

and serious injuries.¹⁶ These mandates grew directly from information arising from the Ford/Firestone tire problem—reports of foreign safety related service actions and a plethora of lawsuits, neither of which had been reported to the agency. Congress also directed the agency to collect aggregate statistical information on property damage claims and authorized it to collect any other data that would assist the agency in its efforts to identify safety related defects in the field.

The purpose of the early warning reporting rule is to ensure that the agency has information from which it can detect potential safety problems and investigate them in a timely manner. We are concerned that our decisions on whether information will be disclosed could discourage manufacturers from collecting the information in the first instance, thereby reducing the information available to the agency to serve this critical function. We are also worried that the public interest in motor vehicle safety will be adversely affected if disclosure has the result of causing manufacturers to be less responsive to consumer safety concerns or to impose greater costs on consumers who need to address problems with their vehicles and equipment, thereby reducing the likelihood of repairing potential safety issues.

The case law construing Exemption 4 makes clear that, while the functioning of our early warning defect detection program is an appropriate consideration when construing the confidentiality of the data, assertions that the data may be useful in a broader public context is not. (See Appendix B) We must consider whether each element required to be submitted pursuant to the early warning reporting regulation is entitled to confidential treatment either because its disclosure will likely cause substantial competitive harm or because its disclosure will likely impair our ability to obtain in the future information important to our early warning defect detection program.

¹⁶ The provision requiring the reporting of safety related recalls and other safety campaigns conducted in foreign countries on vehicles that are identical or substantially similar to those offered for sale in the United States is section 30166(l). The disclosure provision in Section 30166(m)(4)(C) does not apply to this category of information. We mention it, however, because it is a critical element of the information Congress thought important for the agency to obtain. As in the case of information delineating safety recalls in the United States and other widely distributed technical information, we do not consider this category of information confidential and will not protect it from public disclosure.

1. Production Numbers

The early warning reporting rule requires certain manufacturers to submit the number of vehicles, tires and child restraint systems, by make, model, and model (or production) year, produced during the model year of the reporting period and the prior nine model years (prior four years for child restraint systems and tires). The agency previously noted in the early warning reporting NPRM that it has generally granted confidential treatment to production data on child restraints and tires submitted to NHTSA, but that light vehicle production numbers are generally available to the public through the automotive press and have generally not been granted confidential status.

Many business interests discussed their efforts to maintain the confidentiality of their production figures. Harley Davidson and MIC stated that production numbers by model have never been generally available in the motorcycle industry. Cooper Tire submitted an affidavit, further confirmed through RMA's comments, with regard to the competitive harm that disclosure of otherwise confidential production numbers would have in the tire industry. JPMA argued that disclosure of these data would provide new entrants and competitors in the child restraint industry with information about production capacities, sales and market performance not otherwise available in the absence of considerable investment in market research. Bluebird (buses, school buses and motor homes), Utilmaster (final stage walk-in vans and freight bodies for commercial use) and the AORC (occupant restraint systems and other components) also each stated that production numbers in their segment of the industry are confidential and likely to lead to substantial competitive harm if released.

The comments substantiate that production numbers in many sectors of the automotive and equipment industries are competitively protected information, revealing otherwise unobtainable data relating to business practices and marketing strategies. Production numbers for manufacturers other than light vehicle manufacturers have been treated confidentially in the past and their disclosure is likely to cause substantial competitive harm to the businesses engaged in these industries. Accordingly, we are establishing a class determination applicable to such information.

2. Claims and Notices Involving Death, Personal Injury and Property Damage

The early warning reporting rule requires all vehicle and equipment manufacturers, including those producing less than 500 vehicles annually, to report certain information about each incident involving a death that occurred in the United States that is identified in a claim 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 a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's product, if it is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.

Certain manufacturers are also required to report 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 alleging or proving that the injury was caused by a possible defect in the manufacturer's product.

In general, the information that must be reported includes, for each claim or notice: the make, model, model year and Vehicle Identification Number of the vehicle involved, the date of the incident, the number of deaths and/or injuries involved, the state or foreign country in which the incident occurred, and each system or component that is referred to in the claim or notice. In addition, the larger vehicle manufacturers and tire manufacturers must report the numbers of claims for property damage that occurred in the United States that involve certain specified components and systems, regardless of the amount of such claims.

Industry commenters, such as TMA and MEMA/OESA, alleged that release of death and injury data will result in substantial competitive harm. Public Citizen claimed that such reports do not reveal detailed competitive information, but rather reveal only summary information about the incidents reported.

The submissions relating to claims and notices of death, personal injury or property damage involve a collection of information, many of the pieces of which are publicly available. While the data are not generally available to the