



September 20, 2024

Ms. Tanya Topka  
Director, Office of Defects Investigation  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Dear Ms. Topka:

On behalf of the Alliance for Automotive Innovation and its members, I am writing to thank you for spending time with us on July 25, 2024 to discuss our perspectives on enhancing the Early Warning Reporting (EWR) system. As requested, we provided you separately with a copy of the slides that we presented during that meeting, and we understand that you intend to place them in the rulemaking docket that will be associated with the forthcoming proposal to revise regulations governing the EWR system at Part 579 of NHTSA's rules. We are basing our understanding of NHTSA's forthcoming proposal on the *Report to Congress: Proposed Improvements to Early Warning Reporting Data* dated May 2023. For convenience, we will refer to this document as the "2023 Report" in this letter.

We believe that the discussion with you in July was helpful and constructive as we pursue our shared safety goals and strive to make the EWR process as effective as possible without placing undue burden on either the agency or automakers. As a result of the meeting in July, we understand some of your objectives and underlying rationale better, and we hope that you understand our concerns better as well. As we noted throughout the meeting, there is much we can agree on. We flagged several of those items in our meeting with you, and we will generally not repeat those items here, unless we are refining or expanding the discussion. For many of the concepts we found challenging, we offered alternatives to achieve our shared goals of improving the EWR system in a way that balances the safety benefits and the requirements of industry.

The purpose of this letter is to follow up on some items that were left open in our discussion and to provide additional background on some of the other issues including revised component codes, death and injury reports, property damage claims, field reports (both dealer and non-dealer), privileged items, aggregate data, and over-the-air updates.

1. Revised Component Codes

Auto Innovators' members are willing to work with NHTSA to update the component codes through the forthcoming rulemaking proceeding and urge NHTSA to anticipate its future needs so that the revised component codes announced in the final rule can remain static for at least ten years, approximately consistent with the time period between the issuance of the original EWR rule (2002) and the component code revisions in 2013.

The 2023 Report identified a concern that some of the existing component codes<sup>1</sup> specified in Part 579 may be too broad to serve the goal of helping to detect emerging safety defects. For example, the existing code 14 for air bags does not differentiate among air bag issues, such as “failure to deploy,” “unintended deployment” or other concerns. Auto Innovators can support a change that would retain code 14 for general air bag issues, and would add two new codes for “failure to deploy” and “unintended deployment.” The 2023 Report also noted that the existing component codes do not cover energy storage systems used in or around electric motor vehicles and other alternative sources of propulsion. We agree with both of those concerns and would support a change to the component codes to reflect these technologies.

However, we also note that there is substantial burden associated with revising the component codes, because all of the reportable data has to be “mapped” to those component codes for transmittal to NHTSA, a task that requires investment in software as well as in human resources. For the same reason, we urge NHTSA to retain the numbering structure for the existing component codes, and accommodate new (or expanded) component codes by adding numbers to the end of the existing sequence, or to numbers that have not previously been assigned. This is to both minimize overall burden for both NHTSA and automakers and to avoid potential challenges when mapping certain component codes across multiple years.

We believe that NHTSA is in the best position to identify the changes and additions to component codes to meet its programmatic needs, and look forward to commenting on the proposed changes in the forthcoming rulemaking proceeding, since Auto Innovators members can assist NHTSA by providing industry insight to the recommended changes – allowing solutions that optimize the benefits of the changes, when compared to their burden. We again urge NHTSA to propose changes that are objectively defined, and reasonable in number, given the burden associated with remapping to any new codes.

## 2. Death and Injury Reports

We discussed a number of issues related to Death and Injury Reports at our July meeting. Two points from that discussion warrant more detail here: flagging injuries for severity and supplying certain information without a NHTSA request.

