ALLIANCE FOR AUTOMOTIVE INNOVATION

February 23, 2024

Ms. Sophie Shulman
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: NHTSA Report to Congress on Proposed Improvements to Early Warning Reporting Data

Dear Deputy Administrator Shulman,

The Alliance for Automotive Innovation (Auto Innovators) is providing comments in response to the May 2023 NHTSA Report to Congress on Proposed Improvements to Early Warning Reporting (EWR) Data.

Auto Innovators members have more than two decades of experience working under the existing EWR regulations. The members have worked with your staff for several years to identify opportunities for improvements in the utility of the information provided to NHTSA, flag areas of possible reduction in burden to both the regulated industry and the agency, and have candidly discussed concerns about some of the concepts identified by staff. Throughout this review process, Auto Innovators members have remained steadfast in support of efforts to modernize the EWR process. We continue to emphasize the importance of regulatory certainty, and advocate that any major revisions to the reporting requirements in Part 579 be done through rulemaking to amend those regulations. This is essential for providing stability and certainty in understanding what information is expected to be submitted by manufacturers and avoiding the potential need for sizable changes to the reporting requirements without commensurate benefits to the agency's program and the public.

In reviewing the 24 proposed changes to the Early Warning Reporting regulation in NHTSA's 2023 Report, it is clear to Auto Innovators and its members that many of them represent a substantial shift in the policy and reporting of early warning information and would impose enormous new burdens on the regulated industry in terms of on-going reporting obligations to provide millions of newly required documents, as well as software investments needed to process the proposed new information collections. Nonetheless, NHTSA has not even designated this as a "significant" rulemaking for OMB consideration under the Paperwork Reduction Act and Executive Order 12866.

As the agency considers issuing a future Notice of Proposed Rulemaking (NPRM) on this topic, it is essential that any resulting requirements are focused on ensuring that there is an appropriate balance between the utility of data weighted against its burden. To that end, we are writing to express our initial comments and significant concerns related to the proposals outlined in the agency's Report. The Appendix to this letter provides supporting details.

In particular, we do not agree that the proposed changes in NHTSA's Report to Congress will achieve the improvements needed to provide an efficient means for early identification of potential safety defects. We urge the agency to consider issuing an Advanced Notice of Proposed Rulemaking (ANPRM) to gather more detailed information from stakeholders about the burdens of implementing the types of changes contemplated. In light of numerous misconceptions about manufacturers' capabilities to make the many of the proposed changes without enormous burdens, including a proposal to impose virtually unlimited obligations to update reported information over time, issuing an NPRM to initiate such significant changes based on many incorrect assumptions would be counterproductive.

At a high level, the agency is considering significant increases in the burdens of EWR reporting without a reasonable likelihood of securing a corresponding safety benefit for the agency's defect identification mission or public safety. Mainly the proposed changes:

- depart from the original "early warning" purpose of the regulation and instead significantly increases burdens by compelling manufacturers to update and provide analyses of data indefinitely into the future even if further follow up in many cases would not prove useful;
- incorrectly assume that "more information is better," when in fact more information (as proposed) is not better because the additional information requested is not objectively defined and will only make it more difficult to use early warning data to identify potential safety defects; and
- attempt to make up for not objectively defining the requirements by requiring manufacturer employees to conduct analyses, use schemas, and otherwise sort/follow up on millions of newly required documents that in most cases are unlikely to be useful.

As further discussed, below, the proposed new approach not only imposes significant additional burdens on the manufacturers (as this would not be a simple matter of automating existing processes), but also can slow the identification of potential safety defects by diverting manufacturer resources to support potentially ineffective data collections for NHTSA. In spite of the significant increased burdens, it is likely that the proposed changes to EWR, if implemented, would decrease the collective ability of the agency and the industry to identify potential safety defects.

The Proposed Changes should be Designated as "Significant" for the Purposes of OMB Review under Executive Order 12866.

