

**TREAD EARLY WARNING
PRESENTATION TO OESA
E-BUSINESS COMMITTEE
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NOTICE:

- **These slides are intended to be informational only and are not intended as legal advice.**
- If you need legal advice on NHTSA's regulations and standards as they apply to your unique fact situation, consult your legal counsel or with a member of the Automotive Industry Group of Warner Norcross & Judd LLP.



Where Do You Look for Information?

49 CFR §579.3 OF THE EARLY WARNING REPORTING REQUIREMENTS

- c) With regard to any information required to be reported under subpart C, an entity **need only review information and systems where information responsive to subpart C is kept in the usual course of business.**



What Do You Report for Reportable Incidents?

Organization of Incident Reports under §579.27(b)

- Report organized so that the incidents are reported alphabetically by make, within each make by model, within each model by model year.
- For vehicle manufacturers, the categories specified in (b)(2) of 579.21 through 579.24 shall be used to describe the component or system that allegedly contributed to the incident.
- **For component manufacturers, a description of each component allegedly involved, and whether there was a fire.**

Reporting Template for §579.27 Incident Reports-A Download From NHTSA Website

ID	ManUniqueID	Make	Model	ModelYear	VIN	IncidentDate	NumDeaths	NumInjuries	StateOfCrity	SysOrCompA	SysOrCompB	SysOrCompC	SysOrCompD	SysOrCompE

E-Mail Addresses for Reports

- §579.5 Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other reports (not safety and in the US): tsb@nhtsa.dot.gov
- §579.11 Reports Relating to Foreign Recalls: frecalls@nhtsa.dot.gov
- To electronically send the populated NHTSA worksheets (total file size must be less than 5MB): odi.ewr.@nhtsa.dot.gov



§579.28 Due Date of Reports and Other Miscellaneous Provisions



When Do You Not Report?

§579.28(d) Minimal Specificity

- **Need not report** claims or notices involving deaths, injuries, or property damage or consumer complaints, warranty claims or adjustments or field reports, **if the vehicle or equipment is not identified with minimum specificity.**
- **However**, if you subsequently obtain information to identify the product with minimal specificity, the claim will be deemed to have been received at time additional information is received.

§579.4(c) defines Minimal Specificity as:

- 1) For a vehicle: the make, model and model year;
- 2) For a child seat: the manufacturer and the model (either the model name or model number);
- 3) For a tire: the manufacturer tire line and tire size; and
- 4) **For other motor vehicle equipment, the manufacturer and, if there is a model or family of models identified on the item of equipment, the model name or model number.**



Updating Information

§579.28(f) Updating Information Required in Reports

- 1) **Need not update early warning reports, except as specified here.**

Incidents involving deaths or injuries:

- 2) (i) If a vehicle manufacturer is not aware of the VIN, or a tire manufacturer is not aware of the TIN, at time original report filed, the manufacturer **shall submit an updated report in its report covering the reporting period in which the VIN or TIN is identified.**

Updating Reports (continued)

- 2) (ii) If a manufacturer indicated code 99 in its report because a system or component had not been identified, and the manufacturer becomes aware in a subsequent calendar quarter of one or more systems or components that allegedly contributed to the incident, then must submit an updated report in the period that the system or component was identified. **(No code 99 for equipment manufacturers that are not tire or child restraint manufacturers.)**

Need Not Update When:

- 2) (iii) a system was identified in a previous report and a new system is identified in a subsequent reporting period;
- (iv) a person dies after the manufacturer has already reported the injury in a previous report.



Confidentiality

§579.28(j) Claims of Confidentiality

- §579.28(j) states that claims for confidentiality must be made in accordance with §512 of this chapter (49 CFR 512).

NHTSA's Final Rule on Confidentiality of Early Warning Reporting Data

- The Final Rule **grants confidentiality** for many of the classes of information required to be reported under the Early Warning Reporting rule.

