

Memorandum



U.S. Department of Transportation
National Highway Traffic Safety
Administration



Subject: ACTION: Ex-Parte Communication with Hyundai Motor North America **Date:**

From: Dylan Voneiff
Trial Attorney
Litigation and Enforcement **Reply to** NCC-100
Attn. of:

To: Docket No. NHTSA-2023-0014
NPRM - Rules for Implementing the
Whistleblower Provisions of the Vehicle
Safety Act

Thru: Kerry Kolodziej
Assistant Chief Counsel
Litigation and Enforcement

On November 9, 2021, NHTSA had a virtual discussion with counsel for Hyundai Motor North America (HMNA) and its outside counsel regarding the rulemaking to implement the Motor Vehicle Safety Whistleblower Act.

The following is a list of meeting attendees from NHTSA and HMNA.

NHTSA: Kerry Kolodziej, Sarah Sorg

HMNA: Jason Erb, Sarah Wilson, Gerald Hodgkins

The stakeholders provided a presentation on building an effective whistleblower program. A copy is enclosed.

Enclosure

Building an Effective Motor Vehicle Safety Whistleblower Program

November 2021

Hyundai Motor America, Inc.

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The Right Framework for a Whistleblower Program

Having the “*right framework to move forward in – not one where we’re just deciding on a case-by-case basis, based on public opinion*” is an important aspect of a functioning whistleblower program. - *Pete Buttigieg (2019)*

The Right Framework for a Whistleblower Program

- The Motor Vehicle Safety Whistleblower Act (“MVSWA”), provides that NHTSA “*shall* promulgate regulations on the requirements of” its whistleblower program “[n]ot later than 18 months after the date of enactment” of the statute.
- The MVSWA is modeled on and uses the same key terms as the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The Right Framework for a Whistleblower Program

- Hyundai supports the creation of a whistleblower program under the MVSWA.
- Hyundai believes that NHTSA must promulgate clear and specific regulations in order to roll out a successful whistleblower program.
- Dodd-Frank model is useful, with motor vehicle safety-related adjustments.

Hyundai's Recommendations

- Whistleblower regulations are important to provide:
 - clear instructions and timelines for reporting of potential safety violations and eligibility criteria;
 - a level playing field for whistleblowers to apply for awards by providing guidance on original information and how to submit that information; and
 - clear guidelines for consistent and fair agency processing of applications and awards.

Hyundai's Recommendations

- In promulgating regulations, NHTSA should follow the example of the SEC, which promulgated regulations to interpret the analogous Dodd-Frank Act.
- The SEC's regulations interpret many of the same key terms that appear in the MVSWA.
- NHTSA should adopt similar definitions with an added focus on safety given the purpose of the MVSWA.

Procedures for Submitting an Award Application

	MVSWA Requirement	SEC Rule/Approach
Publication of Notice of Covered Action	No requirements or guidelines.	Publication on the SEC's website required.
Form & Time	No requirements or guidelines.	Standardized application form required; submission must be within 90 days of publication of Notice of Covered Action.
Submission of Original Information	No requirements or guidelines.	Original information to be submitted using specified methods.

Procedures for Processing an Award Application

	MVSWA Requirement	SEC Rule/Approach
Award Application Processing	No requirements or guidelines.	Established Office of the Whistleblower; screens applications; has regulations regarding evidence to be considered during evaluation of applications.

Eligibility Criteria for Awards

	MVSWA Requirement	SEC Rule/Approach
Original Information Definition	Defined as “derived from the independent knowledge or analysis of an individual.”	Defines "independent knowledge" and "independent analysis" and identifies when information <i>is not</i> derived from either independent knowledge or analysis.
Whistleblower Definition	Includes in definition description of an individual who "voluntarily" provides original information, but does not define "voluntarily."	Provides definition of "voluntarily" as well as definition of when information is not provided "voluntarily."
Leads to Definition	States that individuals not eligible for award if information provided did not "lead to" successful resolution of covered action.	Provides detailed definition of "leads to" in different contexts (pre/post examination or investigation).

Disqualification Criteria for Awards

	MVSWA Requirement	SEC Rule/Approach
Criminal Conviction	Convictions related to covered action disqualify.	Convictions related to judicial or administrative action disqualify; not further defined by rules.
Causing or Contributing to Violation	"Deliberately caus[ing]" or "substantially contribut[ing]" to violation disqualifies.	No equivalent disqualification; culpable conduct considered in determination of size of award.
Submission of Previously Submitted Facts	Submitting information based on facts submitted by other whistleblower disqualifies.	Rules provide detailed disqualification factors.
Failure to Comply with Regulations	Failure to provide information in the form set by regulation disqualifies.	Absent "extraordinary circumstances," failure to provide information in the form and manner set by regulation disqualifies.
Failure to Internally Report	Subject to exceptions, failure to internally report disqualifies.	No explicit disqualification factor based on lack of internal reporting, but is a factor in size of award.

Amount of an Award

	MVSWA Requirement	SEC Rule/Approach
Amount of an Award	Discretionary awards between 10% and 30%.	<p>Rules provide detailed factors that influence increases and decreases in award size, including but not limited to:</p> <ul style="list-style-type: none">• significance of information provided;• assistance provided by whistleblower;• participation or interference in internal compliance systems;• whistleblower's culpability; and• whistleblower's delay in reporting.

SEC Launch and Ten-Year Review

- Dodd-Frank Act enacted in July 2010
- SEC promulgated regulations in August 2011
- SEC announced its first award in August 2012
- SEC submitted its 10th anniversary report to Congress in 2020 celebrating successes including updated “rules governing the whistleblower program to provide greater clarity to whistleblowers and increase the program’s efficiency and transparency.”

Questions?

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