consolidate them into a single category.

In the final rule, we have decided to reduce the burden upon light vehicle manufacturers by not requiring separate reports involving integrated child seat systems (which are now included in the definition of seats), or by requiring reporting on trailer hitches and climate control systems. We are also not requiring medium-heavy vehicle and bus manufacturers to report on climate control systems. As discussed below, however, both types of manufacturers will have to separately report incidents, etc., involving rollover.

For trailers, we proposed to require manufacturers to separately report the number of problems/incidents relating to suspension, service brakes, parking brakes, electrical system, lighting/horns/alarms, climate control systems (including fuel systems in camping/travel trailers), structure (other than latches), latches, tires, wheels, trailer hitches and related attachments, the number of incidents in which there was a fire, and, for incidents of death only, if another system or component is allegedly involved or if the system or component is not specified in the claim or notice. In the final rule, we are retaining all these proposed systems and components except for climate control systems.

Finally, for motorcycles, we proposed to require manufacturers to separately report the number of problems/incidents relating to steering, suspension, service brakes, engine and engine cooling system, fuel system, power train, electrical system, lighting, structure, engine speed control (including throttle and cruise control), wheels, tires, the number of incidents in which there was a fire, and, for incidents of death only, if another system or component is allegedly involved or if the system or component is not specified in the claim or notice. In the final rule, we are retaining all

these proposed systems and components.

With respect to reporting of incidents involving deaths and injuries, if the component or system identified in the claim or notice is other than a component or system for which reporting is specified, the manufacturer will enter the code ''98.'' If the component or system is not specified in the claim or notice (i.e., is unknown to the manufacturer), the manufacturer shall use the code ''99.'' (Other code numbers are discussed later.)

For incidents involving deaths and/or injuries, we have added a column with the heading of ''ID.'' Manufacturers must identify each separate incident with a unique, consecutive number. This will allow both ODI and the manufacturer to readily identify and refer to a specific incident. This will be particularly useful in those rare cases in which a manufacturer needs to update the incident report (as discussed below).

We proposed definitions for many of the systems and components for which reporting would be required. While we believed that these definitions were straight forward and self-explanatory, we requested comments on their accuracy and completeness. In some instances, we did not propose definitions because the need for a definition had not been clear, based on the ANPRM. However, in light of the comments on the NPRM requesting greater specificity, we are setting forth definitions for each category for which reporting will be required. In some cases, these are based on definitions recommended by the Alliance in its comments.

01. We did not propose a definition for ''Steering System'' in the NPRM. For the final rule, we have defined ''Steering System'' to mean

> all steering control system components, including the steering system mechanism and its associated hardware, the steering wheel, steering column, steering shaft, linkages, joints (including tie-rod ends), steering dampeners, and power steering assist systems. This term includes a steering control system as defined by FMVSS No. 203 and any subsystem or component of a steering control system, including those components defined in FMVSS No. 204. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This definition generally follows the language suggested by the Alliance. It should be noted that the Alliance recommended joining steering, suspension, and wheels together in a single category, believing that the systems overlap. While we recognize that the three areas are related, we believe they are more properly subdivided into discrete categories that can be analyzed separately. Otherwise, unusual problems in one area might be masked by normal problem experience in the other areas.

02. ''Suspension System'' means

> all components and hardware associated with a vehicle suspension system, including the associated control arms, steering knuckles, spindles, joints, bushings, ball joints, springs, shock absorbers, stabilizer (anti sway) bars, and bearings that are designed to minimize the impact on the vehicle chassis of shocks from road surface irregularities that may be transmitted through the wheels, and to provide stability when the vehicle is being operated through a range of speed, load, and dynamic conditions. The term also includes all electronic control systems and mechanisms for active suspension control, as well as all associated components such as switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.) and mounting elements (such as brackets, fasteners, etc.).

This is essentially the definition that we proposed. Our definition as adopted incorporates the Alliance recommendation, except that, as noted above, we have divided steering, suspension, and wheels into three separate categories. We have also expanded this definition slightly to include electronic control systems and mechanisms for active suspension control, as well as all associated components such as switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

03, 04. We did not propose a definition of ''Service Brake System'' in the NPRM. After reviewing the Alliance's suggested definition, we have decided that this term will mean

> all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including the foundation braking system, such as the brake pedal, master cylinder, fluid lines and hoses, braking assist components, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135. This term also includes systems and devices for automatic control of the brake system such as antilock braking, traction control, stability control, and enhanced braking. The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This definition is similar to that suggested by the Alliance, except that the parking brake has been placed in a separate category.

As discussed above, manufacturers of medium-heavy vehicles, buses, and trailers must subdivide their reports on service brake system issues into ''hydraulic'' and ''air'' brake systems. Code 03 should be used to refer to hydraulic service brakes on these vehicles and all service brake reports on light vehicles and motorcycles. Code 04 should be used to refer to air service brake systems on medium-heavy vehicles, buses, and trailers utilizing air service brakes or air-over-hydraulic brake systems. If a medium-heavy vehicle, bus, or trailer has a type of service brake system not readily categorized as an ''air'' or ''hydraulic'' brake system (e.g., electric brakes), the manufacturer should indicate hydraulic service brakes on its report (Code 03).

05. We are adopting the definition we proposed for ''Parking Brake,'' with certain revisions recommended by the Alliance. ''Parking Brake'' means

> a mechanism installed in a motor vehicle which is designed to prevent the movement of a stationary motor vehicle, including all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This term does not include automatic transmission interlock components or pawls. Those components are part of the power train, which is addressed separately. Contrary to the Alliance's suggestion, we believe that the function and performance of the parking brake is sufficiently distinct to warrant separate reporting, even though certain elements of the service brake system may be shared by the parking brake. Where there is doubt, the manufacturer should attribute the incident to the vehicle's service brake system.

06. We did not propose a definition for ''Engine and Engine Cooling.'' The Alliance contended that the category is unneeded because incidents that would be reported under it would be reported under other categories. The Alliance asserted, however, that if this were to be maintained as a separate category, the definition needs to clarify where the fuel system ends and the engine begins. To do so, we are defining ''Engine and Engine Cooling'' to mean

> the component (e.g., motor) providing motive power to a vehicle, and include the exhaust system (including the exhaust emission system), the engine control unit, engine lubrication system, and the underhood cooling system for that engine. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

07, 08, 09. We did not propose a definition for ''Fuel System'' in the NPRM. However, we have developed a definition based on the Alliance's recommendation. ''Fuel System'' means

all components used to receive and store fuel, and to transfer fuel between the vehicle's fuel storage, engine, or fuel emission systems. This term includes, but is not limited to, the fuel tank and filler cap, neck, and pipe, along with associated piping, hoses, and clamps, the fuel pump, fuel lines, connectors from the fuel tank to the engine, the fuel injection/carburetion system (including the fuel injector rails and injectors), and the fuel vapor recovery system(s), canister(s), and vent lines. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

For medium-heavy vehicles and buses, manufacturers must report separately for vehicles powered by gasoline (07), diesel (08), and other (09) types of fuel. For light vehicles and motorcycles, all fuel system reports shall be coded as 07.

10. We are defining ''Power Train'' to mean

the components or systems of a motor vehicle which transfer motive power from the engine to the wheels, including the transmission (manual and automatic), gear selection devices and associated linkages, clutch, constant velocity joints, transfer case, driveline, differential(s), and all driven axle assemblies. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This was essentially the definition we proposed. The Alliance agreed with it, but suggested adding the clarifying exclusion that it ''does not include any component of the suspension or steering system.'' We believe that this is unnecessary, as neither the suspension nor the steering system ''transfer motive power from the engine to the wheels.'' For consistency with other definitions, as discussed above, we are adding a reference to ''all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).''

11. We did not propose a definition of ''Electrical System.'' We are adopting the definition suggested by the Alliance, except that we are adding a specific reference to the ignition system, and, for consistency, a reference to ''all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).'' Therefore, ''Electrical System'' means

any electrical or electronic component of a motor vehicle that is not included in one of the other enumerated reporting categories, and specifically includes the battery, battery cables, alternator, fuses, and main body wiring harnesses of the motor vehicle and the ignition system, including the ignition switch and starter motor. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

12. We did not propose a definition of ''Exterior Lighting'' in the NPRM. For clarity, we are defining ''Exterior Lighting'' to mean

all the exterior lamps (including any interior-mounted center highmounted stop lamp if mounted in the interior of a vehicle), lenses, reflective systems, and associated components of a motor vehicle, including all associated switches, control units, connective elements (such as wiring harnesses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

The Alliance recommended not including a category regarding lighting as a separate component/system and was concerned about how, if included, ''lighting'' would be distinguished from ''Electrical System.'' This definition addresses the questions posed by the Alliance. Compare with Item 11 above.

13. We proposed a definition of ''Visual Systems'' which we are calling ''Visibility'' in the final rule. Visibility means

the systems and components of a motor vehicle through which a driver views the surroundings of the vehicle including windshield, side windows, back window, and rear view mirrors, and systems and components used to wash and wipe windshields and back windows. This term includes those vehicular systems and components that can affect the ability of the driver to clearly see the roadway and surrounding area, such as the systems and components identified in FMVSS No. 103, 104, and 111. This term also includes the defogger/defroster system, the heater core, blower fan, windshield wiper systems, mirrors, windows and glazing material, heads-up display (HUD) systems, and exterior view-based television systems, but does not include exterior lighting systems which are defined under ''Lighting.'' The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

The Alliance suggested that it was not necessary to establish this as a separate code. However, the components and systems covered under this definition, encompassing wipers, washers, and defrosters as well as the windows, have often been the subject of defect investigations and recalls, and problems in this area should be reported.

14. We did not propose a definition for ''Air Bags,'' but have provided one here for clarity. The definition incorporates the definition suggested by the Alliance, but is somewhat broader. We did not intend to limit the specific definition to relate only to ''Air Bags,'' but also to address all automatic safety restraint systems. Therefore, for purposes of this rule, ''Air Bags'' means

an air bag or other automatic occupant restraint device (other than a ''seat belt'' as defined in this subpart) installed in a motor vehicle that restrains an occupant in the event of a vehicle crash without requiring any action on the part of the occupant to obtain the benefit of the restraint. This term includes inflatable restraints (front and side air bags), knee bolsters, and any other automatic restraining device that may be developed that does not include a restraining belt or harness. This term also includes all air bag-related components, such as the inflator assembly, air bag module, control module, crash sensors, and all hardware and software associated with the air bag. This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

15. We did not propose a definition for ''Seat Belts,'' but one is now provided for clarity. We have incorporated the definition suggested by the Alliance. ''Seat Belts'' means

any belt system, other than an air bag, that may or may not require the occupant to latch, fasten, or secure the components of the seat belt/webbing based restraint system to ready its use for protection of the occupant in the event of a vehicle crash. This term includes the webbing, buckle, anchorage, retractor, belt pretensioner devices, load limiters, and all components, hardware and software associated with a non-automatic seat belt system addressed by FMVSS Nos. 209 or 210. This term also includes integrated child restraint systems in vehicles, and includes any device (and all components of that device) installed in a motor vehicle in accordance with FMVSS No. 213, which is designed for use as a safety restraint device for a child too small to use a vehicle's seat belts. This term includes all vehicle components installed in accordance with FMVSS No. 225. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

16. We are adopting a definition of ''Structure,'' as

any part of a motor vehicle that serves to maintain the shape and size of the vehicle, including the frame, the floorpan, the body, bumpers, doors, tailgate, hatchback, trunk lid, hood, and roof. The term also includes all associated mounting elements (such as brackets, fasteners, etc.)

The Alliance did not believe a separate category for ''structure'' was necessary. However, we believe that it is important to obtain information about problems with a vehicle's structure, since many other systems and components attach to the structure.

17. We are adopting a definition of ''Latch'' to mean

a latching, locking, or linking system of a motor vehicle and all its components fitted to a vehicle's exterior doors, rear hatch, liftgate, tailgate, trunk, or hood. This term includes, but is not limited to, devices for the remote operation of a latching device such as remote release cables (and associated components), electric release devices, or wireless control release devices, and includes all components covered in FMVSS No. 206. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

As a modification of the definition we proposed, we have added ''locking'' and ''linking'' to ''latching,'' since latching systems, as a general rule, include linking and locking components. As modified, this definition incorporates the recommendations made by the Alliance.

18. We are adopting the definition we proposed for ''Vehicle Speed Control,'' which means

the systems and components of a motor vehicle that control vehicle speed, either by command of the operator or by automatic control, including, but not limited to, the accelerator pedal, linkages, cables, springs, speed control devices (such as cruise control) and speed limiting devices. This term includes, but is not limited to, the items addressed by FMVSS No. 124, and includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

19. We did not propose a definition of tire, but are adopting one in the final rule. ''Tire'' means

an item of motor vehicle equipment intended to interface between the road and a motor vehicle. The term includes all the tires of the vehicle, including the spare tire. This term also includes tire valves, tubes, and tire pressure monitoring and regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

20. We did not propose a definition of ''Wheel'' in the NPRM. For clarity, we are defining the term ''Wheel'' to mean

the assembly or component of a motor vehicle to which a tire is mounted. The term includes any item of motor vehicle equipment used to attach the wheel to the vehicle, including inner cap nuts and the wheel studs, bolts, and nuts.

The Alliance recommended incorporating the ''Wheel'' component with ''Steering'' and ''Suspension,'' but, as discussed above, we believe that it is more appropriate to separate these categories.

21. We did not propose a definition of ''Trailer Hitch.'' By ''Trailer Hitch'' we mean

all coupling systems, devices, and components thereof, designed to join or connect any two motor vehicles. This system also includes any associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

We are requiring reports on trailer hitches only for medium-heavy vehicles/buses and trailers, even though some light vehicles contain such hitches. Manufacturers of light vehicles and motorcycles are not required to report on trailer hitches because most of the hitches for these vehicles are installed by dealers or installed by the owner as an aftermarket add-on. As such, they are equipment items. No commenter addressed this component.

22. We did not propose to define ''Seats.'' By ''Seats,'' we mean

all components of a motor vehicle that are subject to FMVSS Nos. 202, 207, and S9 of 209, including all electrical and electronic components within the seat that are related to seat positioning, heating, and cooling. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

This definition is based on the definition provided by the Alliance.

