

# Questions & Answers

## Regarding Confidential Treatment of Early Warning Reporting (EWR) Data

You may submit a request for confidential treatment of Early Warning Reporting (EWR) data to NHTSA. The following questions and answers should provide you with the information necessary to ensure that your request for confidential treatment is properly considered.

1. *Has NHTSA addressed what EWR data are confidential?*

NHTSA has determined that certain classes of EWR information will be afforded confidential treatment. See 49 CFR Part 512, Appendix C. The classes of early warning information to where the agency has granted confidential treatment are:

- a. Data relating to warranty claims;
- b. Data relating to field reports and copies of field reports;
- c. Data relating to consumer complaints; and
- d. Production numbers, other than of light vehicles.

2. *Do I need to request confidential treatment for EWR data relating to warranty claims, field reports, consumer complaints and non-light vehicle production numbers? How do I do so?*

No. You do not need to request confidential treatment for EWR data relating to warranty claims, field reports, consumer complaints and non-light vehicle production numbers. You need only place a “P” designation in the Confidentiality Request Identifier in the template file name. A “P” designation does not mean a waiver of confidential treatment of this information, only that no other request for confidentiality is being requested for this EWR file.

*3. Do I need to submit a separate written request for confidential treatment to NHTSA's Office of Chief Counsel for EWR data relating to warranty claims, field reports, consumer complaints and non-light vehicle production numbers?*

You do not need to submit a separate written request for confidential treatment for this EWR information to NHTSA's Office of Chief Counsel since NHTSA has determined that these classes of information are confidential.

*4. May I request confidential treatment for EWR data that is not subject to a class determination?*

It is not legally precluded. You should realize that in the preamble to NHTSA's amended 49 CFR Part 512, Confidential Business Information Rule, 68 Fed Reg 44209, July 28, 2003), NHTSA assessed whether EWR information on incidents involving deaths or injuries (identified in claims and notices), numbers of property damage claims, and production for light vehicles should be afforded confidential treatment. NHTSA concluded that it should not. In the preamble to that final rule, NHTSA rejected numerous arguments that such data should be granted confidential treatment through class determinations. One trade association has sought reconsideration. However, NHTSA has not precluded manufacturers from submitting individual requests for confidential treatment for EWR data relating to deaths and injuries based on claims and notices, numbers of property damage claims and/or production for light vehicles.

To assert a claim for confidential treatment for EWR data relating to reports of incidents involving death and injury, numbers of property damage claims and/or production for light vehicles, you must do the following:

- a. Place a "C" designation in the Confidentiality Request Identifier in the template file name; and
- b. Submit a written request to NHTSA's Office of Chief Counsel when the EWR report containing the "C" designation is submitted to NHTSA electronically. This request includes:

1. Submission of the information that you claim to be confidential (unless you have received a document from the Chief Counsel that allows you to identify the EWR information precisely in a letter to the Chief Counsel in lieu of submission of it to the Chief Counsel);
2. Support for your claim for confidential treatment pursuant to 49 CFR Part 512; and
3. A certificate pursuant to 49 CFR Part 512, Appendix A.

*5. What will happen if I place a "C" designation on EWR data relating to reports of incidents involving death and injury, numbers of property damage claims, and production for light vehicles, but I do not submit a written request for confidential treatment to the Chief Counsel?*

If you fail to submit a written request to NHTSA's Office of Chief Counsel at the time the EWR data is submitted to NHTSA, the claim for confidentiality is not valid and the information may be disclosed to the public.

*6. What will happen if I do not submit adequate support for my request for confidential treatment to Chief Counsel?*

You must submit adequate support that the release of EWR data will cause competitive harm and that such harm will be substantial. See 49 CFR § 512.8(c)(2). Failure to provide adequate support will result in a denial of your request for confidential treatment.

*7. What do I do if I do not wish to request confidential treatment for EWR data that is not the subject of a class determination?*

If you do not seek confidential treatment for information that is not subject to a class determination (i.e., incident reports on deaths and injuries based on claims and notices, property damage claims, and production information for light vehicle manufacturers only), you merely place a "P" designation in the Confidentiality Request Identifier in the template file name.

8. *Where can I find more information about NHTSA's confidentiality process?*

You may obtain more information about NHTSA's confidentiality process from 49 CFR Part 512 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_03/49cfr512\\_03.html](http://www.access.gpo.gov/nara/cfr/waisidx_03/49cfr512_03.html) or the Office of Defects Investigation's EWR compendiums. The compendiums may be accessed at <http://www-odi.nhtsa.dot.gov/ewr/ewr.cfm>.