

MAY 14 2003

Mr. Michael Kastner
Director of Government Relations
National Truck Equipment Association
1300 19th Street, Fifth Floor
Washington, DC 20036-1609

Dear Mr. Kastner:

This is in reply to your letter of April 22, 2003, asking 20 questions relating to the early warning reporting (EWR) regulations issued by this agency (Subpart C, 49 CFR Part 579). By letter dated April 11, 2003, we previously answered several other questions you asked about these regulations. Your questions, and our responses, are as follows:

“1) For manufacturers of fewer than 500 vehicles per year, is NHTSA requiring a report for each quarter when there are no fatalities?”

No.

“A) If not, are low volume and equipment manufacturers still required to submit a request for an m [User] ID and password when they have no fatalities to report?”

No.

“B) Is it true that low volume and equipment manufacturers can submit reports for fatalities in writing to NHTSA?”

No. “Low volume” and equipment manufacturers eligible to report under Section 579.27 must submit reports of claims and notices involving deaths in one of the two ways specified under Section 579.29(a)(2), either by submitting them to the Office of Defects Investigation’s (ODI) early warning repository through the use of templates available through NHTSA’s internet home page, or by filling out an interactive form on ODI’s early warning website.

- “2) Is there another method for requesting and receiving a [User] ID and password, and also the designation of manufacturer's contacts, besides writing to the Director or [sic] ODI, as required under Part 579.29?”

No.

“A) If [a request for] an ID and password is submitted in writing within the required period, and it is not received prior to the due date for the reports, what should a manufacturer do?”

ODI will attempt to provide user IDs and passwords well before the due dates for reporting. If a manufacturer does not receive that information by the due date, it should notify ODI which will take appropriate action. We would then expect reports to be submitted within 10 working days after the manufacturer receives the User ID and password.

“B) Also, if a low volume or equipment manufacturer has no fatalities to report, are they still required to submit a request for an ID and password and the designation of the manufacturer's contacts?”

No.

- “3) Part 579.29 - Manner of Reporting, indicates that the required reports ‘must be submitted to NHTSA's early warning data repository identified on NHTSA's Internet home page (www.nhtsa.dot.gov)’. As of April 21, 2003, there does not appear to be any reference to the repository or to early warning reporting in general, including the Excel templates on the home page. When will the repository, Excel templates and any other information be listed on the home page?”

The NHTSA home page contains a link to “Early Warning Reporting (EWR) Requirements” under the list of “Popular Information.” That link will take the viewer to templates and other information which are available now for downloading. Templates may be updated, as necessary. Manufacturers are encouraged to check the website periodically for any such updates.

“A) Also, Part 579.29 indicates that manufacturers of fewer than 500 vehicles per year and equipment manufacturers can either submit reports to the data repository "or by manually filling out an interactive form on NHTSA's early warning web site." Where is this located, and are there instructions/examples for using this interactive form? (See question 1 regarding low volume/equipment mfg.)”

There will be a link from the NHTSA website. We will also provide an information manual on how manufacturers are to report to ODI.

4) [Answered by the Final Rule published April 15, 2003, 68 FR 18136]

“5) For manufacturers that have production of 500 or more vehicles for the first time in the 2003 calendar year or after, but not in any prior year, what would be their reporting obligations?”

“A) If such a manufacturer reaches a production level of 500 for the very first time in the 4th quarter of a given calendar year, are they then responsible for submitting reports for the 4th quarter and each of the prior 3 quarters of that calendar year?”

In this situation, a manufacturer would submit reports under Section 579.27 for the first three calendar quarters, and, for the fourth quarter, reports under Sections 579.21-24, according to the type of vehicle manufactured.

“B) If so, would such a manufacturer also be required to submit a one-time historical report?”

The one-time historical report is due only on the date specified in Section 579.28(c), and would not be required from a manufacturer that begins to submit reports under sections 579.21-.24 at a subsequent date.

C) [Moot]

“D) How are the reporting obligations for the quarterly reporting and one-time historic report determined for manufacturers whose production fluctuates above and below 500 vehicles per year for the previous 2 or more years?”

The EWR regulations provide that if a manufacturer’s aggregate production of a vehicle type “during the calendar year of the reporting period or during each of the prior two calendar years is 500 or more,” the manufacturer is not eligible to report under Section 579.27 for that type, and must provide quarterly reports and a one-time historical report in accordance with Section 579.28(c). See, e.g. the introductory text of Section 579.22.

“6) When acting as an intermediate stage manufacturer, how are vehicles that are modified treated? Are they counted for production?”