23. The Alliance did not agree with our proposed definition of ''fire,'' and suggested that ''fire'' be defined as ''a rapid, persistent chemical change that releases heat and light and is accompanied by flame, especially the exothermic oxidation of a combustible substance.'' We had proposed that ''fire'' be defined as ''combustion of any material in a vehicle as evidenced by, but not limited to, flame, smoke, sparks, or smoldering.'' The Alliance commented that ''sparks'' are the normal byproduct of any rotating electrical component and which occur in normal vehicle operation, such as the working of a starter motor. Moreover, the definition would include complaints of ''smoke,'' and ''smoldering,'' which the Alliance does not believe need to be tracked for early warning purposes. We are retaining these words. Smoke commonly results from burning. We construe ''smoldering'' as burning with little smoke and no flames. We construe ''sparks'' as incandescent particles thrown off from a burning substance. *See The American Heritage Dictionary.* Each of these conditions is indicative of a fire or a potential fire. The type of sparking for which the Alliance provided examples generally occurs as a part of normal vehicle operation and is generally not visible to the driver or passengers. We deem it highly unlikely that this type of spark will be reported to the manufacturer. Therefore, in the final rule, we are defining fire much as we proposed it, except that we are adding ''or burning'' after ''combustion.'' ''Fire'' means ''combustion or burning of any material in a vehicle as evidence by, but not limited to, flame, smoke, sparks, or smoldering.''

24. We have decided to add an additional reporting category, ''rollover.'' The failure of various components can lead to a rollover, so none of the other specified systems and components is likely to capture all claims, notices, complaints, etc. about rollover. (Moreover, some claims of rollover assert that the overall design of the vehicle in question is defective, without referring to any particular system or component.) Also, it is noteworthy that one major impetus for the early warning provisions in the TREAD Act was the lack of information available to NHTSA about incidents, including fatal crashes, involving rollover after a tire tread separation. To avoid corrupting the data, we are limiting this category to single-vehicle crashes. Moreover, it will apply only to light vehicle and medium-heavy vehicles including buses.

Although NHTSA has not previously defined ''rollover,'' FMVSS No. 301, *Fuel System Integrity,* includes a static rollover test (S6.4) in which a vehicle is rotated on its longitudinal axis to successive increments of 90 degrees. This forms the basis for our defining ''rollover'' for this rule as ''a single-vehicle crash in which a vehicle rotates on its longitudinal axis to at least 90 degrees, regardless of whether it comes to rest on its wheels.'' This will encompass situations in which a vehicle rolls over on its side as well as those in which it rolls over on its roof.

With regard to child restraint systems, ODI conducted a review to identify the components whose failures have led to most of the recalls. Based on this review, which has been placed in the docket, we proposed to require manufacturers to separately report the number of problems/incidents relating to the buckle and restraint harness, handle, seat shell, and base. We proposed definitions for these components, except for the handle.

JPMA commented that the term ''pads'' (restraint pads) and ''padding'' were used in two of our proposed definitions, and asked that these terms be stricken since these components are rarely associated with a safety risk and are often the subject of complaints unrelated to safety. We agree with JPMA, and the final definitions do not include these terms. Our own review of the term ''shield'' shows that it appears in the definitions of both ''buckle and restraint harness'' and ''seat shell.'' As only one is necessary, we are including ''shield'' in the definition of ''buckle and restraint harness'' and specifically excluding it from ''seat shell.''

With respect to tires, we proposed to follow the suggestions of RMA in its comments, and by and large the final rule does so. Fatality and injury reporting will include the information required of manufacturers of other products, and will also include the damage claimed, the vehicle manufacturer, the vehicle make, model and model year, the tire size, the tire line, and the TIN.

We specifically requested RMA to provide its comments on appropriate definitions of the terms ''bead,'' ''common green,'' ''tire line,'' ''sidewall,'' ''SKU,'' and ''serial code'', and it did so. We have adopted those suggestions.

''Bead'' is defined as

> all the materials in a tire below the sidewalls in the rim contact area, including bead rubber components, the bead bundle and rubber coating if present, the body ply and its turn-up including the rubber coating, rubber, fabric, or metallic bead reinforcing materials, and the inner-liner rubber under the bead area.

The proposed definition of ''common green'' has been modified to read as follows:

> Tires that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.

''Tire line'' is defined as ''the entire name used by a tire manufacturer to designate a tire product, including all prefixes and suffixes as they appear on the sidewall of the tire.''

The term ''sidewall'' includes ''The sidewall rubber components, the body ply and its coating rubber under the side areas, and the inner-liner rubber under the body ply in the side area.''

''SKU (Stock Keeping Unit)'' is defined as ''the alpha-numeric or numeric designation assigned by a manufacturer to a tire product.''

We also asked for a definition of ''serial code,'' a term RMA used on its draft warranty and property damage claim reporting forms. Upon further consideration, and in order to use a term familiar to both NHTSA and the industry, RMA will use the term ''tire type code'' on these forms. This corresponds to the third grouping of identification requirements as specified in 49 CFR 574.5(c), and, therefore, no further identification is needed in this rule.

Finally, we are adopting RMA's recommended definition for ''tread'' or ''crown.'' That term means:

> All materials in the tread area of the tire, including the rubber that makes up the tread, the subbase rubber, when present, between the tread base and the top of the belts, the belt material, either steel and/or fabric, and the rubber coating of the same, including any rubber inserts, the body ply and its coating rubber under the tread area of the tire; and the inner-liner rubber under the tread.

For property damage claims and warranty adjustments, we proposed to require tire manufacturers to separately report the number of problems/incidents relating to tread, sidewall, and bead. For incidents involving death, if another component is allegedly involved, or if the component is not specified in the claim, the incident will still have to be reported.

RMA proposed a format for submitting data concerning total tire production, warranty production, number of property damage claims and number of adjustments. This sample format is shown on the document filed in the docket, NHTSA 2001–8677–102, Attachment B–2. NHTSA accepts this suggestion from RMA for submitting production, property damage claims, and warranty adjustment data. However, we do not want tire manufacturers to submit adjustment rate and property damage rate data as shown on the RMA sample format. Therefore, the template that will be adopted for tire manufacturers to submit data will be congruent with the RMA suggestion, but will not include rate data.

RMA also suggested that we require tire manufacturers to provide a list of ''common green'' tires. This is needed so that we are aware of various tire lines, including house brands, that are of identical construction, so we can get a fuller picture as to the failure experiences of relevant tires. We have therefore added a new Section 579.26(d) to require submission of such a list with each quarterly report.

Consistent with the approach taken in connection with the Uniform Tire Quality Grading Standards (UTQGS), 49 CFR 575.104, we did not propose to require reporting of warranty adjustments, property damage claims, and field reports with respect to tires for which total annual production of the same design and size is 15,000 or less. RMA did not comment on this. After further consideration, we have decided that simply establishing a 15,0900 tire threshold would raise too many difficult issues that would require additional interpretation. We will accomplish the same objective, however, by simply referencing the ''Application'' provisions of the UTQGS, 49 CFR 575.104(c)(1), which contain an exception for, among other things, ''limited production tires'' as defined in Section 575.104(c)(2).

RMA also commented that the early warning proposed rule would cover tires for all motor vehicles, but that ''the obligation to submit early warning information for non-passenger and light truck tires presents a host of issues not addressed in the NPRM, requiring further information from the industry.'' In separate comments submitted to the docket (Comment NHTSA 01–8677–101), RMA addressed an early warning reporting system for these tires, ''which suggests that, at the very least, the implementation of the early warning reporting requirements for these tires be delayed for at least one year.'' As an example, RMA referred to ''medium radial truck tires,'' and commented that this category comprises new and retreaded tires (which may have a different manufacturer from the tire casing). Warranty periods for these tires vary according to contract terms, and the tires are professionally serviced. RMA would exclude these tires from all reporting except for incidents of death.

We concur with RMA's view that this segment of the tire industry requires further study, which may warrant regulation for early warning purposes in a manner that differs from that accorded tires for other motor vehicles. Accordingly, we are adopting the RMA recommendation to only require full reporting under Section 579.26(a) and (c) for passenger car tires, light truck tires, and motorcycle tires. However, reports about incidents involving deaths must be submitted for all tires.

O. Updating of Information

Several commenters addressed the issue of whether NHTSA will require updating of reports of incidents involving death or injury if there are changed circumstances or if the manufacturer was not aware of certain relevant information at the time the report was initially submitted to us. We are adopting Section 579.28(f) to address this issue. We recognize the burden associated with tracking the progress of claims and litigation to identify a broad range of newly

discovered information. However, some information that may not be known to the manufacturer at the time of the initial report is so vital that we need to receive it if it subsequently becomes available. If a manufacturer indicates in its initial report that no system or component has been identified in a claim or notice and later becomes aware that a specified system or component allegedly contributed to the incident, the manufacturer must submit a supplemental report regarding that incident in the report covering the reporting period in which the information was obtained.

In addition, if a vehicle manufacturer is not aware of the VIN, or a tire manufacturer is not aware of the TIN, at the time the incident is originally reported to us, the manufacturer must submit a supplemental report regarding that incident in the report covering the reporting period in which the VIN or TIN is identified. No other updating will be required. For example, if a manufacturer has reported an incident to us involving an injury and the injured person later dies, we will not require a supplemental report. This last scenario was specifically identified by several commenters as possibly creating a significant burden.

P. One-Time Reporting of Historical Information

In the NPRM, we expressed concern that, as early warning reporting begins, receipt by NHTSA of information from the first several reporting periods would not provide sufficient information to allow us to identify safety defect trends unless we could compare it to similar information about earlier periods. To maximize the usefulness of the data from the onset of reporting, we want to ''seed'' our data base with historical data rather than merely letting it accumulate from the time of the initial report. Therefore, we proposed that, no later than the date that a manufacturer must submit its first reports under the final rule, which we expected to be April 30, 2003, each manufacturer would also submit, on a one-time basis, corresponding reports reflecting the same information required by paragraphs (a) and (c) in each of proposed Sections 579.21 through 579.27, providing information on production and on the numbers of property damage claims, consumer complaints, warranty claims, and field reports, as applicable, that it received in each calendar quarter from January 1, 2000, to December 31, 2002, for each model and model year vehicle manufactured in model years 1994 through 2003, and for child restraint systems and tire manufactured on or after January 1, 1998. Each report would identify the alleged system or component related to the claim, incident, etc., as would the reports for the current reporting period.

We requested comment on whether the time frame for the proposal is appropriate, and whether we should exclude historical data for deaths and injuries. Many commenters objected to this proposal on the grounds that it would be excessively burdensome. A discussion of these comments and our estimate of the burdens of several alternative approaches is contained in the Final Regulatory Evaluation (FRE) for this rulemaking, which has been placed in the docket. We note, however, that some manufacturers erroneously believed that we had proposed to require submission of copies of the older field reports. We had not done so.

RMA objected to the proposal that tire manufacturers provide data, on a quarterly basis, for a period commencing January 1, 1998. It suggested yearly production information beginning with that date, and commented that ''for property damage claims and warranty adjustments, an accumulation of all claims and adjustments received in years 2000 through 2002 should be reported for each tire line and size for each year of production.'' In our view, yearly data are not sufficient, since the purpose of obtaining this historical data is to allow us to make comparisons with currently quarterly information submitted in the first several years of this program. And simply dividing the yearly totals by four is not adequate, since there are often seasonal differences, particularly for tires.

We have thoroughly considered the comments on this issue and, in order to minimize the burden upon manufacturers, have decided to significantly reduce the amount of historical information to be submitted under this provision. We will not require the submission of the numbers of historical consumer complaints (which the commenters deemed most burdensome) or property damage claims. In addition, in response to requests from several commenters, we have delayed the date for submission of this information so that it is due one month after the initial quarterly report (i.e., on September 30, 2003).

The final rule requires that a manufacturer shall file 12 separate reports, providing information on the number of warranty claims or adjustments, and the number of field reports that it received in each of the 12 calendar quarters from April 1, 2000 to March 31, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicles designated as 2004 models), for child restraint systems manufactured on or after April 1, 1998, and for tires manufactured on or after April 1, 1998. The manufacturers generally did not object to providing warranty data, and we believe that field reports will provide the richest data. We emphasize again that copies of these older field reports need not be submitted.

V. When Information Must Be Reported

Section 30166(m)(3)(A) and (B) state that the information covered by those paragraphs shall be reported ''periodically or upon request'' by NHTSA. Section 30166(m)(3)(C) states that the information covered by that paragraph shall be reported ''in such manner as [NHTSA] establishes by regulation.'' The ANPRM and NPRM discussed several possibilities.

A. Periodically

The statute authorizes us to require periodic reporting of information related to the early warning of defects. In the ANPRM, we discussed the options of reporting on bases of ''information-as-received,'' monthly, and quarterly, depending upon the gravity of the information involved (e.g., we suggested the possibility that information about deaths allegedly caused by safety defects might justify a more frequent period of reporting than other types of information). Commenters generally objected to reporting information ''as received.'' There was no objection to reporting on a quarterly basis, the same as is required for defect campaign reporting under 49 CFR 573.6.

In the NPRM, we tentatively concluded that, with respect to statistical reports, an ''as received'' or even monthly basis would impose too great a burden and would be unlikely to provide significant timeliness benefits. A quarterly reporting period appeared to be more appropriate. We noted that the burden upon manufacturers would be lessened if a common reporting date were adopted for the submission of all statistical early warning information that we will require ''periodically.'' However, the NPRM requested comments on whether we should require reporting six times per year.

In the NPRM, we proposed that virtually all the early warning information, including copies of required field reports, be submitted to us not later than the 30th day of the calendar month following the end of the reporting period. We believed that 30 days would be sufficient to compile this

information, but we requested comments on whether a shorter or longer period would be appropriate. We also proposed that all communications that would be required by Section 579.5 (those presently required by 49 CFR 573.8 and those that would be covered by the early warning rule, i.e., communications relating to a customer satisfaction campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicles or equipment) be submitted to us monthly, within 5 working days of the end of the month, as is currently required for submissions under Section 573.8.

Several commenters asked for more time before the reporting requirements would take effect. For example, the Alliance suggested that the first reporting quarter should be one year after the final rule (including any possible modifications adopted pursuant to petitions for reconsideration) is issued.