NHTSA's recommendations represent a dramatic departure from the original concepts of the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act (which originally authorized NHTSA to issue EWR requirements) and the implementing Part 579 regulations. Thus, as an initial matter, NHTSA has erroneously not designated this as a "significant rule" for OMB consideration[1], which may be due to fundamental misunderstandings about how manufacturers fulfill their current regulatory obligations, what changes would be required if the Report's proposals were adopted, and how likely they are to produce useful early warning data for the agency.

[1] Executive Order 12,866 defines "significant regulatory actions" as those that: "(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; . . . or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order."

As further outlined in these comments, the proposed changes would entail significant additional data collection that is unlikely to be useful for the purposes of early warning of potential safety defects. A robust analysis of the societal costs and benefits of the information collected is needed. If not "significant" due to having an annual effect on the economy of $100 million or more,[2] the forthcoming rulemaking would still be "significant" by raising "novel legal or policy issues arising out of legal mandates," (such as the TREAD Act and the Bipartisan Infrastructure Law) "the President's priorities, or the principles set forth in this Executive order." Thus, designating the rule as significant for OMB review is appropriate, and Auto Innovators urges NHTSA to do so when an ANPRM or NPRM is issued.

The Proposed Changes Significantly Depart from the Original "Early Warning" Purpose of the Regulation.

As the agency is aware, the purpose of the TREAD Act and the associated Early Warning Reporting regulations were to provide NHTSA with "early warning" of potential safety defects. The focus was the prompt collection of field data from manufacturers so that the agency could analyze the data for trends and potential follow-up with individual manufacturers as needed. In other words, the purpose was to give NHTSA early access to field data close to the time in which it is being received by the manufacturer. NHTSA designed the original regulations to provide an appropriate balance between the benefits of having "early warning" data available to the agency and the burdens on manufacturers to provide it. At great expense, manufacturers developed new data collection and reporting systems to comply with the then-new requirements.

When establishing the requirements in the early 2000s, careful consideration was given to the types of information to be collected, the manner of reporting it, and the associated burdens of doing so. To provide "early warning", the fundamental premise was to require reports based on what a manufacturer initially received in the various reporting categories. There was a recognition that the issues reported from the field by vehicle owners can be varied and fluid in manner and form and could appear in multiple reporting categories over time.

For example, a customer complaint could be made about one problem, then a different problem might be raised, and a warranty or other claim may ultimately be submitted. The burden of tracking the progress of any particular matter on any particular vehicle was minimized by making the reporting based on what was "on the face of the claim or complaint." Duplicate reporting (e.g., a consumer complaint and a warranty claim) on the same issue in the same vehicle was deemed appropriate; however, updates on information after it was first reported to NHTSA were not normally required. This was a reasonable way to reduce burdens by eliminating the need to constantly make changes to update information in the various categories which, at some point soon after it is submitted, is no longer "early" warning of anything.

As further described in these comments, NHTSA's recommended changes in its 2023 Report to Congress significantly depart from the initial philosophy of the Early Warning program, which focused on the collection of raw field data and "early warning," and instead emphasizes requiring manufacturers to

[2] In its October 29, 2021 Paperwork Reduction Act notice concerning Part 579 (86 *Fed. Reg.* 60095), NHTSA identifies the "average" number of manufacturers of all types reporting under Part C (reporting of early warning information) to be 337. While not all have the reporting requirements encompassing all of the recommendations in the Report to Congress, the proposals are so extensive and significant, with much more intensive manual processing and updating on an on-going basis, that it is likely the $100 million threshold would be met.

update and provide analyses of field data into the future on an indefinite basis after they are first reported to the agency.

An obligation to continuously update prior reports would exponentially increase the reporting burdens, essentially requiring continuous investigation and follow up on information even where such follow up would otherwise provide little safety benefit. In addition, manufacturers would have to devote new and substantial human resources to prepare and file updated reports, as it is unlikely technology solutions are available to determine what information has already been reported, what new information is later received that requires previous reports to be updated, what analyses are to be done, and what assessments are to be reported based on yet-to-be-determined criteria. The updating proposal reflects a fundamental misunderstanding of how most manufacturers obtain and maintain data about field incidents and a significantly erroneous assumption that the data are maintained in a single, common data library that can easily be shared with NHTSA on a quarterly (or more frequent) basis.

