

September 27, 2024

U.S. Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
West Building
Room W12-140
Washington, DC 20590-0001

Re: Public Comments Regarding the Collection of Information (OMB Control: 2127-0616)

I am responding to your September 20, 2024, Notice and request for comments on an extension without change of a currently approved collection of information ([89 FR 77228](#); [Docket No. NHTSA-2024-0055](#)). The request for comments describes the collection of information for which National Highway Traffic Safety Administration (NHTSA) intends to seek Office of Management and Budget (OMB) approval on the reporting of information and documents about potential safety defects. Below, I utilize side underride crashes into semitrailers as an example of how to improve the information collection about potential safety defects.

The Early Warning Reporting (EWR) requirements (U.S.C. 30166(m); 49 CFR part 579, subpart C; NHTSA 2009, 74 FR 47740) specify that manufacturers of motor vehicles and motor vehicle equipment, including trailers, must submit to NHTSA information periodically or upon NHTSA's request, that includes claims or notices for incidents involving death or injury; numbers of property damage claims, consumer complaints, warranty claims, and field reports; copies of field reports; and other information that may assist NHTSA in identifying potential safety-related defects. This includes a report on each incident involving one or more deaths or injuries occurring in the United States that is identified in a claim¹ against and received by the manufacturer (49 CFR part 579.24). A manufacturer must report claims or notices involving alleged deaths or injuries involving a product produced by the manufacturer for 10 calendar years from production (NHTSA 2020). While I fully support the collection of information and documents about potential safety defects under the current OMB approval, you could easily enhance the quality, utility, and clarity of the information to be collected by addressing the following issues:

1. Missing EWR Reports: Please explain the missing EWR reports below of a claim or notice for incidents involving fatal side underride crashes between semitrailers and passenger vehicles. Please confirm that these claims should have been submitted to NHTSA via a quarterly EWR submission. Unfortunately, this is not the first instance of missing EWR reports (Safety Research & Strategies 2014; Office of Inspector General 2015). Moreover, the Office of Defects Investigation (ODI) does not verify that manufacturers' early warning reporting data are complete and accurate or take timely action to correct identified inaccuracies and omissions (Office of Inspector General 2015). Therefore, given this long-standing issue and your proposal to for an extension without change of a currently approved information collection, how do you now intend to correct these omissions and enforce EWR non-reporting? The following are side

¹ Claim means a written request or written demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or a fire originating in or from a motor vehicle or a substance that leaked from a motor vehicle. Claim includes, but is not limited to, a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled in the manufacturer's favor (NHTSA 2020).

underride crashes of passenger vehicles into the sides of semitrailer that involved “...one or more deaths or injuries occurring in the United States that is identified in a claim against and received by the manufacturer...” (49 CFR part 579.24):

Trailer Manufacturer: Utility Trailer Manufacturing Company; **Vehicle:** Suburban; **FARS Case Listing:** 220249; **Date of Fatal Crash:** May 5, 2009; **Location:** Caddo Parish, Louisiana; **Claim:** *Beane v. Utility Trailer Mfg. Co. & Truck Trailer Mfrs. Ass’n*, 934 F. Supp. 2d 871, No. 2:10-CV-0781.

Trailer Manufacturer: Utility Trailer Manufacturing Company; **Vehicle:** Honda Accord; **FARS Case Listing:** 61133; **Date of Fatal Crash:** July 9, 2017; **Location:** Riverside County, California; **Claim:** *Valenzuela v. Abarca, et al.* (and *Utility Trailer Mfg. Co.*), No. 19STCV10467. [NOTE: this crash was inaccurately coded in FARS as “No Underride or Override Noted”, see Hein 2023 Appendix].

Trailer Manufacturer: Utility Trailer Manufacturing Company; **Vehicle:** Tesla Model S; **FARS Case Listing:** 120918; **Date of Fatal Crash:** May 7, 2016; **Location:** Levy, Florida; **Claim:** NTSB 2017; NHTSA 2017.

Trailer Manufacturer: Wabash National; **Vehicle:** Dodge Journey; **FARS Case Listing:** 360121; **Date of Fatal Crash:** February 25, 2020; **Location:** New York; **Claim:** NHTSA 2023.

Trailer Manufacturer: Wabash National; **Vehicle:** Volkswagen CC; **FARS Case Listing:** 290345; **Date of Fatal Crash:** May 19, 2019; **Location:** St Louis, Missouri; **Claim:** *Lawsuit Perkins, et al. v. Wabash National Corp., et al.*, No. 2022-CC00495. (NOTE: this rear underride crash was inaccurately coded in FARS as “No Underride or Override Noted”, see Attachment 1_FARS Caselisting 290395 Rear Underride trailer St Louis Missouri).