As we explained in our letter of April 11, 2003 to you, for vehicles manufactured in two or more stages, only the manufacturer of the completed vehicle is required to report as a vehicle manufacturer. Incomplete vehicles, including vehicles produced by intermediate manufacturers, are deemed to be equipment, and information about them need not be reported under Sections 579.21-.24. However, we recognize that some light vehicle manufacturers may choose to include information about their incomplete chassis along with their other vehicles for which they report under Section 579.21. The final rule’s definition

of "type" includes "incomplete vehicle" as a category of "light vehicle." Therefore, such a manufacturer would report production numbers and other data for incomplete vehicles that will be light vehicles when completed.

"A) Are intermediate stage manufacturers considered to be equipment manufacturers, since they are not completing the incomplete vehicle?"

See prior answer.

"7) Production Number reporting - do manufacturers of vehicles built in 2 or more stages count both the vehicles that they complete from incomplete chassis and the number of vehicles that they alter? The OEM of the completed vehicles that are altered, such as a pickup truck with the box removed and a new body added, would already have counted the completed pickup in their production numbers, so would the alterer need to count it as well after their manufacturing operations?"

Yes. A manufacturer must include in its production numbers any vehicle to which it attaches, or should attach, a certification under Part 567, either as its original manufacturer or as its alterer.

"A) Are used vehicles that are modified counted toward production, warranty claims, etc. since the company performing this is technically not a "manufacturer" at this point, but a repair facility? Ex. a used chassis that has a new body installed on it."

As a general rule, a used chassis with a new body installed is not considered a new vehicle, and no reporting is required under the EWR regulations. In addition, modifications of used vehicles, with two exceptions, are insufficient to create a new vehicle subject to NHSTA regulations that apply to new vehicles. Those two exceptions are based upon the extent of the modifications. See Sections 571.7(e), *Combining new and used components*, and 571.7(f), *Combining new and used components in trailer manufacture*. These provisions may be relevant to the operations of some NTEA members.

"If so, what model year is used for reporting, the original model year of the vehicle or the year in which it was modified?"

If a truck or trailer is considered newly manufactured under Sections 571.7(e) or (f), the model year would be that of the year of the vehicle's modification, and reporting would be required under the EWR regulations in the same manner as other new motor vehicles. If a truck or trailer is not considered newly manufactured under these sections, no reporting is required. This moots your remaining questions under "A."

"B) Along the same lines, under Part 571.7(e) and (f), since certain vehicles are excluded from Subpart B, does it make a difference whether a vehicle that is modified after the first retail sale is considered 'newly manufactured' or not with regard to being counted toward production. For example, if it is not 'newly manufactured' is it

accounted for, and if so how? If it is considered 'newly manufactured' is it accounted for, and if so, how? If not, what about when a new VIN is issued? If so, for a vehicle with a new VIN, what model year would be used to designate it?"

See our answers to questions 7 and 7 A) above.

"C) Also under Part 571.7(c), since military vehicles are excluded from Subpart B, are vehicles and/or equipment produced and sold to the US Armed Forces counted toward production and included in reporting of warranty claims, consumer complaints, field reports, etc.?"

The exclusion of Section 571.7(c) is limited to compliance with the Federal motor vehicle safety standards (FMVSS) and does not extend to other NHTSA regulations applicable to motor vehicles. We would expect manufacturers of vehicles that they would otherwise be required to certify, such as staff (passenger) cars and some trucks, to submit reports under the EWR regulations in the same manner as manufacturers of non-military motor vehicles certified by their manufacturers.

"D) Vehicles modified for mobility of the disabled are allowed to use the exemption from the 'make inoperative prohibition' under which the 'first purchase of a vehicle in good faith for purposes other than retail' is defined as 'the point at which the seller and the end user enter into a sales contract that identifies a specific vehicle to be delivered' in the Final Rule of February 27, 2001. Are vehicles that are modified under this provision counted for production purposes?"

Part 595 only applies to modifications made after first sale. Therefore, they will be counted for EWR purposes by their original manufacturers, and not by the modifier.

"8) What are the model years of production volumes that need to be reported for the one-time historic and on-going quarterly reports? The July 10, 2002 (sic) indicates that production volumes from 1994 to the present must be reported for each year of the one-time report and then a moving window of the current model year plus the past 9 model years for the quarterly reports (i.e. is it provided for every year starting with 1994 and carries forward so there are always 9 years plus the current year shown on the quarterly reports?)."