First, with respect to flagging injuries for severity, the 2023 Report proposes the development of injury reporting thresholds with a field for indicating “injury severity.” Any severity flag adopted by NHTSA must be objective and easily applied by laypersons. Auto Innovators members propose using one of the reporting criteria that NHTSA adopted for the Standing General Order on ADS/ADAS events: whether the injured person required a transport to a hospital.<sup>2</sup> This is an objective “yes/no/unknown” flag that can be added to all injury reports when first reported to NHTSA. This would provide NHTSA with the information available at the time of the report, while allowing NHTSA to follow up, if desired. Auto Innovators emphasizes that the individuals who prepare EWR filings for submission to NHTSA are not trained in crash reconstruction nor injury severity coding. Also, manufacturers are not willing to

---

<sup>1</sup> The existing codes cover some components (like tires), some vehicle systems that have multiple components (like air bags) and, in a few cases, events (rollover and fire). For convenience in this letter, Auto Innovators will refer to all of these as “component codes,” just as NHTSA did in the 2023 Report.

<sup>2</sup> See NHTSA Second Amended Standing General Order 2021-01, Request Specification 1.C (“individual being transported to a hospital for medical treatment”).

speculate about the severity of an injury from an ambiguous or nonspecific claim or notice document. Absent an objective, understandable definition, manufacturers will not be able to segregate injuries by severity for EWR purposes.

Secondly, the 2023 Report discussed the current two-step system by which NHTSA requests additional information about death reports and certain injury reports, usually in a letter sent sometime after NHTSA has received the quarterly death/injury EWR submission and expressed several concerns about this process. In response to these concerns, we proposed that manufacturers would be willing to supply proactively certain information, if available, for all fatalities reported in EWR, in a submission window of 30 days following the EWR submission. This submission would consist of the information NHTSA has been seeking in the existing standard information request: the initial claim/notice, the police report, the EDR download (taking into account that the vehicle owner's consent is ordinarily required to obtain an EDR download), and the manufacturer's assessment of the incident.

For reasons we discussed at the meeting and in our February 2024 letter, Auto Innovators strongly opposes any change to the current EWR rules to require updates to fatality/injury reports after the initial submission beyond what Part 579 now requires. As time passes from the date of the initially reported information, the "early warning" value of the later-supplied information diminishes rapidly. The burden of attempting to provide this information during every submission cycle would be enormous. Under the proposals described in the 2023 Report, each previously submitted fatality and injury report would have to be monitored and manually checked at least quarterly to see if new information has been received. Information used to prepare Death and Injury Information Request submissions (such as police reports) are not kept in searchable databases and have no uniformity in the terminology or format; this limits the ability to automate a monitoring and updating process. Moreover, some of this information is received by third parties, such as the OEMs' outside counsels or insurance companies. To the extent the 2023 Report proposals contemplated that manufacturers would have to continually monitor each matter and solicit update information, including reaching out to third parties or other sources, Auto Innovators opposes any such expansion of the current requirements, because it would create an even more significant burden without a significant safety benefit. NHTSA always retains the authority to pursue additional information about any given crash, or any given potential defect issue, and frequently exercises that authority.

Finally, Auto Innovators opposes the proposal in the 2023 Report to establish a standardized "schema" for Death and Injury reports that would include an obligation to identify (and potentially produce) additional "supporting evidence" for each incident, including "reports, photographs, videos, or event data" and the status of the manufacturer's own investigation of the incident. NHTSA is already receiving all non-privileged non-dealer field reports, including those related to death/injury incidents, under the existing rule. As to the status of internal investigations, Auto Innovators does not support this proposal and believes it does not further the "early warning" goals of EWR.

### 3. Property Damage Claims

Auto Innovators previously expressed opposition to the proposal in the 2023 Report to add all "property damage claims" to the incident-level death/injury reporting category. During our meeting, the example of property damage claims related to "fire" was offered by NHTSA staff as one type of incident that would not be fully known to NHTSA from the current aggregate-level property damage reporting. In the interest of addressing specific open issues, Auto Innovators is willing to support a change to include property damage claims alleging "fire" in the incident level reporting category that currently has only

death and injury claims/notices, but only if that reporting category otherwise remains unchanged with respect to frequency of reporting (quarterly), level of detail sought by the regulation and the minimal requirements for updating (only the VIN and/or component code when unavailable at the time of the initial report and only for one year)

In general, property damage claims by themselves have rarely provided any helpful insights for detecting potential safety defects. Although the 2023 Report includes “property damage claims” in a list of the “most effective parts” of the current EWR reporting sources, it does not provide any data or examples to explain how NHTSA is using the data to spot emerging safety defects. Moreover, if the current “property damage claims” are already among the “most effective parts” of the program, there is no obvious need to change the current reporting process. If NHTSA does propose an inclusion of property damage claims alleging “fire” in the incident level reporting category that now has only death and injury claims/notices, it should also eliminate the aggregate reporting requirements for all other property damage claims.