Trailer Manufacturer: Wabash National; **Vehicle:** PT Cruiser; **FARS Case Listing:** 350229; **Date of Fatal Crash:** September 6, 2016; **Location:** New Mexico; **Claim:** *Lawsuit Hauck v. Wabash Nat’l Corp.*, No. CV 18-471 KG/LF.

Trailer Manufacturer: Great Dane; **Vehicle:** Chevrolet Lumina; **Date of Serious Injury Crash:** June 24, 2013; **Location:** Louisville, Kentucky; **Claim:** *Lawsuit Wilden v. Laury Transp., LLC (including Great Dane)*, No. 3:13-cv-784-DJH-CHL, 2016 WL 4522670, at *1 (W.D. Ky. Aug. 29, 2016).

2. Missing Manufacturer: The EWR reporting requirements apply to all trailer manufacturers that produce over 5,000 trailers per year (NHTSA 2009; 74 FR 47740); yet, the semitrailer manufacturing company Vanguard is not listed in the online [Early Warning Reporting-Data Search](#), even though they from 2020 to 2022 produced an average of 15,480 trailers per year (Trailer Body Builders 2023). The information below demonstrates that a Vanguard semitrailer was involved in a fatal side underride crash that was part of a lawsuit against and received by the manufacturer. Please explain why Vanguard, a trailer manufacturer, is missing from the EWR reporting.

Trailer Manufacturer: Vanguard; **Vehicle:** Tesla Model 3; **FARS Case Listing:** 120467; **Date of Fatal Crash:** March 1, 2019; **Location:** Palm Beach, Florida. Claim: Lawsuit *Banner v. Tesla et al.* No. 50-2019-CA-009962 (see also ABC News 2019; Washington Post 2023; see also NTSB 2019).

3. Time Lag in EWR Reporting: Utility Trailer Manufacturing Company submitted my son's November 13, 2015 fatal side underride crash EWR record into one of their 2016 refrigerated semitrailers; however, the crash was not reported until the 3rd quarter of 2018, nearly 3 years after the fatal fiery crash (Attachment UTM EWR 2018; NHTSA 2024a). Similarly, Wabash National submitted a March 15, 2005 fatal side underride crash EWR record into one of their 2016 refrigerated semitrailers; however, the crash was not reported until the 2nd quarter of 2008, nearly 3 years after the fatal crash (Attachment Wabash National EWR 2008; NHTSA 2024a). Please explain why there is an allowable 3-year lag with no enforcement of the requirement for timely EWR reporting. Also, please explain how a 3-year EWR reporting lag is compatible with the need to "...promptly [emphasis added] identify potential safety-related defects in motor vehicles and motor vehicle equipment" (89 FR 77228). How do you intend to enforce the timeliness of EWR reporting?
4. Inaction Opening a Safety Defect Investigation: The Federal Register notice ([89 FR 77228](#); [Docket No. NHTSA-2024-0055](#)) indicates that "When a trend in incidents arising from a potentially safety-related defect is discovered, NHTSA relies on this information, along with other agency data, to determine whether to open a defect investigation." However, using side underride crashes into semitrailers as an example, this reporting process or your analysis did not identify a lack of side underride guards on semitrailers as a potential safety-related defect.² You failed to ensure that the EWR requirements were met by trailer manufacturers (i.e., missing EWR reports of claims, missing trailer manufacturer, time lag, etc), which may explain why NHTSA has yet to open a defect investigation on side underride crashes into semitrailers. With regard to side underride guards, has NHTSA followed the Office of Inspector General's (2015) recommendation to "Develop a process for prioritizing, assigning responsibility, and establishing periodic reviews of potential safety defects that ODI determines should be monitored." Please describe the approach, including using EWR data from manufacturers "along with other agency data"³, that ODI uses to identify potential safety-related defects and open an investigation. Please also explain whether NHTSA implemented the recommendation to "Develop and implement a method for assessing and improving the quality of early warning reporting data" (Office of Inspector General 2015). Are traditional sources of

² Please explain whether NHTSA implemented the recommendation from Office of Inspector General (2015) to "Update standardized procedures for identifying, researching, and documenting safety defect trends that consider additional sources of information beyond consumer complaints, such as special crash investigation reports and early warning data."

