

would be retained until the second quarter of 2005, five years after the records were generated. This is consistent with the outcome that the Alliance requested.

JPMA asked whether it was necessary to retain "non-substantive information (such as name, address, telephone number of claimant), or hard-copies of incoming or outgoing correspondence related to the claim (such as letters obtaining additional information from the claimant), that complete the entire underlying claim record." The answer is yes, it is necessary to retain this information. It is substantive material. For example, we may wish to contact the claimant. The records underlying the reports to NHTSA will not be complete without the information referred to by JPMA.

III. Petitions To Clarify Production Numbers To Be Reported Under Part 579

The final rule requires reporting of production numbers by manufacturers who sell vehicles in the United States even if those vehicles are made outside the United States. The Alliance, JPMA, and RMA viewed the production reporting as ambiguous, that it could be interpreted as requiring a manufacturer to report its world-wide production. The Alliance assumed that NHTSA only wants production figures for units destined for sale in the United States, otherwise NHTSA could be comparing U.S. trend-indicator data against a world-wide production number. The Alliance is correct, with the caveat that vehicles destined for lease in the United States are included as well. Moreover, for the same reason, manufacturers producing vehicles in the United States for export should not include the exported vehicles in their production numbers.

IV. Petitions To Amend or To Clarify Section 579.4(c), Other Terms

Section 579.4(c) contains definitions of terms used in the early warning reporting final rule. We were asked to amend or to clarify a number of these terms as well as to add definitions.

1. *Affiliate*. The final rule defines "affiliate" in pertinent part as "a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified." RMA recognized that we had based this definition on regulations of the Securities and Exchange Commission (SEC) (17 CFR 230.405), which also provide a separate definition of "control." RMA urged us to adopt the SEC definition "in order to ensure that

the term 'affiliate' is defined with specificity." We concur with this recommendation, and are defining the term "control" as follows:

Control (including the terms controlling, controlled by, and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

2. *Base*. JPMA asked whether "base" means only a detachable base used with an infant seat and not the permanently-installed base associated with some designs of convertible child restraints that allow changing positions for child comfort. We defined "base" as "the detachable bottom portion of a child restraint system that may remain in the vehicle to provide a base for securing the system to a seat in a motor vehicle." Thus, this term applies only to the detachable base used with an infant seat.

3. *Buckle and release harness*. JPMA also asked whether the definition of "buckle and restraint harness" included "harness clips." See Section 579.25(b)(2). Our definition included "the components that are intended to restrain a child seated in such a system. * * *" A harness clip can help ensure that the harness is properly positioned on the child's shoulders and chest at time of impact. However, under the early warning rule, we do not view it as a component intended to restrain a seated child. If a manufacturer receives a claim or notice of a death or injury that is alleged to be due to a problem or defect in a harness clip, the incident would be reported under "other" rather than "buckle and restraint harness."

4. *Claim*. In its comments on the NPRM, the Alliance recommended that early warning reports of injuries should not include claims or notices about "emotional" and other non-physical injuries because these are not ordinarily the type of injury with which NHTSA is concerned under the Vehicle Safety Act. We disagreed, noting that a claim for emotional distress following (for example) an inadvertent airbag deployment or a loss of vehicle control would be of interest to us (p. 45840). The final rule requires manufacturers of 500 vehicles or more, and manufacturers of tires and child restraint systems, to provide information on claims of injuries and on notices of injuries occurring in the United States that are alleged or proven to be due to a defect in the manufacturer's product. Reportable injuries were not limited in the regulatory text. The preamble indicated

that NHTSA intends the term "injury" to include non-physical as well as physical injuries. Saying that it had not been clear as to what we meant, the Alliance requested that we exclude from the definitions of "claim" and "notice" any injury claim "that is derivative of a fatality/injury claim that is separately reportable under the early warning system." In support of its latest request, the Alliance evoked the specter of derivative claims by persons related to persons injured in a crash but who themselves were not physically present when the injury occurred. The Alliance asserted that reporting of derivative injury claims will distort the real injury accident rate for a particular make/model of vehicle.

We have reviewed the Alliance's request and are modifying the regulations in part. Claims may be asserted until the statute of limitations runs. In some cases, the initial claim against a manufacturer will be made by a person physically injured as a direct result of a crash, whether the claimant is inside a vehicle or outside of it. But in other cases, the initial claim may be filed by a person outside the vehicle who was not physically injured by the crash or physically present at the crash. There could be a considerable difference in time between the submission of the two claims. We want to be aware of claims arising out of alleged defects as soon as possible, and therefore do not want to broadly exempt all derivative claims. However, a derivative injury claim would appear to provide little benefit for early warning reporting purposes when an incident involving a death or injury that is the predicate for the derivative claim has been reported to NHTSA. We are balancing these concerns by retaining the general requirement that manufacturers report claims and notices by vehicle occupants and people outside vehicles who were not physically injured in a crash but presented claims for emotional distress, but are adding an exclusion that these claims and notices need not be reported if the manufacturer has reported the incident as an incident involving a death or injury. This exclusion includes a claim for a non physical injury presented in the same document as a claim for death or a physical injury, and a claim for a non physical injury received by the manufacturer in the same reporting period as the claim for death or physical injury, regardless of which was received first. To clarify this point, we are adding a subsection to Section 579.28 that states that if a manufacturer has reported a claim or notice relating to an incident involving