

MAR 25 2003

Robert Strassburger, Vice President  
Safety and Harmonization  
Alliance of Automobile Manufacturers  
1401 H Street, NW, Suite 900  
Washington, DC 20005

Dear Mr. Strassburger:

This is in response to your letter of March 18, 2003, in which you asked questions regarding our interpretation of certain provisions of the early warning reporting rules promulgated by the National Highway Traffic Safety Administration, Subpart C of 49 CFR Part 579. You requested prompt turn around in view of the fact that the first reporting period will soon begin. This letter provides that response. I will first paraphrase your inquiries and then provide a brief statement of our interpretation.

1. *Reporting Information on the Face of a Claim/Complaint.* The Alliance inquired as to whether manufacturers must report complaints/claims based on the information contained on the face of the complaint or claim, rather than reporting on the basis of the manufacturer's review or analysis of the complaint/claim.

The answer is yes. Reporting is to be based on the information in the complaint or claim, rather than on the manufacturer's assessment. Even if the manufacturer disagrees with the assertions of the consumer/claimant after conducting its analysis, the manufacturer must still report the complaint or claim. Each of the five examples given in your letter would be reportable as a "consumer complaint" under the early warning reporting rules.

2. *Marketing Survey Information.* The Alliance sought NHTSA's concurrence that marketing information purchased from third-party vendors (such as J.D. Power) or supplied by third parties (such as Consumer Reports magazine), which might contain information reflecting a consumer's dissatisfaction with a product, is not reportable in the early warning program as a "consumer complaint," or otherwise, even if the information contains "minimum specificity" about the make, model, and model year of a vehicle. You also asked about complaints that are included in "marketing information" solicited by a manufacturer directly from the purchasers of its products.

We concur with respect to third-party submissions, since they are not “addressed to the company . . .” and therefore do not fall within the regulatory definition of “consumer complaint” in Section 579.4(c). However, if a manufacturer collects the information directly from its consumers, by itself or through a contractor, it would have to report any “complaints” included in that information, regardless of whether the primary purpose of the activity is marketing. As you note in your letter, consumers responding to such manufacturer surveys are “likely aware that they are communicating with the manufacturer.” The fact that the comments are solicited by the manufacturer is not determinative, particularly since many consumers who make a complaint about a vehicle in this context will justifiably believe that they need not repeat that complaint to a different office within the company.

3. *Dealer Repair Work Orders.* The Alliance sought the agency’s views on whether dealer repair work orders, if received in writing by a vehicle manufacturer, are reportable as “dealer field reports.” These work orders are the dealer’s internal records of service performed at dealerships. As described in your letter, these work orders are not requested by, or provided to, manufacturers in the ordinary course of business, but might be submitted in the context of “lemon law” proceedings, product liability litigation, or similar proceedings, often many years after the service in question was performed. As such, we would not consider them to be “field reports” under the rule, and they would not have to be reported under that category. However, if the work had been performed under warranty, it would have to be reported as a warranty claim.

4. *Vehicle Inspections Conducted to Determine Eligibility for Insurance and/or Extended Warranty Coverage.* Finally, the Alliance asked whether written reports of vehicle inspections conducted solely to determine eligibility for insurance and/or extended warranty coverage are reportable as “field reports.” As described in your letter, these reports are not prepared in response to an assertion that a specific problem exists in a particular vehicle, which is the normal genesis of field reports. Thus, although it is possible that an inspection report might identify a problem in a vehicle, it would not be a “communication . . . regarding the failure, malfunction, lack of durability, or other performance problem . . .” As such, these inspection reports would not have to be reported to us as field reports.

If you have any questions, please call Taylor Vinson or Lloyd Guerci of this office at (202) 366-5263.

Sincerely,

Original Signed By

Jacqueline Glassman  
Chief Counsel