More Information Does Not Mean Better Information.

When it comes to analyzing field data to look for early warning of potential safety defects, it is not a simple matter of "more data is better." More data is not necessarily better, because the useful data can be diluted by requiring additional information without regard to its value. Further, any carefully defined and collected data need to be analyzed by engineers and statisticians with the requisite expertise in order to make reasonable judgments about what data might indicate a potential safety defect that requires further investigation.

In short, if data are simply collected, without careful consideration for what the data are, why it is useful, how it will be objectively defined, and how the relevant expertise will be brought to bear to examine it, the data collection will simply impose societal costs without any reasonable expectation that it will yield a corresponding benefit in increased safety for the motoring public. In addition, the more of this data that has to be handled, the greater the resource load on manufacturers and on the agency.

NHTSA Proposals Require Manufacturer Employees to Conduct Analyses that are Unlikely Useful and More Likely Counterproductive, Imposing Significant Increased Costs without any Reasonable Corresponding Benefit.

NHTSA's latest proposals for improving EWR are at risk of repeating the prior mistakes of collecting data that cannot be objectively defined. To make up for this inability to objectively define the data to be collected, the agency is considering a requirement for manufacturer employees to broadly conduct certain analyses of field data and use certain schemas to process and analyze field data in ways that the manufacturers themselves do not, and will not, find to be useful in identifying potential safety defects.

As the agency is well aware, each manufacturer of motor vehicles and motor vehicle equipment has designed a robust system for collecting and analyzing field data. The strategies employed by each manufacturer are varied, proprietary, and based on the expertise and judgment within each company. Part 579 regulations were never intended to "unify," "level," or "systematize" the diverse approaches of the various manufacturers to ingest and evaluate field data as agency staff has suggested in past discussions about potential EWR changes. Thus, Part 579 regulations should not be used to standardize industry-wide field data collection.

As an example, some companies rely more heavily on field reports; others may rely more on warranty data. The processes greatly vary by company and are designed to, in some cases, fit into global processes of analyzing field data for major manufacturers. "Field reports", as that term is defined in the EWR rules, may be important data inputs for some manufacturers, but others may use different analytical methods to achieve the same goal. A new regulation should not be used to change such processes and practices to standardize information for NHTSA or stifle the ability of manufacturers to innovate new ways of early detection and quick resolution of potential safety defects.

Instead of objectively defining early warning field data to be submitted, the agency is instead contemplating requiring manufacturers to significantly expand the data and analysis that is required, e.g., by standardizing field reports with a schema, requiring a manufacturer assessment for each reported death, injury, or property damage case, and requesting continuous updating of such. In doing so, the agency would essentially require manufacturer employees to investigate vast amounts of data and provide analysis for many cases in a standard and unified fashion. While manufacturers will naturally follow up on many reports of field incidents in accordance with their own varied processes and based upon their engineering judgment, NHTSA contemplates essentially a blanket requirement for manufacturers to follow up, analyze, and report on vast categories of cases on an indefinite basis, even in those cases in which the manufacturer does not have reason to believe that further investigation is warranted and may not have any safety relevance at all. Of course, NHTSA is always free to devote its resources to follow up on any issue or case reported in EWR, but it should not seek to commandeer the industry resources to follow up on every issue and case reported, regardless of its merit or safety significance.

Moreover, adopting these proposals would likely be counterproductive and not further the industry and agency goal of maximizing motor vehicle safety. Requiring the reporting of more data in a format not useful to companies and of a wider scope that may have little or no safety relevance, together with increased frequency and continual updating, will actually divert resources from conducting investigations according to their well-established business practices.

Collection of additional data is meaningless if the data are inconsistently collected. However, the solution to this problem is not to simply increase requirements for manufacturers to analyze the data on behalf of the agency. If the agency's proposal is implemented, at best, it would generate significant amounts of additional analysis for which the vast majority will be useless at identifying potential safety defects that require further investigation.

High Level Recommendations

As a result, we respectfully request that the agency reconsider many aspects of its proposals in its May 2023 Report to Congress. In the Appendix, we comment in more detail on certain specific proposals and our concerns about them. However, at a high level, we recommend the following.

