

market experience. Competitors (and others) may also use the field report information competitively, just as with warranty data, to suggest comparisons that may merely result from differing policies and practices.

Public Citizen maintains that, because field reports are often disclosed as part of individual defect investigations, field reports and/or field report information should also be disclosed in a wholesale fashion when submitted as part of early warning data. On the other hand, manufacturers such as Utilimaster and Enterprise Fleet Services described the harmful competitive effects of disclosing the confidential field reports relating to the performance of their products. As stated by Utilimaster, "public and private parcel delivery operations do not under any circumstances want their competitors (or competitors of their respective customers) to be aware of and exploit delivery vehicle fleet performance, maintenance or durability issues which might impact on the operational capability of the delivery company in a particular region/trading area, or on the operations of particular customer accounts."

The same is true for other manufacturers, who collect equally proprietary information about their products that allows them to conform future design and production to field experience. Because they would have access to comprehensive data covering all products, competitors would obtain data revealing which product features, components and systems have met with consumer acceptance (and which have not), as well as what problems may be associated with particular components and systems. The information may also reveal which aspects of a vehicle's performance (whether potentially safety related or not) a manufacturer deems important in its commercial efforts. As a result, and as commenters have illustrated, the disclosure both of the hard copies of field reports and information about the number of reports associated with the components and systems specified is likely to cause substantial competitive harm. This is true both for the quarterly reports and with regard to the historical seeding field report information.

The field report data are also entitled to protection because their disclosure is likely to lead to fewer and less reliable field reports available to the agency in its efforts to identify potential safety defects promptly. The agency has required the submission of hard copies of certain field reports, as well as the numbers of all field reports, because the agency believes that this information

will be especially helpful in identifying the existence of possible safety-related problems. We recognize that we cannot compel the preparation of field reports, but rather only require that manufacturers submit to the agency information about, and copies of, those field reports that companies choose to prepare and/or obtain. *See* 49 U.S.C. 30166(m)(4)(B). Therefore, we do not want to do anything to discourage manufacturers from preparing accurate and comprehensive field reports about problems with their products. Nor do we want to detract from the candor and specificity with which field reports are written.

As made clear throughout the comments, disclosure of field reports is likely to discourage candor on the part of field personnel and could adversely affect corporate policies and practices with respect to their preparation. The available evidence shows that the disclosure of the field reports and the field report data would likely inhibit a significant feature of the agency's program to encourage the collection and reporting of information and to identify the potential existence of safety defects as soon as they begin to manifest themselves in the field. It would also reduce the amount of valuable information available to the agency during our defect investigations.

Because disclosure of the field report information required by the early warning reporting rule is likely to cause substantial competitive harm and will likely impair the ability of the agency to obtain comprehensive field report information in the future, we have decided to create a class determination applicable to these data.

5. Consumer Complaints

The early warning reporting regulation also requires larger vehicle manufacturers and child restraint manufacturers to submit complaints received each quarter relating to specified components and systems.¹⁹ Consumer complaints are defined by the regulation as:

[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

¹⁹ Child restraint system manufacturers will report consumer complaints and warranty data together. As to those manufacturers, the data are considered warranty data for purposes of this rule.

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.²⁰

The definition recognizes that companies may receive customer input in a variety of ways and may establish differing practices for the receipt of customer complaints. Companies may enhance their ability to receive consumer complaints, for example, by increasing the staff at their toll free telephone numbers or by creating web-based systems through which consumers can make complaints instantly by email. The more consumer inputs a company receives, the more reliable the information available to it, and the agency, to assess its products' performance in the hands of consumers.

We are concerned that release of the consumer complaint information will discourage companies from actively pursuing or will restrict their ability to receive consumer feedback.²¹ Consumer complaint information is a critical aspect of the data the agency intends to use to identify potential vehicle problems. Like warranty data and field reports, the aggregate information is likely to be a useful pointer to areas that, after appropriate inquiry, may lead to defect investigations and ultimately to the remedy of safety defects.

Our experience in defect investigations has been that companies generally receive considerably more consumer inputs than does the agency on any given vehicle problem. Indeed, the importance of this material increases as warranties expire and the availability of warranty claims information correspondingly diminishes. The early warning reporting regulation will make available to the agency information about the volume of complaints received by manufacturers as to each of the specified components or systems, thus considerably enhancing the agency's ability to review field experience as it arises. The disclosure of this information is likely to discourage manufacturers' proactive efforts to obtain the data or to expend sums to establish systems to receive more information or to use it more effectively.

²⁰ 49 CFR 579.4(c).

²¹ Harley-Davidson noted its proactive efforts to pursue consumer feedback that might not otherwise be brought to the company's attention. Efforts such as those of Harley-Davidson show that consumer complaint data may be developed by manufacturers at their own expense and for their own proprietary purposes. The record, however, does not indicate that efforts like those described by Harley-Davidson are prevalent among all manufacturers.