

public in this type of compilation, the disclosure of this collected information is not likely to reveal business strategies or other data that can be used competitively. These kinds of claims tend to be more historical than other types of information required by the early warning reporting regulation, with any apparent trends arising over longer periods of time. Given the nature of the data, we consider it unlikely that information about claims of death, personal injury or property damage will lend itself to cross-company comparison. We further note that the claims about a particular issue against a particular manufacturer, and in particular a developing set of claims, often receive media attention and are already in the public domain.

Nor are we concerned that disclosure will detract from the future availability or reliability of this information. Manufacturers receive claims based on incidents occurring in the field, not as the result of proactive efforts to obtain data or customer feedback. They are required under 49 CFR part 576 to retain this information and do not have the option to refuse to amass it. Further, the required information relating to these claims does not involve subjective determinations or require companies to make any admissions relating to facts or legal conclusions in dispute. The reports simply reflect the existence of allegations made with regard to events that occurred in the field.

For these reasons, we have decided not to create a class determination to cover the early warning reporting information relating to claims and notices of death or personal injury, or property damage claims. We have determined that release of that data generally will neither lead to substantial competitive harm nor impair our ability to obtain such information in the future.

3. Information Regarding Warranty Claims

Manufacturers of more than 500 vehicles per year and tire manufacturers must report quarterly the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they paid that involved certain specified components and systems and that arose in the United States. Manufacturers of child restraint systems must combine these with the number of reportable consumer complaints. In addition, these manufacturers must provide similar historical information relating to warranty claims paid during each calendar quarter from July 1, 2000 to June 30, 2003. The information is provided on a make/model basis and

categorized with reference to the twenty-two categories defined as part of implementation of the early warning regulation.

Public Citizen argued that the information is summary in nature and typical of that generally provided as part of particularized defect investigations. Conversely, almost all the corporate commenters decried the potential disclosure of warranty data claims as the revelation of vital competitive information. Comments from the Alliance and Cooper Tire included affidavits providing evidence relating to the competitive harm that would be associated with the disclosure of warranty data within the light vehicle and tire industry, respectively.

As suggested by the affidavit from AutoPacific, Inc., submitted by the Alliance, knowledge of the warranty experience of one of the specified components or systems on a make/model level can provide other manufacturers with information about the reliability of a component or system not otherwise available to them, except perhaps through extensive investment in market research. GM offered the following example:

If supplier A offers a newly-designed system to OEMs, any OEM can tear it down and test it, but no practical test duplicates the experience that is gained from having the system in hundreds of thousands of vehicles. If OEM1 makes the investment to put the system in some of its vehicles, it would gain that field experience and could use it to make better decisions about the future use of the system. With early warning warranty data disclosure, other OEMs would have access to some of the same information and would be able to make their decisions with less extensive testing and analysis. Through the loss of its confidential information, OEM1 is forced to subsidize the other OEMs, reducing their costs at OEM1's expense.

General Motors also makes the further point that warranty cost information is critical in the competitive automotive marketplace. While particular warranty information (such as that submitted as part of a particular defect investigation) does not reveal a company's cost structure, when aggregated by make, model and model year and applied across systems, a cost index is created. As GM notes, cost structure information has consistently been considered data likely to cause substantial competitive harm if released.

Cooper Tire raised concerns that competitors could mischaracterize the data and use it to their competitive advantage. In an affidavit submitted to the docket, Cooper Tire's expert explained that the release of "a few statistics, such as the warranty adjustment rate, without the complete

background behind those statistics could lead to a very misleading picture of tire performance." The company indicated that the differences between warranties among otherwise identical tire lines sold to different types of users "could lead to erroneous inferences about tire safety which, in turn could lead to erroneous and justified competitive harm." Many other commenters echoed this same concern, asserting that because warranty practices differ and because the raw data do not reflect any technical evaluation, the data can be used and abused competitively.

In addition to the comments filed in the docket, additional public information illustrates the extent to which the industry as a whole relies on and uses sensitive warranty information. For example, GM uses its warranty data to help it pinpoint problem areas and to help it reduce its warranty costs. *See, e.g.,* Gregory L. White, "GM Takes Tips from CDC to Debug its Fleet of Cars," Wall St. J., April 8, 1999, at B1 (noting GM's adaptation of the epidemiological system used by the Centers for Disease Control and Prevention to warranty issues) and "A Message to Dealers Regarding the Ford Recall of Firestone Wilderness AT Tires and General Motors Continued Use of Firestone Tires on its Vehicles" (May 25, 2001)(stating that GM and Firestone tire engineers "are on site at GM's tire and wheel laboratory two days a week" to "monitor tire warranty data"), published on GM's Web site at <http://www.gmfleet.com>.

The comments and affidavits submitted support a conclusion that the warranty information required by the early warning reporting rule—that is, the number of claims associated with specific components and systems broken down by make, model and model year (with slightly different breakouts for tires and child restraint systems)—is likely to provide competing manufacturers with sufficient information about the field experience of those components and systems to provide commercial value to competitors who may be deciding whether to purchase similar components, the price at which to purchase those components and which suppliers to choose.

While manufacturers are likely to explore the practices and policies of their competitors when reviewing any publicly available warranty claims information, the public is more likely simply to rely on generic cross-company comparisons. The warranty claims information may be used as part of