³ On January 12, 2023, I followed the NHTSA-identified Consumer Vehicle Complaint Process (2019) and mailed 40 complaint letters of fatal side underride crashes into semitrailers to Office of Defects Investigation (ODI) (Attachments 2-41). I opted to mail the complaints because the "easy-to-use" online portal (<https://www.nhtsa.gov/report-a-safety-problem#index>) does not function without the full 17-character a VIN. The complaints I mailed clearly identified the crash, the date, location, and FARS Case Listing, which could easily be used to associate the vehicle with the complaint. Unfortunately, these vehicle complaints were not recorded by NHTSA because only 2 complaints were identified by ODI after I submitted a recent petition dated July 3, 2024, requesting an investigation of all van-type semi-trailers resulting in significant injuries or death due to the lack of side underride guards (ODI 2024). In fact, even though I specifically identified Utility Trailer Manufacturing Company (UTM) in the numerous submitted complaints AND in the petition, the investigation incorrectly indicated that, "No single trailer manufacturer or equipment supplier was identified" (ODI 2024).

information such as consumer vehicle complaints⁴ also part of the overall analytical process to determine whether to open a defect investigation? Is there a threshold or number of fatalities/injuries that must occur before ODI investigates a potential safety-related defect? The Office of Inspector General (2015) phrased this as, “Develop and implement guidance on the amount and type of information needed to determine whether a potential safety defect warrants an investigation proposal and investigation.” Please explain.

5. Office of Inspector General Recommendations: The Office of Inspector General (2015) found that “ODI’s process for determining when to investigate potential safety defects is also insufficient to prompt needed recalls and other corrective actions.” The Office of Inspector General (2023) subsequently determined that NHTSA does not follow the written procedures necessary for investigators to evaluate the severity of risk posed by potential defects and may miss critical information for launching an investigation. NHTSA’s (2020) safety defect analysis policy is to objectively evaluate different levels of risk using frequency of occurrence and categories of severity of harm, based on a data-driven process to validate these parameters, whether there is sufficient evidence of a potential safety-related defect, and then open a formal investigation. Yet, despite a high severity of risk resulting in frequent severe or fatal injuries from side underride crashes, NHTSA has taken no action to investigate a potential defect and recalling of semitrailers without side underride guards. Please describe how NHTSA has incorporated Recommendations from Office of Inspector General (2015, 2023) into your reporting, investigations, and evaluations, including using the EWR data under the current Reporting of Information and Documents About Potential Defects, (OMB Control: 2127–0616).

I appreciate your consideration of these comments.

Sincerely,

Eric Hein

Enclosures:

⁴ ODI (2024) only lists a total of 5 “incidents” that have been reported. The Opening Resume Report Identification Numbers lists only two incidents: 11454443, 11500135. Incident number 11500135 is a Hyundai Translead semitrailer. The trailer did not have any side underride guards and resulted in one injury. The other incident number 11454443 is my son’s fatal crash into a UTM trailer, which is also inaccurately reported because the vehicle complaint I submitted identifies that “...his Civic to become pinned underneath the 2016 semitrailer built by Utility Trailer Manufacturing Company.” and “Utility Trailer Manufacturing Company was negligent because their newly-manufactured semitrailer lacked side underride guards” (Attachment 42_Side_Underride_Complaint_NHTSA_Redacted). Even though I provided the full Vehicle Identification Number 1UYVS2531GU303503 and the online complaint form identifies the semitrailer as “2016 UTILITY TRAILER MANUFACTURER Utility Trailer Manufacturer” (Attachment 42_Side_Underride_Complaint_NHTSA_Redacted); somehow, the Make, Model, and Year are coded as “UNKNOWN, UNKNOWN, 9999” (ODI 2024).

The 2021 petition analysis (ODI 2021; NHTSA 2022) lists the following information: “ODI has received three (3) complaints, other than those from the petitioners, related to trailer underride. All three of these additional complaints involve vehicles older than Model Year 2006 and were submitted by the same individual more than 11 years ago. Although NHTSA’s EWR regulations do not have a specific code for underride, searching the Death and Injury (D&I) EWR data identified five (5) reports citing underride.” Please explain why the vehicle complaint reporting process and/or analysis failed to not only include the 3 complaints referenced in the 2021 petition analysis, but also either did not acknowledge or perhaps even record the other 40 submitted complaints (see ODI 2024). **If this is beyond the scope of this notice, please contact me directly with an explanation.

Literature Cited

ABC News. 2019. [Tesla sued for 'defective' Autopilot in wrongful death suit of Florida driver who crashed into tractor trailer; the accident had similarities to a 2016 Florida fatal crash.](#)

Written by S. Youn.

Banner v. Tesla, et al., [No. 50-2019-CA-009962](#) (Fla. Cir. Ct., 15th Jud. Cir., Palm Beach Cnty.).

Beane v. Utility Trailer Mfg. Co. & Truck Trailer Mfrs. Ass'n, 934 F. [Supp. 2d 871, No. 2:10-CV-0781](#) (W.D. La. 2013).

Becker v. Wabash Nat'l Corp., [No. C-07-115](#) (S.D. Tex. May 1, 2007).

Hauck v. Wabash Nat'l Corp., [No. CV 18-471 KG/LF](#) (D.N.M. Feb. 17, 2021).

Hein, E.W. April 2023. [An Evaluation of NHTSA Side Underride Crash Reporting Accuracy in Fatality Analysis Reporting System \(FARS\) Case Listings.](#) 21 pp. *Enclosure 5*.