Part 512 Appendix C: Early Warning Reporting Class Determinations

- a) Determination that the following types of information **will cause substantial competitive harm and will impair the government's ability to obtain this information in the future, if released:**
 - 1) Reports and data relating to warranty claim information;
 - 2) Reports and data relating to field reports, including dealer reports and hard copy reports; and
 - 3) Reports and data relating to consumer complaints

§512 Appendix C: Class Determinations (Cont)

- b) In addition, the Chief Counsel has determined that the following information will cause **substantial competitive harm** if released: Reports of production numbers for child restraint systems, tires, and vehicles other than light vehicles as defined in 49 CFR 579.4.

Appendix C Class Determinations Not Applicable To OEMs

- However, to the extent you believe your data should be granted confidential treatment, you can request it
- § 512.4 states that it applies to “[a]ny person submitting information to NHTSA, **other than information in a class identified in Appendix C of this part**, and requesting that the information be withheld from public disclosure pursuant to 5 U.S.C.552(b) [of the Freedom of Information Act]...

§512.8 What Supporting Information Should I Submit With My Request?

- a) Describe the information for which confidentiality is being requested
- b) Identify confidentiality standards under which request should be evaluated;

(cont)

§512.8 What Supporting Information Should I Submit With My Request? (cont.)

- c) Justify the basis for the claim for confidentiality:
 - 1) Why information is a **trade secret**, if basis for confidentiality is trade secret
 - 2) If claim is based upon **substantial competitive harm**, what the harmful effects are, and why they are substantial;
 - 3) If claim is based upon **impairment to government interests**, what interests will be impaired and why disclosure is likely to impair such interests;
 - 4) **Measures taken by submitter to ensure information has not been disclosed to public;**
 - 5) Any **other basis for confidentiality under 552(b)(4)** of the Freedom of Information Act

Confidentiality

- Again, the more real world examples NHTSA has as to how disclosure of the data could be harmful to you, the more likely they are to be willing to grant you confidential treatment.
- To the extent you believe your data is confidential make your strongest arguments with your confidentiality request that accompanies the first submission of the data.



Document Retention

§576 Record Retention

- **Extends** the current five-year record retention relating to malfunctions that may be related to motor vehicle safety **to child restraint and tire manufacturers.**
- **Requires all manufacturers of motor vehicles and motor vehicle equipment to retain for five years the records underlying the reports they make to NHTSA pursuant to §579.**

§576(c)

- Manufacturers need not retain documents transmitted to NHTSA pursuant to parts 573, 577 or 579 of this chapter.
- **I Recommend: Retain an exact copy of what you have transmitted to NHTSA.**

Recommendations:

- Appoint a person or organization within your company to be responsible for developing your early warning reporting system, including document retention requirements.
- Train the people who receive the reportable information in the usual course of business on what they must do to meet the reporting requirements.

Recommendations (cont):

- Implement Systems and Processes and Train All Your Involved Employees to be able to:
 - Meet the legal requirements of early warning reporting, including document retention;
 - Document that you have fully complied with the requirements; and
 - Know your data better than NHTSA so that you can discover any safety defects before NHTSA does.

Recommendations (cont):

- Have your EW systems in place as early as possible, so you can verify that they will function properly and in a timely manner.
- Set up your systems so you can easily verify that the system has been appropriately followed over time for each required report.

Recommendations (cont):

- Keep in close contact with NHTSA as questions arise relative to your specific fact situation and what it means with respect to early warning reporting.
 - Informal contacts;
 - Requests for interpretation.

Recommendations (cont):

- An **independent systems audit** of your EW reporting system is desirable.
- An **independent legal audit** of your compliance program is also desirable.
- Retain an exact copy of the information you provide NHTSA in any EW Report.
- To the extent you believe your data is confidential make your strongest arguments with your confidentiality request with the first submission of the data.

THANK YOU

I CAN BE REACHED AT:



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