

vehicle comparisons, even though the warranty terms and conditions and corporate warranty practices may differ. As a result, the potential for the warranty claims information to give rise to misleading comparisons and cause substantial competitive harm is also strong.

For the reasons set forth above, we have determined that the early warning reporting of warranty information, both as regards the quarterly reports and the one-time seeding of the system, is entitled to confidential treatment because its disclosure is likely to cause substantial competitive harm.<sup>17</sup>

The warranty data required by the early warning reporting regulation are also entitled to confidential treatment because their disclosure is likely to impair the agency's ability in the future to obtain and use reliable warranty information as part of its program to identify potential safety related defects. Warranty claims data—which begin to accumulate as soon as vehicles are sold and continue for the length of any given warranty policy—will be a significant indicant of potential defects. The quarterly warranty claims reports, combined initially with the historical seeding material, will help the agency to identify trends involving particular equipment and systems or components in a particular make, model and model year of a given product.

The more warranty information available to the agency, the more useful the warranty data will be in assisting the agency in identifying areas for further investigation. Warranty information is particularly important since it is generated early in the life of the vehicle, thus assisting in the prompt identification of potential defects. The record is replete with comments explaining why disclosure is likely to impair corporate willingness to provide expansive warranty coverage or to apply warranty policy in a more generous and less restrictive way. Longer warranties, and more liberal applications of warranty policy, will increase the number of claims paid by manufacturers and, therefore, the amount of data available to the agency. Moreover,

changes in warranty policy caused by a reaction to disclosure of warranty data would likely reduce the ability of the agency to compare current data with historical data and to explore apparent changes in the data.

We are aware that, for marketing purposes, manufacturers may choose to make available to their customers warranties of longer duration and broader mileage (e.g., a company may offer a 5 year/50,000 mile warranty or a 3 year/36,000 mile warranty), making more warranty claims information available to the agency.

DaimlerChrysler, for example, lengthened its engine warranty period to gain in the competitive market. *See, e.g.,* Jeff Green, "DC Emphasizes Warranty," Bloomberg, Sept. 6, 2002, available at <http://www.theautochannel.com>. Not only do warranties differ by manufacturer, they also differ based on the targeted market (e.g. luxury v. non-luxury) and on system components. *See*, 2003 Manufacturers' Warranties, available at <http://www.enterprise.com>.

Similarly, companies can choose strictly to adhere to their warranty limitations or, alternatively, they may adopt policies of avoiding customer dissatisfaction by covering repairs arguably no longer covered under warranty, either because they may not fall within the terms of the warranty or because they fall outside their time or mileage parameters. As pointed out in the comments, the disclosure of early warning warranty data may deter "good will," customer satisfaction, and early dispute resolution efforts since such efforts will increase the number of warranty claims.<sup>18</sup> If these data were made public, it could lead consumers to assume that the product was of poorer quality than a similar competing product made by a manufacturer with a stricter approach to allowing warranty or "good will" claims.

The disclosure of early warning warranty information could lead to contraction of current warranty policies, and discourage their expansion, resulting in substantially less information available to NHTSA to screen for signs of early field problems. Thus, the disclosure of the comprehensive compendium of warranty data will likely impair the

agency's defect detection program. Because disclosure of the early warning reporting warranty information is likely to cause substantial competitive harm and will likely impair the ability of the agency to obtain comprehensive warranty information in the future, we have decided to create a class determination covering this information.

#### 4. Field Reports

Larger vehicle manufacturers and manufacturers of child restraint systems must report on a quarterly basis 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, with respect to vehicles and restraints offered for sale, sold or leased in the United States. In addition, these 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. Like information relating to warranty claims, the agency is requiring the submission of historical field report information from these manufacturers to provide it with a seeding of data it can use immediately to detect any trends within the manufacturers' product lines.

The nature, quality and quantity of field reports vary significantly from company to company. Some companies actively pursue field feedback, whether directly from customers or through dealers and manufacturer representatives. Our experience in conducting defect investigations, in which we routinely receive field reports about the specific problem under investigation, shows that companies obtain information from the field in differing ways and with differing degrees of specificity and technical evaluation. Some manufacturers collect field reports that are little more than customer complaints, collected through dealers and field personnel. For others, a field report is more akin to technical investigation into a problem detected through warranty, consumer complaint or other data available to the company.

Field reports reflect the in-use experience of a manufacturer's product, collected by the company at its expense and with the intent of identifying problems associated with its products in the field. Such information would be of substantial value to competitors, who could—if this information were to be made public—avert similar issues or improve their products without the need to invest in market research, engineering development or actual

<sup>17</sup> In its comments, the Alliance pointed out the competitive value of warranty information by identifying publications available through sale, including one called the Automotive Industry Status Report. Public Citizen, in turn, points out that the Alliance both claims that warranty claim data are competitively protected and that they are generally available for sale. Having reviewed the website on which that publication is sold, we believe that the report provides certain summary information relating to aftermarket equipment, but that it is not comparable to the compendium of more specific data required to be submitted under the early warning reporting regulation.

<sup>18</sup> We recognize that this is not a matter of corporate generosity. Some companies may choose as a matter of marketing or customer relations to apply their warranty policies liberally, thus generating additional numbers of warranty claims. Other companies may make decisions aimed primarily at avoiding potential warranty liability in the context of real or potential disputes. In either event, disclosing early warning warranty claims data may discourage customer satisfaction and early dispute resolution efforts.