National Highway Traffic Safety Administration. September 20, 2024 (2024). [Notice and request for comments on an extension without change of a currently approved collection of information; Title: Reporting of Information and Documents About Potential Defects; OMB Control: 2127-0616.](#) [Docket No. NHTSA-2024-0055]. 89 FR 77228-77236.

National Highway Traffic Safety Administration 2024a. Utility Trailer Manufacturing Company, EWR Data - Death & Injury Records; Reporting Period: 2018, Q3. Online: <https://www.nhtsa.gov/vehicle-manufacturers/early-warning-reporting>

National Highway Traffic Safety Administration 2024b. Wabash National Corporation, EWR Data - Death & Injury Records; Reporting Period: 2008, Q2. Online: <https://www.nhtsa.gov/vehicle-manufacturers/early-warning-reporting>

National Highway Traffic Safety Administration. January 2023 (2023). [Special Crash Investigations: On-site semitrailer underride crash investigation; Vehicle: 2019 International Tractor/2018 Wabash Semi-Trailer;](#) Location: New York; Crash Date: February 2020 (Report No. DOT HS 813402).

National Highway Traffic Safety Administration. July 5, 2022 (2022). [Denial of petition for a defect investigation.](#) [Docket No. NHTSA–2022–055]; 87 FR 39899-39901.

National Highway Traffic Safety Administration. May 2020 (2020). [Manufacturer Portal Training Light vehicles, Medium/Heavy Vehicles, Trailers, Motorcycles.](#) 75 pp.

National Highway Traffic Safety Administration. 2020. [Risk-Based Processes for Safety Defect Analysis and Management of Recalls.](#) Report No. DOT HS 812 984.

National Highway Traffic Safety Administration. 2019. [Consumer Vehicle Complaint Process.](#) 1 pp.

National Highway Traffic Safety Administration. 2017. [Investigation: MY2014-2016 Tesla Model S and Model X; OID Resume: PE 16-007](#). Office of Defect Investigation. 13 pp.

National Highway Traffic Safety Administration. September 17, 2009 (2009). [Early Warning Reporting Regulations](#). [Docket No. NHTSA–2008–0169; Notice 2]. 74 FR 47740-47758.

National Transportation Safety Board. 2019. [Collision Between Car Operating with Partial Driving Automation and Truck-Tractor Semitrailer Delray Beach, Florida, March 1, 2019](#). Highway Accident Report NTSB/HAB-20/01. Washington, DC.

National Transportation Safety Board. 2017. [Collision Between a Car Operating With Automated Vehicle Control Systems and a Tractor-Semitrailer Truck Near Williston, Florida, May 7, 2016](#). Highway Accident Report NTSB/HAR-17/02. Washington, DC.

Office of Defect Investigation. August 26, 2024 (2024). [Semitrailer side underride guards; NHTSA Action Number: DP24004](#). National Highway Traffic Safety Administration, 2 pp.

Office of Defect Investigation. November 17, 2021 (2021). [Semitrailer side underride guards; NHTSA Action Number: DP21004](#). National Highway Traffic Safety Administration, 2 pp.

Office of Inspector General. May 2023 (2023). [NHTSA Has Not Fully Established and Applied Its Risk-Based Process for Safety Defect Analysis](#). National Highway Traffic Safety Administration. Report Number: ST2023031.

Office of Inspector General. June 18, 2015 (2015). [Inadequate data and analysis undermine NHTSA’s efforts to identify and investigate vehicle safety concerns](#). National Highway Traffic Safety Administration. Report Number: ST-2015-063.

Perkins, et al. v. Wabash National Corp., et al., [Case No. 2022-CC00495](#) (Mo. Cir. Ct., City of St. Louis, 22nd Jud. Cir.).

Safety Research & Strategies Inc., April 8, 2014 (2014). [EWR: Elective Warning Reports – When Manufacturers Don’t Report Claims](#).

Trailer Body Builders. February 28, 2023 (2023). [Trailer Output Report: 2022](#).

Valenzuela v. Abarca, et al. (and Utility Trailer Mfg. Co.), [No. 19STCV10467](#) (Cal. Super. Ct., Los Angeles Cnty. Sept. 24, 2019). [However, this crash was inaccurately coded in FARS as “No Underride Noted”. see Hein 2023].

Washington Post. October 6, 2023 (2023). [The final 11 seconds of a fatal Tesla Autopilot crash: A reconstruction of the wreck shows how human error and emerging technology can collide with deadly results](#). Written by T. Thadani, R. Lerman, I. Piper, F. Siddiqui, and I. Uraizee.

Wilden v. Laury Transp., LLC (including Great Dane), [No. 3:13-cv-784-DJH-CHL](#), 2016 WL 4522670, at *1 (W.D. Ky. Aug. 29, 2016).