RMA commented that tire manufacturers ought to be permitted to report within 60 days after the last day of the quarterly reporting period rather than 30 days. RMA noted that production may come from numerous plant locations, property damage claims from specific files which may not be in one location, and warranty adjustments from totally different files. The manufacturer must then compile the data and load it into a program or programs that will compare the information and match the data to the appropriate tire line and size. According to RMA, ''this process will take many weeks.'' To require submission of data within 30 days ''will represent an unreasonable burden on the tire industry.'' RMA stated that in the third quarter of calendar year 2001, its tire manufacturer members ''collectively received almost 450,000 warranty adjustments and property damage claims, representing over 100,000 different stock keeping units (SKUs).'' Some other commenters asked for 45 days to submit the reports, while others believed that 30 days was sufficient (particularly if they did not have to submit historical data on the same date).

After reviewing these comments, we have decided to adopt the quarterly reporting that we proposed.

While we believe that most manufacturers will be able to have systems in place to accumulate and store the information required to be submitted under this rule within six months, in order to accommodate those manufacturers that may be less prepared, we have decided to defer the first reporting period to the second quarter of 2003.

We also believe that it is reasonable to require reports to be submitted not later than 30 days after the end of each calendar quarter. After all, the entire point of these rules is to obtain early warning information, and we want to minimize any unnecessary delays in our review of this information. However, so that both manufacturers and NHTSA may become accustomed to the collation, transmission, and storage of data, the first three reports (i.e., those for the final three calendar quarters of 2003) will be due two months after the end of the reporting period. Thus, the reports for the quarters that end June 30, September 30, and December 31, 2003, will be due, respectively, not later than August 31 and December 1, 2003 (November 30, 2003, being a Sunday), and February 29, 2004. Thereafter, reports will be due within 30 days of the end of the reporting period; the report for the first quarter of 2004 that ends on March 31 will be due not later than April 30, 2004. Copies of other documents that must be transmitted to NHTSA (relating to customer satisfaction campaigns, etc., as described in Section 579.5(b)), will be due within 5 working days after the end of each month beginning with April 2003.

B. Upon NHTSA's Request

The TREAD Act also requires all manufacturers to provide information within the scope of the early warning provision when we request it. Such a requirement complements our pre-TREAD authority to request safety-related information as part of our investigations. Under this new authority, the information need only relate to preliminary investigative activities and need only be of such a nature that it may assist us in the identification of safety-related defects. Thus, we plan to request additional information from manufacturers if the information in the periodic reports suggests that there may be a possible problem. These inquiries would not be formal investigations, such as Preliminary Evaluations and Engineering Analyses now conducted by ODI.

C. One-Time Historical Report

We had proposed in the NPRM that this historical data would be due on the date that the first quarterly report was due, which we tentatively assumed would be April 30, 2003. However, to reduce the burden on manufacturers, we have decided to establish the due date for that submission as three months after the end of the first quarter covered by the rule, which will be September 30, 2003. This will allow manufacturers to spread their workload and to devote their full attention to preparing their reports for the first regular reporting period, which will be August 31, 2003.

VI. The Manner and Form in Which Information Will Be Reported

Section 30166(m)(4)(A)(iii) requires us to specify ''the manner and form of reporting [early warning] information including in electronic form.''

In the ANPRM, we discussed the possibility of using spreadsheets in a specified format with separate reports of the numbers of various categories of information (e.g., claims/notices of deaths and injuries, consumer complaints, warranty claims, field reports) along with other information (such as production volumes) by make, model, model year, and by component (we would specify which components). We would then be able to utilize a computer to identify aggregate numbers, rates (using production data), or unusual trends in each of these categories. This would obviate the need for manufacturers to provide us with their warranty or claims codes or to make significant revisions to their current coding procedures.

RMA suggested that we simply state that information shall be formatted by a manufacturer in a format approved by NHTSA. However, RMA's suggestion might result in requests by a large number of manufacturers for approval of their own specific formats, taxing NHTSA's resources that will be devoted to the early warning program and to the development of ODI's new data management system.

NHTSA is adopting two alternative methods for manufacturers to submit their periodic reports, using specified templates that are consistent with Microsoft Excel spreadsheets. These templates will be available on the NHTSA website, *www.nhtsa.dot.gov.* The most efficient method, and the one we prefer that manufacturers use, is over the Internet directly to ODI's secure data repository. NHTSA will establish a link on its web site to a data repository suitable for containing these data. After obtaining a secure password from the agency, manufacturers would be able to use that link to ''push'' their report to the NHTSA repository. Upon receipt of the data, an acknowledgement will be returned to the submitter, noting the date and time of the submission. To protect unauthorized submissions and to protect the data, the repository will utilize a highly secure server. Manufacturers will be required to obtain

an identification number and a password by submitting a written request to ODI.

Alternatively, for data files smaller than the size limit of the DOT Internet e-mail server, currently five megabytes, manufacturers may submit their data as an attachment to an e-mail message, sent to *odi.ewr@nhtsa.dot.gov.* The e-mail system will provide a return receipt. There is, however, a risk that this method will not result in the data actually arriving at the appropriate office in NHTSA, since e-mail servers may be unreliable in handling large attachments, both within DOT and within the manufacturers' own systems. The preferred method, based on security considerations, ease of use, and reliability, is the web site link described above.

Any electronic image provided by a manufacturer must have no less than 200 and no more than 300 dpi (dots per inch) resolution.

In the NPRM, we had proposed to allow submission of information on CD/ROMs. However, we have been advised that the radiation used on mail to the DOT Headquarters building to protect against anthrax contamination can destroy information on CD/ROMs. Therefore, we cannot allow this method to be used.

For small manufacturers, which only need to submit minimal amounts of data, we are establishing an interactive form reachable through a link on our web site that may be filled out by manual data entry by the submitter. This method will require completing a form for each incident, with fields for each of the required data elements. A manufacturer ID and a secure password will be needed for these reports as well, to prevent the data from being corrupted.

Paper documents, computer printouts, or similar non-electronic submissions of this data will not be acceptable.

With respect to copies of communications submitted under Section 579.5 and copies of field reports submitted under paragraph (d) of various sections, we prefer receiving the documents in electronic form using any state-of-the-art, commercially available, non-proprietary graphic compression protocol, through the Internet link to the ODI data repository or via e-mail. However, to accommodate small businesses, we will also accept paper copies of those documents mailed in the same manner as is currently used under current Section 573.8.

Manufacturers will have to provide ODI with the name and contact information (phone number, address, e-mail address, etc.) of two information technology (IT) point-of-contact persons (a primary contact and a back-up contact), who will be responsible for resolving issues with data submissions as they come up from time to time.

The Alliance and RMA requested the opportunity to discuss details related to the submission of the early warning data, the reporting format, the means for submitting data, and other technical details to ensure smooth implementation of the reporting process. NHTSA supports this approach. NHTSA staff and its contractor's staff met with Alliance representatives on April 9, 2002, and with RMA representatives on May 17, 2002, to discuss IT issues associated with early warning reporting. Also, after receiving an invitation from Ford for NHTSA to visit its facility, representatives of NHTSA and its contractor traveled to Dearborn to discuss Ford's existing data retrieval and analysis system for early detection of potential safety defects.

After the final rule is published but before the first reporting period, NHTSA will conduct a public meeting at the DOT headquarters in Washington to discuss data transmission methods and protocols. Interested persons, particularly the manufacturers' IT staff members, will be invited to discuss technical issues in an open forum to resolve any issues related to the submission of data. We also plan to conduct several trial runs with the cooperation of various manufacturers to assure that the process will run smoothly.

VII. How NHTSA Plans To Handle and Utilize Early Warning Information

A. Review and Use of Information

Section 30166(m)(4)(A)(i) and (ii) require that our early warning rule specify how the information reported to us will be used. Those paragraphs provide:

> (A) *[NHTSA's] specifications.* In requiring the reporting of any information requested by [NHTSA] under this subsection, [NHTSA] shall specify in the final rule * * *
>
> (i) how [early warning] information will be reviewed and utilized to assist in the identification of defects related to motor vehicle safety; [and]
>
> (ii) the systems and processes [that NHTSA] will employ or establish to review and utilize such information.

We will comply with the statutory provision by explaining in this document, as we did in the NPRM, that we intend to consider pre-investigation information received under Section 30166(m) in the same manner as we currently treat other information that is now available to us about possible safety defects, such as consumer complaints to NHTSA and documents received from manufacturers under current 49 CFR 573.8. That is to say, we will review the available data and information to determine whether potentially problematic trends are developing in the vehicles, equipment items, components, and systems for which information has been provided. As noted earlier, if we identify matters that might possibly suggest the existence of a safety defect, we plan to seek additional clarifying information from the manufacturer in question, and from other sources, to help us to decide whether to open a formal defect investigation. In the NPRM, we commented that if we decided to change this approach, we would discuss any such changes in the final rule.

Referring to a report of the Inspector General of the Department of Transportation (Review of the Office of Defects Investigation, NHTSA, Report No. MH–2002–071, Jan. 3, 2002), RMA suggested that if NHTSA intends to establish procedures for determining whether to open a formal investigation or pursue other enforcement action based on its review of early warning reporting data, the agency should conduct a separate notice and comment rulemaking. We note that NHTSA already has a regulation covering its defect investigations (49 CFR Part 554, Standards Enforcement and Defects Investigation) and does not foresee any change in its investigatory procedures that would require an amendment.

We are developing an enhanced data warehouse and data processing system called ARTEMIS—Advanced Retrieval (Tire, Equipment, Motor vehicles) Information System. ARTEMIS will provide for centralized storage of information, include a document management system, use data analysis tools, and facilitate the provision of appropriate information to the public. We expect to have a fully functional system by the fall of 2002, although modifications will likely be made throughout the remainder of 2002 in preparation for the receipt of early warning information beginning in 2003.

Once the data are received, NHTSA will review the information for a given quarter to insure compliance with the requirements. In addition, as the data become available, historical trends will be evaluated and tracked. The tracking of the various submissions will be, in part, through statistical control mechanisms. The data provided by the manufacturers will be compared with other information available to NHTSA, including its existing databases. As necessary, supplemental information

will be requested from a manufacturer to expand on the routine early warning submissions.[6]

B. Information in the Possession of the Manufacturer

Section 30166(m)(4)(B) provides as follows:

(B) Information in possession of manufacturer. The [early warning] regulations may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer.

The information that we are requiring manufacturers to submit to us is in their possession, or will be under the recordkeeping requirements that we are adopting. For example, if a manufacturer (as broadly defined in this rule) does not have ''possession'' of a complaint, it obviously cannot (and would not have to) report to us about such a document. However, we want to emphasize that we will not tolerate any attempts by manufacturers to utilize this provision to avoid reporting by improperly evading receipt of, or failing to obtain, maintain, and retain relevant records.

Pursuant to 49 CFR Part 576, *Record Retention,* we have required manufacturers of motor vehicles to retain for a period of five years from the date of generation or acquisition ''complaints, reports, and other records concerning motor vehicle malfunctions that may be related to motor vehicle safety'' (49 CFR 576.1). These are described with great specificity in 49 CFR 576.6:

Records to be maintained by manufacturers * * * include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, communications from vehicle users and memoranda of user complaints; reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under or claims made under warranties; service reports or similar documents, including electronic transmissions; from dealers or manufacturer's field personnel; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

Section 576.8 sets forth the meaning of ''malfunctions that may be related to motor vehicle safety,'' which include with respect to a motor vehicle:

* * * any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications, that could in any reasonably foreseeable manner be a causative factor in, or aggravate, an accident or an injury to a person.

Thus, manufacturers of motor vehicles, by virtue of complying with Part 576, already have in their possession the types of information that will have to be reported under this rule.[7]

C. The Requirements Are Not Unduly Burdensome

Section 30166(m)(4)(D), Burdensome requirements, requires that the final rule:

shall not impose requirements unduly burdensome to a manufacturer or a motor vehicle or motor vehicle equipment, taking into account the manufacturer's cost of complying with such requirements and [NHTSA's] ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.

The ANPRM gave manufacturers a general idea of the types of data and information that they may be required to submit under a final rule. This allowed them to make a tentative assessment of the burdens that an early warning reporting rule may entail. Some manufacturers and other commenters addressed these issues. The agency's Preliminary Regulatory Evaluation (PRE), which estimated costs to manufacturers and which was placed in the docket when the NPRM was published, took these comments into consideration. We anticipated that the additional detail in the NPRM and the PRE would allow manufacturers to make a more accurate assessment of potential compliance burdens and to identify them with specificity. The agency has tried to reduce the burden to the extent possible while still fulfilling the intent of the TREAD Act.

There was no significant disagreement with the statement in the PRE that there is unlikely to be a significant burden associated with the actual reporting of information. Rather, the burden on each manufacturer will depend on the extent to which that manufacturer must revise and/or supplement its current information management and retention systems. Most major manufacturers already have a log or database of information about the categories for which early warning reporting would be required that is comprehensive and regularly updated. In this case, the burden associated with the rule would not be substantial. At most, such manufacturers would have to add several data elements and/or reorganize existing data elements such as the identification of components involved in claims, and add a process for dealing with foreign claims related to deaths.

In the NPRM, we significantly reduced the burden on manufacturers of vehicles and equipment from the levels that could have been required under the TREAD Act. First, other than requiring reports about incidents involving deaths based on claims and notices, which do not need to be maintained in a complex computer system, and campaign documents, we did not propose to require small vehicle manufacturers, original equipment manufacturers, and replacement equipment manufacturers, (other than manufacturers of child restraint systems and tires) to submit periodic early warning reports. Second, we did not propose to require at this time any information about incidents that occur in foreign countries except for those based on claims involving deaths.

We also considered requiring information for all systems and components of a vehicle, instead of those specified in Section IV.N above. We believed that the reduced number of components on which reporting is required would reduce reporting costs.

The PRE estimated the number of claims, warranty claims, customer complaints, field reports, etc. for each of the following groups of manufacturers: light vehicles, medium and heavy trucks, buses, trailers, motorcycles, tires, and child restraint systems. It estimated the costs of setting up computer systems to handle the reporting requirements and the types of skills and labor hours needed to provide the proposed information. Similar estimates were made for each of the other groups of manufacturers. Cumulative costs for the other groups were significantly higher, since they included many more manufacturers, and many of those manufacturers are not as computerized today as the light vehicle manufacturers. Manufacturers contested most of our estimates.

