

MAR 26 2004

Steven M. Cormier, Esquire
General Counsel
KME Fire Apparatus
One Industrial Complex
Nesquehoning, PA 18240

Re: Request for Interpretation of Part 579

Dear Mr. Cormier:

This is in reply to your letter dated January 22, 2004 seeking an interpretation of 49 CFR Part 579, Reporting of Information and Communications About Potential Defects. You seek a clarification on the issue of whether to report an incident involving a death identified in a claim pursuant to 49 CFR § 579.27.

You describe KME Fire Apparatus (KME) as a manufacturer of less than 500 vehicles per year, and your website indicates that you are a custom manufacturer of fire fighting vehicles. You also state that KME installs certain components or systems on vehicles that are directly related to the vehicle's use as firefighting equipment.

You seek an interpretation of the Early Warning Reporting (EWR) rule as applied to a particular type of claim. By way of example, you note that your products typically have a fire pump that is used by fire fighters to discharge water through a hose or other device with a nozzle to fight a fire. You state that a defect in such a device could potentially give rise to a claim for injury or death that is wholly unrelated to the safety of vehicle. To clarify, you provided an example that a claim may allege that a failure of the pump resulted in the death of a person in a building or car fire, where the alleged defect did not, itself, cause the fire. You state that it is your understanding that such a claim would not be reportable under the EWR rule.

We can understand how you could reach the conclusion that you reached. However, in enacting the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act, the Congress was concerned that NHTSA did not have the full range of information that was necessary to understand as soon as necessary that there potentially were defects in certain Firestone tires. To address the shortcomings of the

operative statute (49 U.S.C. Chapter 301), Congress added early warning provisions. The early warning provisions broadly authorize NHTSA to obtain information received by the manufacturer to the extent that such information "may" assist in the identification of defects. 49 U.S.C. 30166(m)(3)(A). Also, the Act specifically refers to information on deaths and injuries. In adopting the EWR regulations relating to deaths, NHTSA recognized that it would have to obtain information based on claims and notices, regardless of whether the manufacturer admitted a problem, had determined that there was a safety-related defect or was able to confirm the cause of death. At the same time, NHTSA recognized that the existence of a claim did not mean that a vehicle or item of equipment contained a defect or, even if there were a defect, that it was safety-related. NHTSA also decided that it should have information on deaths even if the claim or notice did not identify any system or component in a vehicle. These are coded as code 99 in the early warning reporting rules. *See also* code 98 (systems and components identified in claim but not specifically identified in the early warning rule). Under the approach of the EWR rule, NHTSA would obtain a complete listing of death incidents based on claims and notices and NHTSA -- rather than the manufacturer -- would decide what is important. I should add that historically NHTSA has been concerned about equipment related to motor vehicles that could cause deaths. For example, NHTSA has investigated and obtained a recall on jack stands. Similarly, NHTSA has addressed various items of equipment in recreational vehicles such as those that could cause fires. *E.g.*, space heaters, external generators not attached to the vehicle's engine, external (110 volt) power supplies and associated wiring; fuel tanks not used by the vehicle's engine. We further took into account potential burdens and, for small volume manufacturers (fewer than 500 vehicles per year) apparently including KME, only required reports involving deaths, and not other matters.

As we explained in the preamble to the final EWR rule:

We also addressed the suggestion by some manufacturers that the reportable incidents be limited to failures of or problems with certain vehicle systems. As discussed in the preamble to the NPRM and below, we believe that this approach is appropriate for certain types of information. However, while deaths and injuries are relatively rare, they are so significant that we want our information to be as complete as possible. Therefore, we proposed to require reporting of all deaths and injuries in the United States based on claims and notices, regardless of the implicated components.

67 Fed. Reg. 45822, 45841 (July 10, 2002).

In view of these concerns and the agency's decisions on the approach to the rule, the EWR rule requires that even if a claim of death does not directly involve operation of the vehicle itself, the claim must be reported. This conclusion follows from the EWR reporting requirement of 49 CFR § 579.27(b), which states in pertinent part:

For each reporting period, a manufacturer . . . shall submit a report . . . on each incident involving one or more deaths occurring in the United States that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer which notice alleges or proves that the death was caused by a possible defect in the manufacturer's vehicle or equipment. . . .

Furthermore, we have consistently interpreted the requirement for manufacturers to report a claim or notice of a death incident to NHTSA to mean that manufacturers must report claims and notices of incidents of death regardless of the manufacturer's view of the underlying facts. We have advised manufacturers to report a claim or notice of death even if the manufacturer's vehicle or equipment did not initiate the sequence of events that lead to the death (*see* letter of August 18, 2003 to Miller, Johnson, Snell & Cummiskey), or when a component did not fall within any of the defined components of EWR rule (*see* letter of July 21, 2003 to Halcore Group), or even if the claim arose out of the performance of an aftermarket part (*see* letter of May 14, 2003 to National Truck Equipment Association, p.6).

In view of the foregoing, under the EWR rule, Kovatch/KME must report any claim alleging a death, including a death allegedly caused by a pump or other item of equipment on a fire truck.

If you have any questions, you may phone Andrew DiMarsico of my staff at (202) 366-5263.

Sincerely,
Original Signed By

Jacqueline Glassman
Chief Counsel