(1) **The rulemaking should be designated as "significant" for the purposes of Executive Order 12866.** The changes proposed are a significant shift from the original concepts and precepts of the Early Warning Reporting regulatory structure. This not only has a substantial impact on manufacturer business processes for analyzing and identifying potential safety defects, but, as evidenced by the TREAD Act and the Bipartisan Infrastructure Law, is a topic that has substantial public and Congressional attention. Close analysis by OMB of the societal costs and benefits of the potential increase in information collection is warranted.

(2) **NHTSA's proposed improvements to EWR should return to the original focus of providing raw field data for purposes of providing *early warning* to the agency about potential safety defects.** By focusing on requiring manufacturers to provide analyses and continuous updating of data submitted under EWR, NHTSA is departing from the philosophy of the Early Warning Reporting program, which has been obtaining initial raw data from manufacturers and bringing its own safety expertise to bear at an early stage of an emerging field issue. Instead, NHTSA seeks to exponentially multiply manufacturer reporting burden and delay its potential "early warning" by shifting its focus to manufacturer analyses and investigation follow up.

(3) **To improve the efficiency of the EWR program, NHTSA should avoid imposing any new requirements for data collection that cannot be objectively defined**. Data collection requirements that are not able to be objectively defined have not proven to be useful over the multiple decades of their existence in the regulations. The inability to precisely collect the data industry-wide makes these data of limited use and, therefore, no amount of paperwork burden is worth this data collection if the data are not of a minimal level of quality so as to be useful.

(4) **Any improvements to the EWR program should not rely on a blanket requirement to use manufacturer employees to conduct analyses and write reports of field data on behalf of the agency**. The agency should not make up for the fact that it is requiring the submission of vast amounts of likely useless data by requiring manufacturers to analyze it when the manufacturer itself would not do so. This is a misallocation of the manufacturer's resources and experts without a likely corresponding increase in safety benefit.

(5) **Increased reporting scope and frequency will not improve EWR and should be reconsidered.** Several proposals in the agency's Report to Congress seek to require not only increases in the types of information being reported, but also the scope (from 10 to 15 years), timing, and cadence for when information should be submitted and updated. This creates a multiplier effect where the burden of reporting exponentially increases while failing to yield comparable improvements in terms of useful information.

(6) **Quantitative analysis is needed to justify changes to EWR reporting.** It is essential that any changes to the EWR process be data driven, that the changes reflect better ways of addressing deficiencies proven to the current data and processes, and that updates to the process adequately take into account the anticipated burden and costs associated with each proposed update and collectively as a group. This information is notably absent from NHTSA's 2023 Report to Congress, but it is fundamental that it be included as part of any subsequent rulemaking that is so significant.

(7) **Improved stakeholder engagement is needed.** In developing the 2023 Report to Congress, the agency did not solicit feedback from all OEMs, nor did there appear to be a systematic approach for collectively engaging with the stakeholders to fully explore the list of potential alternatives in a more balanced and meaningful way. As a result, there are major shortcomings associated with the overall effectiveness of the agency's proposals, notwithstanding the questionable benefits and significant resources that would be required to implement these proposals. Based on past discussions with agency staff in the Trends Analysis Division, there appear to be substantial misunderstandings and misconceptions about manufacturers' existing systems and the enormous burdens associated with changing them to implement NHTSA's 24 proposals. Before

attempting to write a proposed rule, the agency should issue an Advanced Notice of Proposed Rulemaking (ANPRM) to get a true understanding of manufacturers' capabilities and limitations and the value of the information proposed to be collected so that it can properly assess the practical utility of the proposals and the burdens they will create.

(8) **The guiding principles should be further simplified.** Guiding principles are important. However, there are instances where the agency has been inconsistent in its application of the principles outlined in its Report, and these could be further simplified to focus primarily on increasing utility and minimizing burden.

Additional comments on the agency's report to Congress are provided in the attached Appendix. Thank you for your consideration.

Sincerely,

Hilary Cain
Senior Vice President, Policy
Alliance for Automotive Innovation