Based on comments filed in response to the NPRM and on supplemental comments filed by the Alliance on May 3, 2002, we revised our estimates of the burdens associated with this rulemaking. Revised estimates for the

[6] This notice does not establish rules governing disclosure or confidentiality of information submitted pursuant to the early warning rule. The agency has published proposed amendments to 49 CFR Part 512, *Confidential Business Information* (67 FR 21198, April 30, 2002) and, as appropriate, in the course of that rulemaking will consider issues related to confidentiality and disclosure.

[7] As proposed in the NPRM, we are amending Part 576 to require similar retention of records by manufacturers of child restraint systems and tires. See discussion below.

costs associated with the NPRM were published in a notice published on June 25, 2002 pursuant to the Paperwork Reduction Act (67 FR 42843).

NHTSA's Final Regulatory Evaluation (FRE) (June 2002), which is in the docket, discusses benefits and costs associated with the final rule. A benefit from NHTSA's receipt of the early warning information is that NHTSA investigations will be opened sooner. As a result, recalls will be initiated earlier, defective vehicles and equipment will be taken off the roads sooner, and fewer injuries and fatalities, and less property damage, will occur. We expect that the analysis of the information will result in increased numbers of investigations and recalls, both by the manufacturers voluntarily and by NHTSA. However, the agency cannot quantify the benefits in terms of reduced fatalities, injuries, or property damage. The agency estimates that total manufacturers' recall costs could be reduced by $9 million per year because they will identify defective parts earlier, correct the deficiencies in ongoing production and avoid recall costs in the future. This is based on initiation of an average recall (manufacturer voluntary recall and NHTSA-influenced) three months earlier for those recalled vehicles that are still in production when the recall occurs and for which some recalled vehicles are three or more years old, and assumes an average recall cost of $100 per vehicle.

The FRE estimates the total first year costs (including computer startup costs, three years of limited historical data (i.e., warranty claims and field reports), and the four quarterly reports in the first year of submission) for the final rule will be about $70 million, and recurring annual costs will be about $1.72 million.

In summary, there are safety benefits associated with this final rule; however, we were unable to quantify them. There are start-up costs in the first year of the final rule of $70 million that are offset somewhat by economic benefits to manufacturers of $9 million per year. However, in the second and subsequent years, we estimate that benefits to the manufacturers of $9 million per year will outweigh the annual on-going costs of $1.72 million per year.

Apart from quantifiable costs, we emphasize that in this final rule we have significantly reduced many other burdens on manufacturers that had been proposed in the NPRM. Primary among these is the substantial reduction (over 50 percent) in the amount of historical reporting that will be required, since we will not require reporting of historical numbers of property damage claims and consumer complaints. In addition, we postponed the first reporting period for three months, extended the reporting dates for reports covering 2003, merged warranty and complaint reporting for child restraint system manufacturers at their request, expanded the exemption from most reporting for limited production tires by referring to the applicability section of the UTQGS, reduced the need to consult with outside legal counsel, withdrew the proposal to require manufacturers to redact personal identifiers from field reports, and provided for only limited updating of incident reports predicated on claims and notices involving deaths and injuries, rather than requiring repetitive checking to see if additional information becomes available. In addition, we significantly reduced the proposed record keeping requirements, primarily by retaining the existing five-year period rather than the ten years that we had proposed.

D. Periodic Review

Under section 30166(m)(5), NHTSA must specify in the final rule ''procedures for the periodic review and update of such rule.'' Once the final early warning rule is in effect, we anticipate that our experience will indicate areas where the regulation ought to be amended, to add or delete information required, and to modify our information-gathering procedures. We would then make internal adjustments where called for, or propose appropriate modifications to the final rule. This would be an on-going process of evaluation. We plan to commence the initial review of the rule within two years after the initial reports are received, that is to say, the summer of 2005. Subsequently, we plan to review our defect information-gathering procedures at least once every five years.

Although this final rule was preceded by an ANPRM and NPRM, we have received little comment on the impacts the final rule will have on manufacturers who are considered to be ''small businesses'' by the Small Business Administration (SBA) (e.g., trailer manufacturers who employ no more than 500 persons, and all other vehicle manufacturers who employ no more than 1,000 persons). While we have attempted to reduce the reporting burden on manufacturers who produce a limited number of vehicles a year, choosing 500 vehicles as an appropriate threshold, SBA has commented that there are manufacturers who produce more than 500 vehicles a year but who nevertheless are ''small businesses'' as defined by the SBA. SBA provided partial information on the numbers of such businesses, but we are as yet unable to determine the total number of ''small businesses'' in this category. Accordingly, we intend to continue our review of the industry to determine the number of such manufacturers who may be ''small businesses'' but required by the final rule to report in full. By mid-2005, we will have completed this review and expect to have received sufficient reports from these ''small business'' manufacturers to evaluate their assistance in detecting potential defects in their motor vehicles. We expect that this evaluation, in turn, will allow us to determine whether the threshold of 500 vehicles a year is appropriate or whether it should be modified.

VIII. Extension of Recordkeeping Requirements To Include Manufacturers of Child Restraint Systems and Tires

Our principal record keeping regulation is 49 CFR Part 576, *Record Retention.* The current regulation applies only to motor vehicle manufacturers and requires them to keep certain records for a period of five years.

A colloquy on the floor of the House with respect to Section 30166(m)(4)(B) addressed the need to preserve relevant records to assure that the goals of the TREAD Act are achieved:

> Mr. Markey: Concern has been expressed that this provision not become a loophole for unscrupulous manufacturers who might be willing to destroy a record in order to demonstrate that it is no longer in its possession. Would [Mr. Tauzin] agree that it is in [NHTSA's] discretion to require a manufacturer to maintain records that are in fact in the manufacturer's possession and that it would be a violation of such a requirement to destroy such a record?
>
> Mr. Tauzin: The gentleman is again correct.

As we discussed in Section VII above, we proposed to amend Part 576 to assure that documents covered by the early warning regulation are kept for an appropriate length of time after a manufacturer acquires or generates them.

Part 576 currently applies only to vehicle manufacturers, while the TREAD Act covers manufacturers of motor vehicle equipment as well. We proposed to extend the applicability of Part 576 to those equipment manufacturers from whom we will require full reporting, i.e., manufacturers of child restraint systems and of tires. We asked for comments on whether record retention requirements should also be expanded to include

manufacturers of replacement equipment other than child restraint systems and tires and manufacturers of original equipment.

Until the TREAD Act, the requirement that a remedy for safety defects and noncompliances be provided without charge did not apply if a vehicle or child restraint system was bought by the first purchaser more than eight calendar years, or a tire, including an original equipment tire, was bought by the first purchaser more than three calendar years, before the determination that a defect or noncompliance existed. (Section 30120(g)(1)). Section 4 of the TREAD Act amended Section 30120(g)(1) to extend the free remedy period to ten years for vehicles and most replacement equipment including child restraint systems, and to five years for tires.

Currently, 49 CFR 576.5 requires manufacturers of motor vehicles to retain the records specified in 49 CFR 576.6 for a period of five years from the date they were acquired or generated by the manufacturer. The purpose of Part 576 is:

> * * * to preserve records that are needed for the proper investigation, and adjudication or other disposition, of possible defects related to motor vehicle safety and instances of nonconformity to the motor vehicle safety standards and associated regulations (49 CFR 576.2).

Towards this end, we tentatively concluded that records that may be pertinent to possible defects and noncompliances should be retained by a manufacturer of motor vehicles for the period during which the manufacturer is required to provide a remedy without charge. Thus, we proposed amending Section 576.5 to extend the record retention period from five years to ten years for the records specified in Section 576.6. Given that manufacturers of child restraint systems and tires are also required by statute to remedy defects and noncompliances without charge, and that they are also covered by the TREAD Act's early warning reporting requirements, we tentatively decided that manufacturers of child restraint systems and tires should be required to retain records for ten and five years, respectively. Thus, our proposed Section 576.5(d), read as follows:

> (d) Each manufacturer of motor vehicles, child restraint systems, and tires shall retain each property damage claim, warranty claim, consumer complaint, and field report received from an authorized dealer of such manufacturer, for a period of five calendar years from the date the manufacturer acquires it, but need not retain it when the calendar year is or becomes ten years greater than the model year of any motor vehicle or child restraint system that is the subject of the document.

Thirteen comments were submitted concerning the proposed changes in the record retention requirements. These were from Nissan, the Alliance, JPMA, RMA, Harley-Davidson, Bendix, Johnson, Ford, Utilimaster, AIAM, CU, MEMA, and GM. CU supported the proposal. Most of the remaining comments either questioned the reasonableness of the proposal or contended that various aspects of the proposal were inconsistent or confusing. In addition, some noted that the proposal did not specify a limit on the retention of records relating to incidents involving injury or death or limit the retention requirements to records located in the United States or pertaining to vehicles offered for sale in the United States.

A number of comments (Alliance, Nissan, Ford, GM) questioned the need for the agency to extend the current five-year record retention requirement to ten years for most categories of information that would be covered by the early warning reporting rules. These comments generally asserted that there is no reasonable justification for changes to existing requirements for a document to be retained for five years from the date that it was created, and that those requirements provide the agency with enough information to fully investigate any potential safety defects. In its comment, GM contended that there is nothing in the TREAD Act that would require an extension of the record retention period. Ford stated that defect investigations are unlikely to resolve reports of incidents that happened more than five years ago. AIAM observed that it is difficult to imagine that six to ten-year old records will contain information on an alleged problem that is not already present in data available for the most recent five years.

The agency has reevaluated the need for manufacturers to retain records that are more than five years old. We have concluded that our investigative needs, addressed to date by section 576.5 *et seq.*, have been adequately met by the existing requirement for manufacturers to retain complaints, reports, and other records for five years concerning malfunctions that may be related to motor vehicle safety. Accordingly, we have decided not to require that the records described in proposed Section 576.6 be retained for ten years. The agency is instead retaining the existing five-year retention period for those records.

We are adopting and slightly revising the requirement set forth in proposed Section 576.5(c), and in the first portion of proposed Section 576.5(d), relating to retention of the underlying records on which the information reported under the early warning rule is based. For smaller vehicle manufacturers and for manufacturers of equipment other than tires and child restraint systems, this would only apply to records related to these incidents that are referred to in claims and notices involving deaths. For other manufacturers, this would be the underlying records supporting the aggregate numbers of property damage claims, consumer complaints, warranty claims, and field reports that will be reported to NHTSA under paragraph (c) of Sections 579.21–579.26, as applicable. This will not add a significant burden, since most of these documents already were covered by existing Part 576. As discussed below, the retention period for these records will be five years from the date they are generated or acquired.

Proposed Section 576.5(e) would have required motor vehicle, child restraint system, and tire manufacturers to retain, for a period of one year, field reports from one of their employees or representatives or from the owners or operators of ten or more vehicles of the same make, model, and model year that they have manufactured, and a copy of each document reported to NHTSA for a customer satisfaction campaign, consumer advisory, and recall (other than those submitted pursuant to 49 CFR Parts 573 and 577). Because the covered manufacturers will be required to furnish all these documents to NHTSA, the agency has decided that there is no need for the manufacturers also to be required to retain copies of the documents within their own possession for one year. Therefore, we are not adopting the requirements proposed in Section 576.5(e). We are instead adopting language that expressly states that manufacturers are not required to retain copies of any document submitted to NHTSA under 49 CFR Parts 573 and 577 (which specify requirements for notifying the agency and owners of defects and noncompliances) and any document submitted under the early warning reporting requirements of Part 579. *See* Section 576.5(c).

We note that some comments (Alliance, JPMA, Ford) contended that NHTSA had not estimated the costs associated with doubling the record retention period, and had not demonstrated that the benefits that the agency could derive from increasing the retention period would outweigh the burden that increase would impose on affected manufacturers. However, these

comments are mooted by the fact that we are not adopting our proposal.

JPMA recommended that the agency adopt a five-year record retention requirement for child restraint system manufacturers, as opposed to the ten-year requirement proposed in the NPRM, on the basis that this duration is close to the recommended life of the product, and reasonably balances the costs of record retention with the goal of having a reasonable amount of information available to assist NHTSA in defect investigations. JPMA noted that record retention requirements would be imposed on child restraint system manufacturers for the first time. Thus, our final rule is in accord with the views of the representative of the child restraint system manufacturers.

RMA recommended that the proposed regulations be modified to require tire manufacturers to retain information for a period no longer than the five-year period succeeding the date of manufacture of the product identified in a property damage claim, warranty adjustment, or fatality or injury claim or notice. The comment does not explain why the retention period should run from the production date of the tire, as opposed to the date on which the record was acquired, as it does for motor vehicle and child restraint system manufacturers. To maintain consistency with those requirements, the agency believes that the retention period for records pertaining to tires should run for a period of five years from the date on which the record was acquired, and not from the date on which the tire was manufactured.

Our decision not to impose a ten-year record requirement also addresses a number of comments (Nissan, Alliance, AIAM, Harley-Davidson) which contended that the proposed regulatory language for Section 576.5 is confusing. These comments observed that paragraph (a) of this section would impose a ten-year retention period for the category of records described in Section 576.6, and that this description is broad enough to encompass the property damage claims, warranty claims, consumer complaints, and field reports for which a five-year retention period was proposed in paragraph (d) of the section, and the field reports for which a one-year retention period would be prescribed in paragraph (e). As noted above, the agency is leaving the existing five-year retention requirement for these records in place. We are also adopting a five-year retention requirement for the records that underlie the information reported to us under the early warning reporting requirements (claims and notices involving death or injury, and, as applicable depending on the type of product manufactured, property damage claims, warranty claims, consumer complaints, and field reports). This should eliminate any confusion as to the length of time that any given record must be retained.

Section 576.5(d), as proposed, would have created an exception from the five-year record retention requirement for property damage claims, warranty claims, consumer complaints and authorized dealers' field reports ''when the calendar year is or becomes ten years greater than the model year of any motor vehicle or child restraint system that is the subject of the document.'' Aside from RMA's comment, noted above, the only other comment that addressed this provision was from GM, which stated that it did not understand why the agency would want to create such an exception from current record retention requirements. NHTSA has reassessed the need for the proposed exception in light of this comment, and the absence of any other comment concerning it from manufacturers who would be subject to the proposed record retention requirements. The agency has accordingly not incorporated the exception into Section 576.5(d).

