

On August 12, 2021, NHTSA enacted the First Amended Standing General Order 2021-01 regarding Incident Reporting for Automated Driving Systems and Level 2 Advanced Driver Assistance Systems. The Order includes four requests for reporting and the obligation to report was effective ten (10) calendar days after service of the Order.

WHAT DOES THIS MEAN FOR YOU?

REQUEST NO. 1:

A reporting entity is required to report incidents that meet the below criteria within one calendar day of receiving notice and an updated report ten (10) calendar days after receiving notice. What constitutes notice? Notice is information you have received from any source and in any form. The obligation to report arises whether you have complete information or not and whether the information is verified or not. An entity is said to have notice when it has sufficient information to meet the reporting criterion. The criteria for Request No. 1 are as follows:

- A vehicle equipped with ADS or Level 2 ADAS is involved in a crash on a publicly accessible road in the United States
- The ADS or Level 2 ADAS was engaged at any time during the period from thirty (30) seconds immediately prior to the commencement of the crash through the conclusion of the crash
- The crash resulted in any individual being transported to a hospital for medical treatment, a fatality, a vehicle tow-away, an air bag deployment, or involves a vulnerable road user

A crash is any physical impact between a vehicle and another road user or property that results in any property damage, injury, or fatality. The damage or injury may be minor. However, Request No. 1 adds the requirement that the crash must have resulted in any individual being transported to a hospital for medical treatment, a fatality, a vehicle tow-away, or an air bag deployment. As such, it raises the threshold of injury or damage required than the basic definition of crash requires. The additional qualifier of "involves a vulnerable road user" means that it involves any person who is not an occupant of a motor vehicle with more than three wheels, such as a pedestrian, a motorcyclist, a bicyclist, etc. Such a user is "involved" if he/she was injured as a result of the crash, struck by any vehicle, an occupant of any vehicle that was damaged, or is alleged to have been a causing or contributing factor to the crash.

REQUEST NO. 2:

A reporting entity is required to report incidents that meet the below criteria on the 15th calendar day of the month after notice is received of a crash involving a vehicle with ADS on a publicly accessible road where the ADS was engaged for any period of time from thirty (30) seconds before the crash through the conclusion of the crash. The difference between Request No. 2 and Request No. 1 is that the crash involves a Level 3 system or higher and that the threshold level of damage and injury is decreased, such that any injury or property damage qualifies. These are crashes that do not involve a fatality, hospital treated injury, air bag deployment, vehicle tow-away, or vulnerable road user as those would have been reported under Request No. 1. The agency's justification for requiring reporting of minor incidents is that ADS equipped vehicles constitute a minor

subset of vehicles that are not available for consumer purchase or use. These vehicles are typically operated as test vehicles or for limited commercial purposes under special use permits from State or local authorities, and the agency would like to be advised of ADS involved crashes.

REQUEST NO. 3:

For incidents reported under No. 1 and No. 2, the reporting entity must submit an updated report on the 15th of the month following notice of any materially new or different information about the incident.

REQUEST NO. 4:

If there is nothing reportable under No. 2 and No. 3, then the reporting entity must submit a report confirming lack of anything reportable on the 15th of each month.

There is no expectation of confidentiality for this information. The agency intends on making all information publicly available except for personal identifying information of individuals involved in the incident and confidential business information. *However*, the reporting entity must claim confidential business information in order to maintain that confidentiality, and may only claim confidentiality for (1) the version of the ADAS/ADS with which the vehicle was equipped; (2) whether the vehicle was within its operational design domain at the time of the incident; and (3) the narrative.

Failure to report can result in penalties as well as a civil action to compel responses.

After enactment of the rule, NHTSA requested approval for a three year extension of this reporting requirement. It published a Federal Register notice with a 60-day comment period. Based upon the comments received, NHTSA decided to slightly amend the General Order. The amendment will be that for Request No. 1, for any crashes that resulted in only an air bag deployment or a vehicle tow-away, then only a single incident report is required within five (5) calendar days of receiving notice. If the entity wants to avoid the obligation to report on a weekend or holiday, they may report early. The agency otherwise disagreed and disregarded the remainder of the comments provided. To date, *however*, this amended requirement has not been instituted, but the three year extension is reflected in the current version of the published Order.

If you would like to learn more about this Order and how it may affect you, please do not hesitate to reach out.

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Bobbie specializes in defending the motor vehicle industry and has defended automotive manufacturers in cases involving handling/stability, body structure performance, seat design, seat belts, and inflatable restraints. With an educational background in biology, pre-medicine, and injury studies, and experience as a staff engineer in accident reconstruction, Bobbie enjoys the challenge of learning the technical issues involved in product design and performance.

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