For the quarterly reports, the reports must cover all vehicles "manufactured during the reporting period and the nine model years prior to the earliest model year in the reporting period." See, e.g., the introductory text of Section 579.22. For the one-time historic report, each of the twelve reports must cover claims and field reports applicable to vehicles back to model year 1994.

"A) Can you please give examples of what production information should be submitted for both the one-time historical report and the quarterly reports?"

The production information that is required for quarterly reports and the one-time historical report by manufacturers is described in the introductory text of Sections 579.21-579.24, and subsection (a) of each of these sections. See the production template at NHTSA's EWR website for an example of the information that is to be submitted.

"B) Also, are the one-time historical reports to be produced utilizing the quarterly spreadsheet templates?"

Manufacturers should use the templates for the production numbers and the number of warranty claims and field reports for their one-time historical report.

"If so, what would be the file name strategy vs. the quarterly reports?"

ODI is developing a "naming convention" which will be covered in an early warning reporting manual that will be issued in the near future.

"9) Can the one-time historical report for warranty claims, warranty adjustments and field reports be submitted electronically?"

The one-time historical report should be filed electronically in the same manner as quarterly reports under Section 579.29(a).

"10) The Final Rule published on January 28, 2003 indicates that NHTSA would allow electronic submission of foreign defect reports under Part 579.11, so that they may be transferred by email or fax. Does this apply to other documents required under Part 579.11, specifically the annual list of substantially similar vehicles?"

Yes. Moreover, NHTSA is developing a template for these submissions.

"11) Clarification - are manufacturers responsible for reporting warranty claims, consumer complaints, etc. for equipment that was installed after the first retail sale by someone or themselves?"

We assume that the last phrase of this question meant to say "by someone other than themselves." Vehicle manufacturers need not report warranty claims, etc. under those circumstances. However, they would have to report a claim or notice about a death or injury regarding their product, even if they believe the claim arose out of the performance of an aftermarket addition.

"12) Are manufacturers responsible for reporting warranty claims, consumer complaints, etc. for altered vehicles? If they don't count toward the alterer's production count, it would seem then that they should be excluded from reporting in any of the other categories not involving deaths or injuries."

Alterers are responsible for reporting on the vehicles they alter. If an alterer has certified, or was required to certify, 500 or more vehicles per year within a specific vehicle category, it is required to submit production numbers, the number of warranty claims, consumer reports, etc.

"13) What are the rules for forwarding information that is received from other manufacturers in regards to external communications? Do engineering bulletins that are produced by another manufacturer and sent to more than one other manufacturer, dealer, customer, etc. and then redistributed by one of the recipients who also happens to be a manufacturer, have to be sent to NHTSA by the manufacturer recipient who re-distributes the bulletin/communication?"

Yes, they must do so under Section 579.5, even though the information may also be submitted by the original issuer of the document.

"14) Is there a hierarchy of reporting categories for incidents that fit more than one reporting category? E.g. how would an incident that starts as a consumer complaint that turns into a warranty claim be logged? Both as a consumer complaint and warranty claim or just one of them?"

The incident would be reported both as a consumer complaint and as a warranty claim.

"15) Make - Is it acceptable to use the chassis manufacturer's designation for the make and model?"

No. Our system will not accept submissions that attempt to specify multiple, unrelated manufacturers producing the same make, model, and model year vehicle. For EWR purposes, a final stage manufacturer can create a pseudo make by combining the final stage manufacturer's name with the chassis make, such as Widget Ford, Widget Dodge, Widget Volvo, etc., used in conjunction with the appropriate model application. If a single body is installed on various chassis of a single manufacturer, the model designation would be modified to reflect the chassis. From the example above, Widget Ford becomes Widget Ford 150, Widget Ford 250, etc.

Whichever way a final stage manufacturer identifies a product in its production data, that product identification must be applied throughout each quarterly report (i.e., Death, Injury, Warranty, Consumer Complaints, etc.) as well as in all future quarterly reports.

"16) What constitutes structure"?

For purposes of the EWR regulations, "Structure" is defined in Section 579.4(b).

"A) If truck bodies are considered 'structures,' are all components of the truck body considered to be part of the structure for warranty claims, consumer complaints, etc.?"

Yes.

“B) If yes, what about latch mechanisms on the body compartments-would they be categorized under ‘latch-17’?”

Yes. “Latch,” as defined in Section 579.4(b), applies to latching devices on “doors” of all exterior body compartments.

“C) Further, are there any components of truck body that would not be reportable for warranty claims, consumer complaints, etc.?”

A manufacturer that has certified a completed truck is not required to report the number of property damage claims, consumer complaints, warranty claims, and field reports, involving a body component that is not considered “structure.” However, the manufacturer would be required to report incidents involving death or injury with respect to such a component, using Code 98.