Several comments were received regarding proposed Section 576.5(c), which stated: ''Each manufacturer of motor vehicles, original equipment, and replacement equipment shall retain each claim or notice related to an incident involving a death or injury.'' Most of these (Nissan, AIAM , Alliance, Bendix, Utilimaster, and Harley-Davidson) observed that the proposed language specifies no limit for the retention of claims and notices involving death or injury. The Alliance contended that such an indefinite retention period is inconsistent with OMB regulations requiring agencies to establish maximum retention periods.

The agency recognizes that it inadvertently omitted a time period for retention of these documents. Accordingly, we will add language clarifying that the retention period for all records underlying the early warning submissions is five years from the date the record is generated or acquired. This will make the retention period for such claims and notices involving deaths or injuries consistent with that for all other categories of records covered by the retention requirements.

MEMA agreed with the proposal not to extend most record retention requirements to original and replacement equipment manufacturers, except for manufacturers of tires and child restraint systems. The comment noted that a substantial number of vehicle parts and equipment manufacturers are small businesses, and that applying the record retention requirement to those manufacturers would add an unnecessary cost burden. Accordingly, MEMA supports extending these requirements only to those equipment manufacturers from whom the agency would require full reporting (i.e., tire and child restraint system manufacturers). It recommended that proposed Section 576.5(c) be amended to clarify that it would only apply to motor vehicle, tire, and child restraint system manufacturers. MEMA (and Johnson) noted that absent such an amendment, proposed Section 576.5(c) would be inconsistent with the proposed sections on ''Scope'' (576.1) and ''Application'' (576.3) of Part 576.

We acknowledge the inconsistency. However, we are addressing it by revising the language of Sections 576.1 and 576.3, rather than by allowing equipment manufacturers to destroy documents related to incidents involving claims for deaths attributed to their products. These documents could be very relevant to agency defect investigations. Moreover, the burden of retaining them is exceedingly slight; there are likely to be very few claims and notices received by these manufacturers. Thus, under new Section 576.5(b), the requirement to retain documents related to incidents involving deaths reported to us for five years applies to *all* vehicle and equipment manufacturers.

The Alliance and Nissan observed that as proposed, the record retention requirements would not be limited to documents related to vehicles offered for sale in the United States. The comments asserted that there must be a nexus to the United States for the record retention requirements. Johnson submitted similar comments. We decline to expressly limit the retention requirements to records located within the United States. The agency notes in this regard that the early warning reporting rules will require reports of each incident involving one or more death(s) occurring in a foreign country that is identified in claim(s) against the manufacturer involving the manufacturer's product, if that product is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.'' *See,* e.g., Section 579.21(b)(1). A manufacturer's ability to provide follow-up information if requested would be diminished if the agency were to expressly limit the record retention requirement to records located in the United States. Similarly, the purposes of

the rule and the agency's ability to conduct effective defect investigations would be undermined if we were to limit the record retention requirements to documents related to vehicles offered for sale in the United States.

Finally, we have reviewed our regulation on tire record keeping, 49 CFR Part 574. Section 574.6(d) and Section 574.10 require, respectively, tire manufacturers and motor vehicle manufacturers to maintain records of new tires they produce, and tires on new vehicles and the names and addresses of the first purchaser of the vehicles for not less than three years after the date of purchase. In light of the statutory amendment increasing the period from three to five years for free remedy of tires, and our conforming change to Part 576, we proposed adopting conforming amendments to Sections 574.6(d) and 574.10 under which these records will also be held for five years. There were no comments on the proposal, and Sections 574.6(d) and 574.10 are being adopted as proposed.

IX. Administrative Amendments to 49 CFR Part 573 To Accommodate Final Rules Implementing 49 U.S.C. Sections 30166(l) and (m)

For many years, we have required manufacturers to furnish us with a copy of all notices, bulletins, other communications including warranty and policy extension communiques and product improvement bulletins regarding defects, whether or not safety related (49 CFR 573.8). Currently, this requirement is located in our regulation on defect and noncompliance reporting, 49 CFR Part 573. Given our adoption of a new regulation, Part 579 *Reporting of Information and Communications About Potential Defects,* it seems appropriate to transfer the subject matter of Section 573.8 to Part 579. We proposed a Section 579.5(a) which is identical to Section 573.8. There were no comments on that proposal. The final rule achieves the transfer with the removal of Section 573.8 and the adoption of Section 579.5(a).

There currently exists a regulation at 49 CFR Part 579, *Defect and Noncompliance Responsibility* (2001). This regulation sets forth the responsibilities of various types of manufacturers for safety-related defects and noncompliances. As such, we feel that it would be appropriate for its specifications to be moved to Part 573. Accordingly, we are also amending Part 573 to incorporate these specifications as part of this rulemaking document. These are reflected in amendments to the scope, purpose, and definitions of Part 573, and the addition of the substantive requirements of former Section 579.5 as a new Section 573.5, with other sections of Part 573 renumbered accordingly.

X. Rulemaking Analyses

Regulatory Policies and Procedures. Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking under Executive Order 12866 the Department of Transportation's regulatory policies and procedures. This rulemaking has been determined to be significant by the Office of Management and Budget under Executive Order 12866 because of congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and procedures. A detailed discussion of impacts can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for this rulemaking and filed in the docket. This action does not impose requirements on the design or production of motor vehicles or motor vehicle equipment; it only requires reporting of information in the possession of the manufacturer.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (5 U.S.C. § 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm; another criteria is annual receipts. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing many of the safety systems for which reporting will be required, steering, suspension, brakes, engines and power trains, or electrical system, or other motor vehicle parts not mentioned specifically in this paragraph, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, lighting, motor vehicle seating and interior trim packages, alterers and second-stage manufacturers, or re-tread tires the firm must have less than 500 employees to be classified as a small business.

In Section VII.D, *Periodic Review,* above, we noted that there is some uncertainty about the number of small businesses who may be subject to reporting requirements beyond incidents involving death. Below we estimate that there could be as few as 15 or as many as hundreds that produce more than 500 vehicles. Because of the uncertainty, we are conducting a review of this industry to determine how many small businesses would be subject to more extensive reporting, which is expected to be completed by mid-2005.

There may also be some uncertainty about the impacts. In our view, the more extensive reporting required of these small businesses will not impose a cost burden on them that is significantly different from the burden on those producing fewer than 500 vehicles. The costs of reporting are directly related to the volume of reportable communications submitted to manufacturers. Even though some small businesses would be reporting on more categories of information and at more frequent intervals, the total number of reportable communications would probably be low enough that the company would be able to use its existing computers with commercially available software to prepare its reports, without having to invest in a new computer system. However, we will want to confirm this as part of our review.

Based on the best information available to us at this time, I certify that this final rule will not have a significant

economic impact on a substantial number of small entities. Information on the number of small businesses manufacturing relevant equipment or vehicles currently sold in the United States, by product category, is presented below.

1. *Passenger cars and light trucks, including vans, SUV's and pickups.* There are 16 major manufacturers of passenger cars and light trucks, including vans, SUV's and pickups sold in the United States. All are large businesses by the definition of having more than 1,000 employees. In addition, NHTSA knows of four small manufacturers of (complete) motor vehicles in the United States accounting for less than 1 percent of U.S. production, and in addition, several hundred small enterprises that modified or completed unfinished vehicles, of which many were van converters.

2. *Medium and heavy trucks.* NHTSA believes there are 12 manufacturers of medium and heavy trucks sold in the United States. All are large businesses with more than 1,000 employees.

3. *Buses.* NHTSA believes there are 19 bus manufacturers, of which 14 are small manufacturers with less than 1,000 employees.

4. *Motorcycles.* Based on docket comments, there are 12 motorcycle or moped manufacturers. We identified 2 motorcycle manufacturers as small businesses with less than 500 employees.

5. *Trailers.* We estimate that there are 8 large trailer manufacturers and hundreds of small businesses that manufacture trailers (boat trailers, U-haul type trailers, horse trailers, landscape, tree, and yard care equipment trailers, motorcycle/all-terrain vehicle trailers, cars-in tow trailers, and work-performing equipment trailers, e.g., compressors, signs, lights/generators, leaf collecting/mulch, roof and road tar heating).

6. *Tires.* NHTSA believes there are 10 tire manufacturers, which are all large businesses. The International Tire and Rubber Association website indicates that there are approximately 1,126 retread tire plants in the United States, of which approximately 95 percent are owned/operated by small businesses with less than 500 employees.

7. *Child restraint systems.* Available information on child restraint system manufacturers yields a total of 10 independent enterprises, of which 3 have less than 500 employees and qualify as small businesses.

8. *Manufacturers of original equipment and manufacturers of replacement equipment other than child restraint systems and tires.* While there are many manufacturers of original and replacement equipment (other than manufacturers of child restraint systems and tires) that are small businesses, these manufacturers will have a reporting obligation under this regulation limited to incidents of death involving their products. These are expected to be rare. Thus, this rule will have only a slight impact on these manufacturers.

The agency has decided to limit the impact on small businesses by excluding from most of the reporting requirements any vehicle manufacturer that produces fewer than 500 vehicles a year, by category of vehicle. This exclusion will apply to many of the small businesses discussed above. We will also exclude registered importers (the vehicles imported by registered importers generally comprise a mixed fleet fabricated by more than a single company). However, these smaller-volume manufacturers will not be exempt from the requirements to report to us claims submitted against them for death, and to report notices of fatalities that are alleged or proven to have been caused by possible defects in their vehicles in the United States. We suspect there will be very few reports per year from manufacturers that produce fewer than 500 vehicles per year.

Executive Order 13132 (Federalism). Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. While we have not adopted a standardized form for reporting information, we will be requiring manufacturers to submit information utilizing specified templates. The provisions of this rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. We have requested and received emergency clearance from OMB for the information collection required by this rule. The clearance number is 2127–0616, expiration date September 30, 2002. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments are due by August 26, 2002. We request that comments relating to the Paperwork Reduction Act be directed to that notice.

Data Quality Guidelines

The information that NHTSA is mandated to collect may be made available to the public via the agency's website. The distribution of such data via the agency's website may constitute ''information dissemination'' as that term is defined under the Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (''Information Quality Guidelines'') issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and prepared, in draft form, by the Department of Transportation (DOT) (67 FR 21319, Apr. 30. 2002). DOT's final Guidelines will be issued by October 1, 2002.

If a determination were made that the public distribution of the early warning data constituted information dissemination and was, therefore, subject to the OMB/DOT Information Quality Guidelines, then the agency would review the information prior to distribution to ascertain its utility, objectivity, and integrity (collectively, ''quality''). Under the Guidelines, any affected person who believed that the

information ultimately disseminated by NHTSA was of insufficient quality could file a complaint with the agency. The agency would review the disputed information, make an initial determination of whether it agreed with the complainant, and notify the complainant of its initial determination. Once notified of the initial determination, the affected person could file an appeal with the agency.

List of Subjects

49 CFR Part 573

Motor vehicle equipment, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Tires.

49 CFR Part 574

Labeling, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products, Tires.

49 CFR Part 576

Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

1. Part 573 heading is revised to read as set forth above.

2. The authority citation for part 573 is revised to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

3. Section 573.1 is revised to read as follows:

§ 573.1 Scope.

This part:

(a) Sets forth the responsibilities under 49 U.S.C. 30117–30120 of manufacturers of motor vehicles and motor vehicle equipment with respect to safety-related defects and noncompliances with Federal motor vehicle safety standards in motor vehicles and items of motor vehicle equipment; and

(b) Specifies requirements for—

(1) Manufacturers to maintain lists of purchasers and owners notified of defective and noncomplying motor vehicles and motor vehicle original and replacement equipment,

(2) Reporting to the National Highway Traffic Safety Administration (NHTSA) defects in motor vehicles and motor vehicle equipment and noncompliances with motor vehicle safety standards prescribed under part 571 of this chapter, and

(3) Providing quarterly reports on defect and noncompliance notification campaigns.

4. Section 573.2 is revised to read as follows:

§ 573.2 Purposes.

The purposes of this part are:

(a) To facilitate the notification of owners of defective and noncomplying motor vehicles and items of motor vehicle equipment, and the remedy of such defects and noncompliances, by equitably apportioning the responsibility for safety-related defects and noncompliances with Federal motor vehicle safety standards among manufacturers of motor vehicles and motor vehicle equipment; and

(b) To inform NHTSA of defective and noncomplying motor vehicles and items of motor vehicle equipment, and to obtain information for NHTSA on the adequacy of manufacturers' defect and noncompliance notification campaigns, on corrective action, on owner response, and to compare the defect incidence rate among different groups of vehicles.

5. Section 573.4 is amended by adding in alphabetical order definitions for Original equipment and Replacement equipment to read as follows:

§ 573.4 Definitions.

* * * * *

Original equipment means an item of motor vehicle equipment (other than a tire) that was installed in or on a motor vehicle at the time of its delivery to the first purchaser if the item of equipment was installed on or in the motor vehicle at the time of its delivery to a dealer or distributor for distribution, or was installed by the dealer or distributor with the express authorizations of the motor vehicle manufacturer.

* * * * *

Replacement equipment means motor vehicle equipment other than original equipment as defined in this section, and tires.

§ 573.8 [Removed]

6. Section 573.8 is removed.

§§ 573.5 through 573.7 [Redesignated as §§ 573.6 through 573.8]

7. Sections 573.5 through 573.7 are redesignated as §§ 573.6 through 573.8 respectively.

8. New § 573.5 is added to read as follows:

§ 573.5 Defect and noncompliance responsibility.

(a) Each manufacturer of a motor vehicle shall be responsible for any safety-related defect or any noncompliance determined to exist in the vehicle or in any item of original equipment.

(b) Each manufacturer of an item of replacement equipment shall be responsible for any safety-related defect or any noncompliance determined to exist in the equipment.

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

9. The authority citation for part 574 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

10. Section 574.7(d) preceding the graphic is revised to read as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.

* * * * *

(d) The information that is specified in paragraph (a)(4) of this section and recorded on registration forms submitted to a tire manufacturer or its designee shall be maintained for a period of not less than five years from the date on which the information is recorded by the manufacturer or its designee.

* * * * *

11. Section 574.10 is amended by revising the last sentence to read as follows:

§ 574.10 Requirements for motor vehicle manufacturers.

* * * These records shall be maintained for a period of not less than 5 years from the date of sale of the vehicle to the first purchaser for purposes other than resale.

