

demand in the absence of a lawsuit and a complaint initiating a lawsuit. The definition of "notice" refers to "a document * * * that does not include a demand for relief." We expect that many notices would not satisfy the requirements for the work product exclusion.

Accordingly, we have granted the petitions for reconsideration on this issue, and are amending the definition of "field report" to delete the final phrase "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." In its place we are adding the phrase "but does not include a document covered by the attorney-client privilege or the work product exclusion." We are adding a separate definition of "work product" as meaning "a document in the broad sense of the word, prepared in anticipation of litigation where there is a reasonable prospect of litigation and not for some other purpose such as a business practice, and prepared or requested by an attorney or an agent for an attorney."

GM commented that, were we to exclude field reports prepared in anticipation of litigation, its burden of preparing the one-time historical report would be substantially lessened. The agency's amendment, therefore, will lessen the burden on all manufacturers who must prepare the historical report (see discussion in Section IV below on historical reports).

Further exclusions were also requested. GM and the Alliance asked the agency to clarify that field reports do not include "data concerning vehicles that are still within a manufacturer's direct control" and, consistent with defect notification requirements (§ 573.3(a)), only include reports on "vehicles and equipment that have been transported beyond the direct control of the manufacturer." The commenters feared that "field report" could be interpreted to include "quality data from assembly plants."

We have considered these comments. We agree that the use of an existing regulatory phrase, "beyond the direct control of the manufacturer," would be consistent with what we intended in requiring reports on field reports. By adding the words "with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer," we clarify that quality data from assembly plants or port inspections would not be considered field reports.

Under the EWR rule, manufacturers of more than 500 motor vehicles per year must provide NHTSA with numbers of all field reports and copies of some field reports. The term "field report" is defined to include "a communication * * * by an entity that owns or operates a fleet." "Fleet," in turn, is defined as "more than ten motor vehicles of the same make, model, and model year." The Alliance asserted that "it is usually not obvious on the face of a written complaint from a customer or other person making the complaint whether that customer owns ten or more vehicles of the same make, model, and model year," because manufacturers do not know on any systematic basis how many vehicles a customer owns, with the possible exception of large fleets, such as rental car firms. In its view, it would be burdensome "to require each manufacturer to check the ownership status of each customer who makes a written complaint * * * to determine whether that customer owns ten or more motor vehicles of the same make/model/year."

We understand the Alliance's point, and want to clarify that manufacturers are obliged to provide fleet report information only for those fleets known to it. This is consistent with the TREAD Act's provision (49 U.S.C. 30166(m)(4)(B)) that a manufacturer does not have to maintain or submit records regarding information not in its possession. Accordingly we are amending the definition of "field report" to include written reports from "an entity known to the manufacturer as owning or operating a fleet."

The Alliance asked for confirmation that NHTSA will not consider any internal company correspondence about the subject of a field report, subsequent to the filing of the report, to be itself a reportable field report. The "field" is any location where a vehicle or equipment beyond the direct control of a manufacturer is located. Thus, we do not view the field as encompassing the company itself or its internal correspondence about a field report after it has been filed. However, our definition of "field report" would cover any further communication from the field in response to inquiries from the company for clarifications, further data, and the like on a field report that has been filed.

In light of the discussion above, we are redefining field report as follows:

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, with respect to a vehicle or equipment that has

been transferred beyond the direct control of the manufacturer, a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating 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 covered by the attorney-client privilege or the work product exclusion.

III. Petitions Regarding One-Time Historical Reporting

Section 579.28(c) requires that certain manufacturers file separate reports providing information on the numbers of warranty claims or warranty adjustments and the number of field reports that they received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003, and for child restraint systems and tires manufactured after April 1, 1998, classified by the affected system or component, e.g., electrical system, seat belts. The final rule defines "warranty claim" to include a claim paid by a manufacturer pursuant to good will. "Good will," in turn, is defined 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, or under a safety recall reported to NHTSA under part 573 of this chapter."

The Alliance sought reconsideration of "the requirement to count and categorize historic field reports into the reporting categories established in the final rule," as well as "goodwill" claims outside the warranty system. Even though the final rule does not require submission of hard copies of field reports for the one-time historical reporting, the Alliance asserted that the burden to review and categorize historic field reports nevertheless remains substantial, "and falls disproportionately on those Alliance members whose field reports are not already coded or retained in a text-searchable format." The Alliance also asserted that requiring manufacturers to search through historic files "to locate any 'goodwill' claims that were paid outside the warranty system or settlements of 'breach of warranty' claims/lawsuits" would provide only a minimal benefit to the agency. The Alliance did not question the inclusion of these claims once reporting has begun. According to its comment, "goodwill" claims handled outside the