“i Clarification - are paint runs or dents or scratches reportable as warranty claims, consumer complaints, etc.?”

No. These do not relate to any systems or components of a vehicle specified in the regulations.

“ii What about equipment that is attached to or stored within a body? How would they be classified? Examples: ladder racks, generators, welding equipment, cranes, tool boxes, liquid storage tanks, sprayers, etc.”

Equipment attached to the exterior of a body could create a safety problem if it detaches from the body while the trailer is in motion should be classified as “structure.” Please note that the definition of “structure” includes mounting elements such as brackets and fasteners. On the other hand, equipment stored within a trailer is normally related to the structure of the vehicle. However, an incident that occurs that is due in whole or in part to the equipment, such as a fire or an incident involving a death, would be reportable.

“(a) And, would it make a difference if the vehicle to which the equipment is attached was completed from an incomplete vehicle vs. an altered vehicle with the same equipment?”

No.

“17) Would the definition of ‘latch’ include locking/latching mechanisms that are located internally to a vehicle, such as on the inside of a second unit body of a truck or the interior of a trailer?”

No. The definition of “latch” relates only to a vehicle’s exterior doors.

“18) Would power take-off (PTO) issues be classified?”

“A) If so, how?”

“B) What about transmission mounted vs. engine mounted PTO's? Would the mounting location change the classification?”

Claims and other items involving PTOs would be reportable in the context of how they affect the vehicle or roadway safety; e.g., if a PTO failure causes the engine to seize, then it would be reported in the “Engine and Engine Cooling” category; if a hydraulic line to a PTO ruptures causing a fire, it would be reported under “Fire;” if there is an electrical problem as a result of a failure or problem with a PTO, then it would be reported under “Electrical System.”

“19) In regards to the one-time historical report, the Production Information of Part 579.22 indicates that “[i]f the service brake system in a vehicle is not readily characterized as either hydraulic or air, the vehicle shall be considered to have hydraulic service brakes.” Brake system information is not readily accessible in the records of many final-stage manufacturers, however, GVWR information typically is available. Given this, could manufacturers base their brake system designations on GVWR for the lack of any records to indicate otherwise? Some companies manufacture vehicles that are primarily under 20,000 Lbs. GVWR while others primarily manufacture Class 8 (over 33,000 Lbs. GVWR) vehicles. The guidance provided would be proper for assuming a hydraulic brake system for vehicles that are under 20,000 Lbs. GVWR, but not for vehicles that are over 33,000 Lbs. as they are predominately equipped with air brakes.”

With respect to the service brake issues in the one-time historic report, the manufacturer should provide the warranty claim counts, as they are available. If the counts are not divided by type of service brake system, the approach suggested by NTEA is acceptable except that to prevent any gaps, vehicles with a gross vehicle weight less than 30,000 lbs. GVWR should be filed in Service Brake System, Hydraulic, and all others in Service Brake System – Air.

“20) Part 573.5(a) states that ‘[e]ach manufacturer of a motor vehicle shall be responsible for any safety-related defect or any noncompliance determined to exist in the vehicle or in any item of original equipment.’ Does this mean that a final-stage manufacturer would be required to perform a recall on vehicles that it completes where the defect or noncompliance lies within the incomplete chassis upon which the completed vehicle is based?”

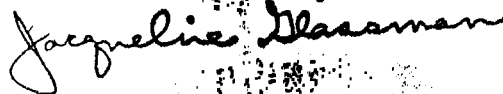
Recall responsibility rests primarily with the manufacturer that certified the completed vehicle. See Sections 568.7, 571.3, 573.5. If the final stage manufacturer certified the vehicle, then it is primarily responsible for remedying any safety-related defect or noncompliance in the vehicle, including the portion of the vehicle manufactured by the incomplete vehicle manufacturer. If an incomplete vehicle manufacturer or intermediate manufacturer certified the vehicle, then it is responsible for remedying the safety defect or noncompliance regardless of the manufacturer of the part or system that is the subject of the recall. Of course, the final stage manufacturer could seek indemnification or other redress from the incomplete vehicle manufacturer.

"A) Further, are incomplete vehicles considered to be "original equipment" for reporting purposes?"

See answer to Question 6.

If you have further questions, you may call Taylor Vinson of this Office (366-5263).

Sincerely,

A handwritten signature in cursive script that reads "Jacqueline Glassman". The signature is written in black ink and is positioned above the printed name and title.

Jacqueline Glassman
Chief Counsel