PART 576—RECORD RETENTION

12. The authority citation for part 576 is revised to read as follows:

Authority: 49 U.S.C. 322(a), 30117, 30120(g), 30141–30147; delegation of authority at 49 CFR 1.50.

13. Section 576.1 is revised to read as follows:

§ 576.1 Scope.

This part establishes requirements for the retention by manufacturers of motor vehicles and of motor vehicle equipment, of claims, complaints, reports, and other records concerning alleged and proven motor vehicle or motor vehicle equipment defects and

malfunctions that may be related to motor vehicle safety.

14. Section 576.3 is revised to read as follows:

§ 576.3 Application.

This part applies to all manufacturers of motor vehicles, with respect to all records generated or acquired on or after August 16, 1969, and to all manufacturers of motor vehicle equipment, with respect to all records in their possession, generated or acquired on or after August 9, 2002.

15. Section 576.4 is revised to read as follows:

§ 576.4 Definitions.

All terms in this part that are defined in 49 U.S.C. 30102 and part 579 of this chapter are used as defined therein.

16. Section 576.5 is revised to read as follows:

§ 576.5 Basic requirements.

(a) Each manufacturer of motor vehicles, child restraint systems, and tires shall retain, as specified in § 576.7 of this part, all records described in § 576.6 of this part for a period of five calendar years from the date on which they were generated or acquired by the manufacturer.

(b) Each manufacturer of motor vehicles and motor vehicle equipment shall retain, as specified in § 576.7 of this part, all the underlying records on which the information reported under part 579 of this chapter is based, for a period of five calendar years from the date on which they were generated or acquired by the manufacturer, except as provided in paragraph (c) of this section.

(c) Manufacturers need not retain copies of documents transmitted to NHTSA pursuant to parts 573, 577, and 579 of this chapter.

17. Section 576.6 is revised to read as follows:

§ 576.6 Records.

Records to be maintained by manufacturers under this part include all documentary materials, films, tapes, and other information-storing media that contain information concerning malfunctions that may be related to motor vehicle safety. Such records include, but are not limited to, reports and other documents, including material generated or communicated by computer, telefax or other electronic means, that are related to work performed under warranties; and any lists, compilations, analyses, or discussions of such malfunctions contained in internal or external correspondence of the manufacturer, including communications transmitted electronically.

18. Part 579 is revised to read as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

Subpart A—General

Subpart B—Reporting of Defects in Motor Vehicles and Motor Vehicle Equipment in Countries Other Than the United States

Subpart C—Reporting of Early Warning Information

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

§ 579.1 Scope.

This part sets forth requirements for reporting information and submitting documents that may help identify defects related to motor vehicle safety and noncompliances with Federal motor vehicle safety standards, including reports of foreign safety recalls and other safety-related campaigns conducted outside the United States under 49 U.S.C. 30166(l), early warning information under 49 U.S.C. 30166(m), and copies of communications about defects and noncompliances under 49 U.S.C. 30166(f).

§ 579.2 Purpose.

The purpose of this part is to enhance motor vehicle safety by specifying information and documents that manufacturers of motor vehicles and motor vehicle equipment must provide to NHTSA with respect to possible safety-related defects and noncompliances in their products.

§ 579.3 Application.

(a) This part applies to all manufacturers of motor vehicles and motor vehicle equipment with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in the United States by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and with respect to all motor vehicles and motor vehicle equipment that have been offered for sale, sold, or leased in a foreign country by the manufacturer, including any parent corporation, any subsidiary or affiliate of the manufacturer, or any subsidiary or affiliate of any parent corporation, and are substantially similar to any motor vehicles or motor vehicle equipment that have been offered for sale, sold, or leased in the United States.

(b) In the case of any report required under subpart C of this part, compliance by the fabricating manufacturer, the importer, the brand name owner, or a parent or United States subsidiary of such fabricator, importer, or brand name owner of the motor vehicle or motor vehicle equipment, shall be considered compliance by all persons.

(c) With regard to any information required to be reported under subpart C of this part, an entity covered under paragraph (a) of this section need only review information and systems where information responsive to subpart C of this part is kept in the usual course of business.

§ 579.4 Terminology.

(a) *Statutory terms.* The terms *dealer, defect, distributor, motor vehicle, motor vehicle equipment,* and *State* are used as defined in 49 U.S.C. 30102.

(b) *Regulatory terms.* The term *Vehicle Identification Number (VIN)* is used as defined in § 565.3(o) of this chapter. The terms *bus, Gross Vehicle Weight Rating (GVWR), motorcycle, multipurpose passenger vehicle, passenger car, trailer,* and *truck* are used as defined in § 571.3(b) of this chapter.

The term *Booster seat* is used as defined in S4 of § 571.213 of this chapter. The term *Tire Identification Number (TIN)* is the ''tire identification number'' described in § 574.5 of this chapter. The term *Limited production tire* is used as defined in § 575.104(c)(2) of this chapter.

(c) *Other terms.* The following terms apply to this part:

Administrator means the Administrator of the National Highway Traffic Safety Administration (NHTSA), or the Administrator's delegate.

Affiliate means, in the context of an affiliate of or person affiliated with a specified person, a person that directly, or indirectly through one or more intermediates, controls or is controlled by, or is under common control with, the person specified. The term person usually is a corporation.

Air bag means an air bag or other automatic occupant restraint device (other than a ''seat belt'' as defined in this subpart) installed in a motor vehicle that restrains an occupant in the event of a vehicle crash without requiring any action on the part of the occupant to obtain the benefit of the restraint. This term includes inflatable restraints (front and side air bags), knee bolsters, and any other automatic restraining device that may be developed that does not include a restraining belt or harness. This term also includes all air bag-related components, such as the inflator assembly, air bag module, control module, crash sensors and all hardware and software associated with the air bag. This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Base means the detachable bottom portion of a child restraint system that may remain in the vehicle to provide a base for securing the system to a seat in a motor vehicle.

Bead means all the materials in a tire below the sidewalls in the rim contact area, including bead rubber components, the bead bundle and rubber coating if present, the body ply and its turn-up including the rubber coating, rubber, fabric, or metallic reinforcing materials, and the inner-liner rubber under the bead area.

Brand name owner means a person that markets a motor vehicle or motor vehicle equipment under its own trade name whether or not it is the fabricator or importer of the vehicle or equipment.

Buckle and restraint harness means the components of a child restraint system that are intended to restrain a child seated in such a system, including the belt webbing, buckles, buckle release mechanism, belt adjusters, belt positioning devices, and shields.

Child restraint system means any system that meets, or is offered for sale in the United States as meeting, any definition in S4 of § 571.213 of this chapter, or that is offered for sale as a child restraint system in a foreign country.

Claim means a written request or written demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or a fire originating in or from a motor vehicle or a substance that leaked from a motor vehicle. Claim includes, but is not limited to, a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. The existence of a claim may not be conditioned on the receipt of anything beyond the document(s) stating a claim. Claim does not include demands related to asbestos exposure, to emissions of volatile organic compounds from vehicle interiors, or to end-of-life disposal of vehicles, parts or components of vehicles, equipment, or parts or components of equipment.

Common green tires means tires that are produced to the same internal specifications but that have, or may have, different external characteristics and may be sold under different tire line names.

Consumer complaint means a communication of any kind made by a consumer (or other person) to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer website that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit within the manufacturer that receives consumer inquiries or complaints, including telephonic complaints, expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but not including a claim of any kind or a notice involving a fatality or injury.

Customer satisfaction campaign, consumer advisory, recall, or other activity involving the repair or replacement of motor vehicles or motor vehicle equipment means any communication by a manufacturer to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, or owner, whether in writing or by electronic means, relating to repair, replacement, or modification of a vehicle, component of a vehicle, item of equipment, or a component thereof, the manner in which a vehicle or child restraint system is to be maintained or operated (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment.

Dealer field report means a field report from a dealer or authorized service facility of a manufacturer of motor vehicles or motor vehicle equipment.

Electrical system means any electrical or electronic component of a motor vehicle that is not included in one of the other reporting categories enumerated in subpart C of this part, and specifically includes the battery, battery cables, alternator, fuses, and main body wiring harnesses of the motor vehicle and the ignition system, including the ignition switch and starter motor. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Engine and engine cooling means the component (e.g., motor) of a motor vehicle providing motive power to the vehicle, and includes the exhaust system (including the exhaust emission system), the engine control unit, engine lubrication system, and the underhood cooling system for that engine. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Equipment comprises original and replacement equipment: (1) *Original equipment* means an item of motor vehicle equipment (other than a tire) that was installed in or on a motor vehicle at the time of its delivery to the first purchaser if the item of equipment was installed on or in the motor vehicle at the time of its delivery to a dealer or distributor for distribution; or the item

of equipment was installed by the dealer or distributor with the express authorization of the motor vehicle manufacturer.

(2) *Replacement equipment* means motor vehicle equipment other than original equipment, and tires.

Exterior lighting mean all the exterior lamps (including any interior-mounted center highmounted stop lamp if mounted in the interior of a vehicle), lenses, reflectors, and associated equipment of a motor vehicle, including all associated switches, control units, connective elements (such as wiring harnesses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, a dealer or authorized service facility of such manufacturer, or by an entity that owns or operates a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the specific vehicle, component, or system at issue in the litigation.

Fire means combustion or burning of any material in a vehicle as evidenced by, but not limited to, flame, smoke, sparks, or smoldering.

Fleet means more than ten motor vehicles of the same make, model, and model year.

Fuel system means all components of a motor vehicle used to receive and store fuel, and to transfer fuel between the vehicle's fuel storage, engine, or fuel emission systems. This term includes, but is not limited to, the fuel tank and filler cap, neck, and pipe, along with associated piping, hoses, and clamps, the fuel pump, fuel lines, connectors from the fuel tank to the engine, the fuel injection/carburetion system (including fuel injector rails and injectors), and the fuel vapor recovery system(s), canister(s), and vent lines. The term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Good will means the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor, paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter.

Incomplete light vehicle means an incomplete vehicle as defined in § 568.3 of this chapter which, when completed, will be a light vehicle.

Integrated child restraint system means a factory-installed built-in child restraint system as defined in S4 of § 571.213 of this chapter and includes any factory-authorized built-in child restraint system.

Latch means a latching, locking, or linking system of a motor vehicle and all its components fitted to a vehicle's exterior doors, rear hatch, liftgate, tailgate, trunk, or hood. This term also includes, but is not limited to, devices for the remote operation of a latching device such as remote release cables (and associated components), electric release devices, or wireless control release devices, and includes all components covered in FMVSS No. 206. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Light vehicle means any motor vehicle, except a bus, motorcycle, or trailer, with a GVWR of 10,000 lbs or less.

Make means a name that a manufacturer applies to a group of vehicles.

Manufacturer means a person manufacturing or assembling motor vehicles or motor vehicle equipment, or importing motor vehicles or motor vehicle equipment for resale. This term includes any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation of such a person.

Medium-heavy vehicle means any motor vehicle, except a trailer, with a GVWR greater than 10,000 lbs.

Minimal specificity means:

(1) for a vehicle, the make, model, and model year,

(2) for a child seat, the manufacturer and the model (either the model name or model number),

(3) for a tire, the manufacturer, tire line, and tire size, and

(4) for other motor vehicle equipment, the manufacturer and, if there is a model or family of models identified on the item of equipment, the model name or model number.

Model means a name that a manufacturer of motor vehicles applies to a family of vehicles within a make which have a degree of commonality in construction, such as body, chassis or cab type. For equipment, it means the name that its manufacturer uses to designate it.

Model year means the year that a manufacturer uses to designate a discrete model of vehicle, irrespective of the calendar year in which the vehicle was manufactured; if a year is not so designated, it means the year the vehicle was produced. For equipment, it means the year that the item was produced.

Notice means a document, other than a media article, that does not include a demand for relief, and that a manufacturer receives from a person other than NHTSA.

Parking brake means a mechanism installed in a motor vehicle which is designed to prevent the movement of a stationary motor vehicle, including all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Platform means the basic structure of a vehicle including, but not limited to, the majority of the floorpan or undercarriage, and elements of the engine compartment. The term includes a structure that a manufacturer designates as a platform. A group of vehicles sharing a common structure or chassis shall be considered to have a common platform regardless of whether such vehicles are of the same type, are of the same make, or are sold by the same manufacturer.

Power train means the components or systems of a motor vehicle which transfer motive power from the engine to the wheels, including the transmission (manual and automatic), gear selection devices and associated linkages, clutch, constant velocity joints, transfer case, driveline, differential(s), and all driven axle assemblies. This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Property damage means physical injury to tangible property.

Property damage claim means a claim for property damage, excluding that part of a claim, if any, pertaining solely to damage to a component or system of a vehicle or an item of equipment itself based on the alleged failure or malfunction of the component, system, or item, and further excluding matters addressed under warranty.

Rear-facing infant seat means a child restraint system that positions a child to face in the direction opposite to the

normal direction of travel of the motor vehicle.

Reporting period means a calendar quarter of a year, unless otherwise stated.

Rollover means a single-vehicle crash in which a motor vehicle rotates on its longitudinal axis to at least 90 degrees, regardless of whether it comes to rest on its wheels.

Seats means all components of a motor vehicle that are subject to FMVSS Nos. 202, 207, and S9 of 209, including all electrical and electronic components within the seat that are related to seat positioning, heating, and cooling. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Seat belts means any belt system, other than an air bag, that may or may not require the occupant to latch, fasten, or secure the components of the seat belt/webbing based restraint system to ready its use for protection of the occupant in the event of a vehicle crash. This term includes the webbing, buckle, anchorage, retractor, belt pretensioner devices, load limiters, and all components, hardware and software associated with an automatic or manual seat belt system addressed by FMVSS No. 209 or 210. This term also includes integrated child restraint systems in vehicles, and includes any device (and all components of that device), installed in a motor vehicle in accordance with FMVSS No. 213, which is designed for use as a safety restraint device for a child too small to use a vehicle's seat belts. This term includes all vehicle components installed in accordance with FMVSS No. 225. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Seat shell means the portion of a child restraint system that provides the structural shape, form and support for the system, and for other components of the system such as belt attachment points, and anchorage points to allow the system to be secured to a passenger seat in a motor vehicle, but not including a shield.

Service brake system means all components of the service braking system of a motor vehicle intended for the transfer of braking application force from the operator to the wheels of a vehicle, including the foundation braking system, such as the brake pedal, master cylinder, fluid lines and hoses, braking assist components, brake calipers, wheel cylinders, brake discs, brake drums, brake pads, brake shoes, and other related equipment installed in a motor vehicle in order to comply with FMVSS Nos. 105, 121, 122, or 135. This term also includes systems and devices for automatic control of the brake system such as antilock braking, traction control, stability control, and enhanced braking. The term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Sidewall means the area of a tire between the tread and the bead area, including the sidewall rubber components, the body ply and its coating rubber under the side area, and the inner-liner rubber under the body ply in the side area.

SKU (Stock Keeping Unit) means the alpha-numeric designation assigned by a manufacturer to a tire product.

Steering system means all steering control system components, including the steering system mechanism and its associated hardware, the steering wheel, steering column, steering shaft, linkages, joints (including tie-rod ends), steering dampeners, and power steering assist systems. This term includes a steering control system as defined by FMVSS No. 203 and any subsystem or component of a steering control system, including those components defined in FMVSS No. 204. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Structure means any part of a motor vehicle that serves to maintain the shape and size of the vehicle, including the frame, the floorpan, the body, bumpers, doors, tailgate, hatchback, trunk lid, hood, and roof. The term also includes all associated mounting elements (such as brackets, fasteners, etc.).

Suspension system means all components and hardware associated with a motor vehicle suspension system, including the associated control arms, steering knuckles, spindles, joints, bushings, ball joints, springs, shock absorbers, stabilizer (anti sway) bars, and bearings that are designed to minimize the impact on the vehicle chassis of shocks from road surface irregularities that may be transmitted through the wheels, and to provide stability when the vehicle is being operated through a range of speed, load, and dynamic conditions. The term also includes all electronic control systems and mechanisms for active suspension control, as well as all associated components such as switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Tire means an item of motor vehicle equipment intended to interface between the road and a motor vehicle. The term includes all the tires of a vehicle, including the spare tire. This term also includes the tire inflation valves, tubes, and tire pressure monitoring and regulating systems, as well as all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Tire line means the entire name used by a tire manufacturer to designate a tire product including all prefixes and suffixes as they appear on the sidewall of a tire.

Trailer hitch means all coupling systems, devices, and components thereof, designed to join or connect any two motor vehicles. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Tread (also known as crown) means all materials in the tread area of a tire including the rubber that makes up the tread, the sub-base rubber, when present, between the tread base and the top of the belts, the belt material, either steel and/or fabric, and the rubber coating of the same including any rubber inserts, the body ply and its coating rubber under the tread area of the tire, and the inner-liner rubber under the tread.

Type means, in the context of a light vehicle, a vehicle certified by its manufacturer pursuant to § 567.4(g)(7) of this chapter as a passenger car, multipurpose passenger vehicle, or truck, or a vehicle identified by its manufacturer as an incomplete vehicle pursuant to § 568.4 of this chapter. In the context of a child restraint system, it means the category of child restraint system selected from one of the following: rear-facing infant seat, booster seat, or other.

Vehicle speed control means the systems and components of a motor vehicle that control vehicle speed either by command of the operator or by automatic control, including, but not limited, to the accelerator pedal, linkages, cables, springs, speed control devices (such as cruise control) and speed limiting devices. This term includes, but is not limited to the items addressed by FMVSS No. 124 and all

associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Visibility means the systems and components of a motor vehicle through which a driver views the surroundings of the vehicle including windshield, side windows, back window, and rear view mirrors, and systems and components used to wash and wipe windshields and back windows. This term includes those vehicular systems and components that can affect the ability of the driver to clearly see the roadway and surrounding area, such as the systems and components identified in FMVSS Nos. 103, 104, and 111. This term also includes the defogger/defroster system, the heater core, blower fan, windshield wiper systems, mirrors, windows and glazing material, heads-up display (HUD) systems, and exterior view-based television systems, but does not include exterior lighting systems which are defined under ''Lighting.'' This term includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

Warranty means any written affirmation of fact or written promise made in connection with the sale or lease of a motor vehicle or motor vehicle equipment by a manufacturer to a buyer or lessee that relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time (including any extensions of such specified period of time), or any undertaking in writing in connection with the sale or lease by a manufacturer of a motor vehicle or item of motor vehicle equipment to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking.

Warranty adjustment means any payment or other restitution, such as, but not limited to, replacement, repair, credit, or cash refund, made by a tire manufacturer to a consumer or to a dealer, in reimbursement for payment or other restitution to a consumer, pursuant to a warranty program offered by the manufacturer.

Warranty claim means any claim paid by a manufacturer, including provision of a credit, pursuant to a warranty program, an extended warranty program, or good will. It does not include claims for reimbursement for costs or expenses for work performed to remedy a safety-related defect or noncompliance reported to NHTSA under part 573 of this chapter, or in connection with an emissions-related recall under the Clean Air Act.

Wheel means the assembly or component of a motor vehicle to which a tire is mounted. The term includes any item of motor vehicle equipment used to attach the wheel to the vehicle, including inner cap nuts and the wheel studs, bolts, and nuts.

(d) *Terms related to foreign claims.* For purposes of subpart C of this part:

(1) A motor vehicle sold or in use outside the United States is identical or substantially similar to a motor vehicle sold or offered for sale in the United States if—

(i) Such a vehicle has been sold in Canada or has been certified as complying with the Canadian Motor Vehicle Safety Standards;

(ii) Such a vehicle is listed in the VSP or VSA columns of Appendix A to part 593 of this chapter;

(iii) Such a vehicle is manufactured in the United States for sale in a foreign country; or

(iv) Such a vehicle uses the same vehicle platform as a vehicle sold or offered for sale in the United States.

(2) An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system performs the same function in vehicles or equipment sold or offered for sale in the United States, regardless of whether the part numbers are identical.

(3) A tire sold or in use outside the United States is substantially similar to a tire sold or offered for sale in the United States if it has the same size, speed rating, load index, load range, number of plies and belts, and similar ply and belt construction and materials, placement of components, and component materials, irrespective of plant of manufacture or tire line.

§ 579.5 Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications.

(a) Each manufacturer shall furnish to NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax, or other electronic means and including warranty and policy extension communiques and product improvement bulletins) other than those required to be submitted pursuant to § 573.5(c)(9) of this chapter, sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser, in the United States, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or any flaw or unintended deviation from design specifications), whether or not such defect is safety-related.

(b) Each manufacturer shall furnish to NHTSA a copy of each communication relating to a customer satisfaction campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicles or equipment, that the manufacturer issued to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, owner, or purchaser, in the United States.

(c) If a notice or communication is required to be submitted under both paragraphs (a) and (b) of this section, it need only be submitted once.

(d) Each copy shall be in readable form and shall be submitted not more than five working days after the end of the month in which it was issued. Each submission shall be accompanied by a document identifying each communication in the submission by name or subject matter and date.

§ 579.6 Address for submitting reports and other information.

Information, reports, and documents required to be submitted to NHTSA pursuant to this part, if submitted by mail, must be addressed to the Associate Administrator for Enforcement, National Highway Traffic Safety Administration (NHTSA), 400 7th Street, SW., Washington, D.C. 20590. Information, documents, and reports that are submitted to NHTSA's early warning data repository shall be submitted in accordance with § 579.29 of this part. Submissions must be made by a means that permits the sender to verify that the report was in fact received by NHTSA and the day it was received by NHTSA.

§§ 579.7–579.10 [Reserved]

Subpart B—Reporting of Defects in Motor Vehicles and Motor Vehicle Equipment in Countries Other Than the United States

§§ 579.11–579.20 [Reserved]

Subpart C—Reporting of Early Warning Information

§ 579.21 Reporting requirements for manufacturers of 500 or more light vehicles annually.

For each reporting period, a manufacturer whose aggregate number of light vehicles manufactured for sale, offered for sale, imported, or sold, in the United States, during the calendar year of the reporting period or during each of the prior two calendar years is 500 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and model year of light vehicle manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, the type, the platform, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased.

(b) *Information on incidents involving death or injury.* For all light vehicles less than ten calendar years old at the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's vehicle, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's vehicle, if that vehicle is identical or substantially similar to a vehicle that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on light vehicles and organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the vehicle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle that allegedly contributed to the incident, and whether the incident involved a fire or rollover, coded as follows: 01 steering system, 02 suspension system, 03 service brake system, 05 parking brake, 06 engine and engine cooling system, 07 fuel system, 10 power train, 11 electrical system, 12 exterior lighting, 13 visibility, 14 air bags, 15 seat belts, 16 structure, 17 latch, 18 vehicle speed control, 19 tires, 20 wheels, 22 seats, 23 fire, 24 rollover, 98 where a system or component not covered by categories 01 through 22 is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report with a limit of five codes to be included.

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 01 through 22 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire or rollover indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or field report involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes, and the incident did not involve a fire or rollover.

(d) *Copies of field reports.* For all light vehicles less than ten calendar years old as of the beginning of the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability, or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

§ 579.22 Reporting requirements for manufacturers of 500 or more medium-heavy vehicles and buses annually.

For each reporting period, a manufacturer whose aggregate number of medium-heavy vehicles and buses manufactured for sale, offered for sale, imported, or sold, in the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and model year of medium-heavy vehicle and bus manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased. For each model that is manufactured and available with more than one type of fuel system (i.e., gasoline, diesel, or other (including vehicles that can be operated using more than one type of fuel, such as gasoline and compressed natural gas)), the information required by this subsection shall be reported separately by each of the three fuel system types. For each model that is manufactured and available with more than one type of service brake system (i.e., hydraulic or air), the information required by this subsection shall be reported by each of the two brake types. If the service brake system in a vehicle is not readily characterized as either hydraulic or air, the vehicle shall be considered to have hydraulic service brakes.

(b) *Information on incidents involving death or injury.* For all medium-heavy

vehicles and buses less than ten calendar years old at the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's vehicle, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's vehicle, if that vehicle is identical or substantially similar to a vehicle that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on medium-heavy vehicles and buses and organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the medium-heavy vehicle or bus, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle that allegedly contributed to the incident, and whether the incident involved a fire or rollover, coded as follows: 01 steering system, 02 suspension system, 03 service brake system, hydraulic, 04 service brake system, air, 05 parking brake, 06 engine and engine cooling system, 07 fuel system, gasoline, 08 fuel system, diesel, 09 fuel system, other, 10 power train, 11 electrical, 12 exterior lighting, 13 visibility, 14 air bags, 15 seat belts, 16 structure, 17 latch, 18 vehicle speed control, 19 tires, 20 wheels, 21 trailer hitch, 22 seats, 23 fire, 24 rollover, 98 where a system or component not covered by categories 01 through 22 is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report with a limit of five codes to be included.

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 01 through 22 in paragraph (b)(2) of this section, or a fire (code 23), or rollover (code 24). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire or rollover indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or field report involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes, and the incident did not involve a fire or rollover.

(d) *Copies of field reports.* For all medium-heavy vehicles and buses less than ten calendar years old as of the beginning of the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, or rollover, containing any assessment of an alleged failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

§ 579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.

For each reporting period, a manufacturer whose aggregate number of motorcycles manufactured for sale, offered for sale, imported, or sold, in the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and model year of motorcycle manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased.

(b) *Information on incidents involving death or injury.* For all motorcycles less than ten calendar years old as of the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's motorcycle, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's motorcycle, if that motorcycle is identical or substantially similar to a motorcycle that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on motorcycles and organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the motorcycle, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the motorcycle that allegedly contributed to the incident, and whether the incident involved a fire, coded as follows: 01 steering, 02 suspension, 03 service brake system, 06 engine and engine cooling, 07 fuel system, 10 power train, 11 electrical, 12 exterior lighting, 16 structure,18 vehicle speed control, 19 tires, 20 wheels, 23 fire, 98 where a system or component not covered by categories 01 through 20 is specified in the claim or notice, and 99 where no system or component of the vehicle is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report with a limit of five codes to be included.

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field

reports which involve the systems and components that are specified in codes 01 through 22 in paragraph (b)(2) of this section, or a fire (code 23). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or field report involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes, and the incident did not involve a fire.

(d) *Copies of field reports.* For all motorcycles less than ten years old as of the date of the beginning of the reporting period, a copy of each field report (other than a dealer report) involving one or more of the components identified in paragraph (b)(2) of this section, or fire, containing any assessment of an alleged failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

§ 579.24 Reporting requirements for manufacturers of 500 or more trailers annually.

For each reporting period, a manufacturer whose aggregate number of trailers manufactured for sale, offered for sale, imported, or sold, in the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information with respect to each make, model and model year of trailer manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the make, the model, the model year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total model year production for each model year for which production has ceased. For each model that is manufactured and available with more than one type of service brake system (i.e., hydraulic or air), the information required by this subsection shall be reported by each of the two brake types. If the service brake system in a trailer is not readily characterized as either hydraulic or air, the trailer shall be considered to have hydraulic service brakes.

(b) *Information on incidents involving death or injury.* For all trailers less than ten calendar years old as of the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's trailer, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's trailer, if that trailer is identical or substantially similar to a trailer that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on trailers and organized such that incidents are reported alphabetically by make, with each make alphabetically by model, and within each model chronologically by model year.

(2) For each incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, model year, and VIN of the trailer, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the trailer that allegedly contributed to the incident, and whether the incident involved a fire, coded as follows: 02 suspension, 03 service brake system, hydraulic, 04 service brake system, air, 05 parking brake, 11 electrical, 12 exterior lighting, 16 structure, 17 latch, 19 tires, 20 wheels, 21 trailer hitch, 23 fire, 98 where a system or component not covered by categories 02 through 21 is specified in the claim or notice, and 99 where no system or component of the trailer is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report with a limit of five codes to be included.

(c) *Numbers of property damage claims, consumer complaints, warranty claims, and field reports.* Separate reports on the numbers of those property damage claims, consumer complaints, warranty claims, and field reports which involve the systems and components that are specified in codes 02 through 21 in paragraph (b)(2) of this section, or a fire (code 23). Each such report shall state, separately by each such code, the number of such property damage claims, consumer complaints, warranty claims, or field reports, respectively, that involves the systems or components or fire indicated by the code. If an underlying property damage claim, consumer complaint, warranty claim, or field report involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes, and the incident did not involve a fire.

(d) *Copies of field reports.* For all trailers less than ten calendar years old as of the beginning of the reporting period, a copy of each field report (other than a dealer report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, or fire, containing any assessment of an alleged failure, malfunction, lack of durability or other performance problem of a motor vehicle or item of motor vehicle equipment (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during a reporting period. These documents shall be submitted alphabetically by make, with each make alphabetically by model, and within each model chronologically by model year.

§ 579.25 Reporting requirements for manufacturers of child restraint systems.

For each reporting period, a manufacturer who has manufactured for sale, offered for sale, imported, or sold child restraint systems in the United States shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each make, model, and production year of child restraint system manufactured during the reporting period and the four production years prior to the earliest production year in the reporting period, including models no longer in production.

(a) *Production information.* Information that states the manufacturer's name, the quarterly

reporting period, the make, the model, the production year, and the production. The production shall be stated as either the cumulative production of the current model year to the end of the reporting period, or the total calendar year production for each calendar year for which production has ceased.

(b) *Information on incidents involving death or injury.* For all child restraint systems less than five calendar years old as of the beginning of the reporting period:

(1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's child restraint system, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's child restraint system, if the child restraint system is identical or substantially similar to a child restraint system that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on child restraint systems and organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by production year.

(2) For each such incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the make, model, and production year of the child restraint system, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, and each system or component of the child restraint system that allegedly contributed to the incident, coded as follows: 51 buckle and restraint harness, 52 seat shell, 53 handle, 54 base, 98 where a system or component not covered by categories 51 through 54 is specified in the claim or notice, and 99 where no system or component of the child restraint system is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report.

(c) *Numbers of consumer complaints and warranty claims, and field reports.* Separate reports on the numbers of those consumer complaints and warranty claims, and field reports, which involve the systems and components that are specified in codes 51 through 54 in paragraph (b)(2) of this section. Each such report shall state, separately by each such code, the number of such consumer complaints and warranty claims, or field reports, respectively, that involves the systems or components indicated by the code. If an underlying consumer complaint and warranty claim, or field report, involves more than one such code, each shall be counted separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes.

(d) *Copies of field reports.* For all child restraint systems less than five years old as of the beginning of the reporting period, a copy of each field report (other than a dealer field report) involving one or more of the systems or components identified in paragraph (b)(2) of this section, containing any assessment of an alleged failure, malfunction, lack of durability or other performance problem of the child restraint system (including any part thereof) that is originated by an employee or representative of the manufacturer and that the manufacturer received during the reporting period. These documents shall be submitted alphabetically by make, within each make alphabetically by model, and within each model chronologically by production year.

§ 579.26 Reporting requirements for manufacturers of tires.

For each reporting period, a manufacturer (including a brand name owner) who has manufactured for sale, offered for sale, imported, or sold tires in the United States shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each tire line, size, SKU, plant where manufactured, and model year of tire manufactured during the reporting period and the four calendar years prior to the earliest model year in the reporting period including tire lines no longer in production. For tires that are limited production tires or are otherwise exempted from the Uniform Tire Quality Grading Standards by § 575.104(c)(1) of this chapter, or are not passenger car tires, light truck tires, or motorcycle tires, the manufacturer need report only information on incidents involving a death, as specified in paragraph (b) of this section.

(a) *Production information.* Information that states the manufacturer's name, the quarterly reporting period, the tire line, the tire size, the tire type code, the SKU, the plant where manufactured, whether the tire is approved for use as original equipment on a motor vehicle, if so, the make, model, and model year of each vehicle for which it is approved, the production year, the cumulative warranty production, and the cumulative total production through the end of the reporting period.

(b) *Information on incidents involving death or injury.* (1) A report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death or injury was caused by a possible defect in the manufacturer's tire, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's tire, if that tire is identical or substantially similar to a tire that the manufacturer has offered for sale in the United States. The report shall be submitted as a report on tires and organized such that incidents are reported alphabetically by tire line, within each tire line by tire size, and within each tire size chronologically by production year.

(2) For each such incident described in paragraph (b)(1) of this section, the manufacturer shall separately report the tire line, size, and production year of the tire, the TIN, the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, the make, model, and model year of the vehicle on which the tire was installed, and each component of the tire that allegedly contributed to the incident, coded as follows: 71 tread, 72 sidewall, 73 bead, 98 where a component not covered by categories 71 through 73 is specified in the claim or notice, and 99 where no component of the tire is specified in the claim or notice. If an incident involves more than one such code, each shall be reported separately in the report.

(c) *Numbers of property damage claims and warranty adjustments.* Separate reports on the numbers of those property damage claims and warranty adjustments which involve the components that are specified in codes 71 through 73, and 98, in paragraph (b)(2) of this section. Each such report shall state, separately by each such code, the numbers of such property damage claims and warranty adjustments, respectively, that involve the components indicated by the code.

If an underlying property damage claim or warranty adjustment involves more than one such code, each shall be reported separately in the report with no limit on the number of codes to be included. No reporting is necessary if the system or component involved is not specified in such codes.

(d) *Common green tire reporting.* With each quarterly report, each manufacturer of tires shall provide NHTSA with a list of common green tires. For each specific common green tire grouping, the list shall provide all relevant tire lines, tire type codes, SKU numbers, plant where manufactured, brand names, and brand name owners.

§ 579.27 Reporting requirements for manufacturers of fewer than 500 vehicles annually, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.

(a) *Applicability.* This section applies to all manufacturers of motor vehicles that are not required to file a report pursuant to §§ 579.21 through 579.24 of this part, to all manufacturers of original equipment, to all manufacturers of replacement equipment other than manufacturers of tires and child restraint systems, and to registered importers registered under 49 U.S.C. 30141(c).

(b) *Information on incidents involving deaths.* For each reporting period, a manufacturer to which this section applies shall submit a report, pertaining to vehicles and/or equipment manufactured or sold during the calendar year of the reporting period and the nine calendar years prior to the reporting period (four calendar years for equipment), including models no longer in production, on each incident involving one or more deaths occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death was caused by a possible defect in the manufacturer's vehicle or equipment, together with each incident involving one or more deaths occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's vehicle or equipment, if it is identical or substantially similar to a vehicle or item of equipment that the manufacturer has offered for sale in the United States. The report shall be organized such that incidents are reported alphabetically by make, within each make alphabetically by model, and within each model chronologically by model year.

(c) For each incident described in paragraph (b) of this section, the manufacturer shall separately report the make, model, and model year of the vehicle or equipment, the VIN (for vehicles only), the incident date, the number of deaths, the number of injuries for incidents occurring in the United States, the State or foreign country where the incident occurred, each system or component of the vehicle or equipment that allegedly contributed to the incident, and whether the incident involved a fire or rollover, as follows:

(1) For light vehicles, the system or component involved, and the existence of a fire or rollover, shall be identified and coded as specified in § 579.21(b)(2) of this part.

(2) For medium-heavy vehicles and buses, the system or component involved, and the existence of a fire or rollover, shall be identified and coded as specified in § 579.22(b)(2) of this part.

(3) For motorcycles, the system or component involved, and the existence of a fire, shall be identified and coded as specified in § 579.23(b)(2) of this part.

(4) For trailers, the system or component involved, and the existence of a fire, shall be identified and coded as specified in § 579.24(b)(2) of this part.

(5) For original and replacement equipment, a written identification of each component of the equipment that was allegedly involved, and whether there was a fire, in the manufacturer's own words.

§ 579.28 Due date of reports and other miscellaneous provisions.

(a) *Initial submission of reports.* The first calendar quarter for which reports are required under §§ 579.21 through 579.27 of this part is the second calendar quarter of 2003.

(b) *Due date of reports.* Each manufacturer of motor vehicles and motor vehicle equipment shall submit each report that is required by this subpart not later than 30 days after the last day of the reporting period. Notwithstanding the prior sentence, the due date for reports covering all calendar quarters in 2003 shall be 60 days after the last day of the reporting period.

(c) *One-time reporting of historical information.* No later than September 30, 2003, each manufacturer covered by §§ 579.21 through 579.26 of this part shall file separate reports, providing information on the numbers of warranty claims or warranty adjustments and field reports that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicle designated as a 2004 model), for child restraint systems manufactured on or after April 1, 1998, and for tires manufactured on or after April 1, 1998. Each report shall include production data, as specified in paragraph (a) of §§ 579.21 through 579.26 of this part and shall identify the alleged system or component covered by warranty claim, warranty adjustment, or field report, as specified in paragraph (c) of §§ 579.21 through 579.26 of this part.

(d) *Minimal specificity.* A claim or notice involving death, a claim or notice involving injury, a claim involving property damage, a consumer complaint, a warranty claim or warranty adjustment, or a field report need not be reported if it does not identify the vehicle or equipment with minimal specificity. If a manufacturer initially receives a claim, notice, complaint, warranty claim, warranty adjustment, or field report in which the vehicle or equipment is not identified with minimal specificity and subsequently obtains information that provides the requisite information needed to identify the product with minimal specificity, the claim, etc. shall be deemed to have been received when the additional information is received. If a manufacturer receives a claim or notice involving death or injury in which the vehicle or equipment is not identified with minimal specificity and the matter is being handled by legal counsel retained by the manufacturer, the manufacturer shall attempt to obtain the missing minimal specificity information from such counsel.

(e) *Claims received by registered agents.* A claim received by any registered agent of a manufacturer under the laws of any State, or the agent that any manufacturer offering motor vehicles or motor vehicle equipment for import has designated pursuant to 49 U.S.C. 30164(a), shall be deemed received by the manufacturer.

(f) *Updating of information required in reports.* (1) Except as specified in this subsection, a manufacturer need not update its reports under this subpart.

(2) With respect to each report of an incident submitted under paragraph (b) of §§ 579.21 through 579.26 of this part:

(i) If a vehicle manufacturer is not aware of the VIN, or a tire manufacturer is not aware of the TIN, at the time the incident is initially reported, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the VIN or TIN is identified.

(ii) If a manufacturer indicated code 99 in its report because a system or component had not been identified in

the claim or notice that led to the report, and the manufacturer becomes aware during a subsequent calendar quarter that one or more of the specified systems or components allegedly contributed to the incident, the manufacturer shall submit an updated report of such incident in its report covering the reporting period in which the involved specified system(s) or component(s) is (are) identified.

(iii) If one or more systems or components is identified in a manufacturer's report of an incident, the manufacturer need not submit an updated report to reflect additional systems or components allegedly involved in the incident that it becomes aware of in a subsequent reporting period.

(iv) If the report is of an incident involving an injury and an injured person dies after a manufacturer has reported the injury to NHTSA, the manufacturer need not submit an updated report to NHTSA reflecting that death.

(g) *When a report involving a death is not required.* A report on incident(s) involving one or more deaths occurring in a foreign country that is identified in claim(s) against a manufacturer of motor vehicles or motor vehicle equipment involving a vehicle or equipment that is identical or substantially similar to equipment that the manufacturer has offered for sale in the United States need not be furnished if the claim specifically alleges that the death was caused by a possible defect in a component other than one that is common to the vehicle or equipment that the manufacturer has offered for sale in the United States.

(h) *Reporting on behalf of other manufacturers.* Whenever a fabricating manufacturer or importer submits a report on behalf of one or more other manufacturers (including a brand name owner), as authorized under § 579.3(b) of this part, the submitting manufacturer must identify each such other manufacturer. Whenever a brand name owner submits a report on its own behalf, it must identify the fabricating manufacturer of each separate product on which it is reporting.

(i) *Abbreviations.* Whenever a manufacturer is required to identify a State in which an incident occurred, the manufacturer shall use the two-letter abbreviations established by the United States Postal Service (e.g., AZ for Arizona). Whenever a manufacturer is required to identify a foreign country in which an incident occurred, the manufacturer shall use the English-language name of the country in non-abbreviated form.

(j) *Claims of confidentiality.* If a manufacturer claims that any of the information, data, or documents that it submits is entitled to confidential treatment, it must make such claim in accordance with part 512 of this chapter.

(k) *Additional related information that NHTSA may request.* In addition to information required periodically under this subpart, NHTSA may request other information that may help identify a defect related to motor vehicle safety.

(l) *Use of the plural.* As used in this part, the plural includes the singular and the singular includes the plural to bring within the scope of reporting that which might otherwise be construed to be without the scope.

§ 579.29 Manner of reporting.

(a) *Submission of reports.* (1) Except as provided in this paragraph, each report required under paragraphs (a) through (c) of §§ 579.21 through 579.26 of this part must be submitted to NHTSA's early warning data repository identified on NHTSA's Internet homepage (*www.nhtsa.dot.gov*). A manufacturer must use templates provided at the early warning website, also identified on NHTSA's homepage, for submitting reports. For data files smaller than the size limit of the Internet e-mail server of the Department of Transportation, a manufacturer may submit a report as an attachment to an e-mail message to *odi.ewr@nhtsa.dot.gov,* using the same templates.

(2) Each report required under § 579.27 of this part may be submitted to NHTSA's early warning data repository as specified in paragraph (a)(1) of this section or by manually filling out an interactive form on NHTSA's early warning website.

(b) *Submission of documents.* A copy of each document required under paragraph (d) of §§ 579.21 through 579.26 of this part may be submitted in digital form using a graphic compression protocol, approved by NHTSA, to the NHTSA data repository, or as an attachment to an e-mail message, as specified in paragraph (a)(1) of this section. Any digital image provided by a manufacturer shall be not less than 200 or more than 300 dpi (dots per inch) resolution. Such documents may also be submitted in paper form.

(c) *Designation of manufacturer contacts.* Not later than 30 days prior to the date of its first quarterly submission, each manufacturer must provide the names, office telephone numbers, postal and street mailing addresses, and electronic mail addresses of two employees (one primary and one back-up) whom NHTSA may contact for resolving issues that may arise concerning the submission of information and documents required by this part.

(d) *Manufacturer reporting identification and password.* Not later than 30 days prior to the date of its first quarterly submission, each manufacturer must request a manufacturer identification number and a password.

(e) *Graphic compression protocol.* Not later than 30 days prior to the date of its first quarterly submission, each manufacturer which wishes to submit a copy of a document in digital form, as provided in paragraph (b) of this section, must obtain approval from NHTSA for the use of such protocol.

(f) Information and requests submitted under paragraphs (c), (d), and (e) of this section shall be provided in writing to the Director, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

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Jeffrey W. Runge,

Administrator

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