#### 4. Field Reports: Non-Dealer

Auto Innovators understands that non-dealer field reports provide one of the most useful sources of information for the EWR program, and wishes to work with NHTSA to improve the utility of this information. However, it is important to note that field reports are fundamentally business records created by each manufacturer for its own business purposes. Each manufacturer uses a different format (or no format at all), collects different types of information and records it in different ways (e.g. some collect photos and some do not). There is no standardized industry template for field reports, nor should there be.

During our meeting, it became clear that NHTSA erroneously assumes that all manufacturers retain their field reports in databases or generate their reports from such databases.<sup>3</sup> NHTSA’s discussion in the 2023 Report about “Data Analytics” (page 14) confirms that NHTSA misunderstands the availability of extractable field report data within the business records of most manufacturers. While some manufacturers maintain some of their field report information in databases, not all do, and even when some information is retrievable from a database, not all such information is stored that way. Most manufacturers do not have the idealized and comprehensive data analytics process described in the 2023 Report, at least at the level of sophistication and automation described by NHTSA. For this reason, the recommendation contained in the 2023 Report to require a new process to transfer “data from relevant manufacturer databases directly to NHTSA’s EWR field report database” is not feasible or practicable.

Nevertheless, Auto Innovators appreciates the inefficiencies associated with NHTSA staff conducting a manual review of hard copy field reports. For those manufacturers that do maintain some field report information in a database, the data could be exported to a flat file and shared with NHTSA in that format. Part 579 could be amended to allow a manufacturer to submit either a hard copy or a flat file to comply with the field report submission requirements in §579.21(d) for field report data. The flat file submission alternative would be at the manufacturer’s option for field report data that is maintained in a database. However, the flat file format needs to be objectively defined in a way that can balance utility to the agency in identifying potential safety defects without creating unnecessary burden on

---

<sup>3</sup> See, for example, 2023 Report at Footnote 10 (“Metadata refers to descriptions of the data elements contained in each manufacturer’s field report databases.”)(Emphasis added.)

manufacturers (e.g. requiring manufacturers to significantly change format and methods currently used to manage these business documents). Moreover, the rule could not mandate the use of a flat file submission because not all manufacturers maintain their field report information in extractable databases, and even those that maintain some data in that fashion do not maintain all of their field report information that way. While this proposal may involve increased burden on the manufacturers preparing the submissions, Auto Innovators members are willing to support this proposal in furtherance of the shared goal of improving the utility of the EWR program.

The 2023 Report also proposes a change to the Death/Injury submission requirements to mandate submission of each field report related to each death/injury claim or notice. Auto Innovators does not support this proposal. The current EWR rule already requires submission of each non-dealer field report, whether or not it is related to a death/injury claim or notice. NHTSA should be able to associate any field report related to a death or injury with its incident report.

#### 5. Field Reports: Dealer

Auto Innovators wishes to reiterate its position on the proposal in the 2023 Report regarding the submission of dealer field reports in its February 2024 letter. We appreciate the clarification during our July 2024 meeting that NHTSA is not proposing to require submission of hard copies of dealer field reports. As we discussed during our meeting, the volume of such reports is enormous, and the value of the information contained in the written texts for early warning purpose is very limited. Although it was not discussed at our meeting, we assume that NHTSA is no longer pursuing the proposal in the 2023 Report to convert dealer field reports to incident level reporting (as death/injury claims and notices are now reported). If we are incorrect about that assumption, then we should make clear our strong opposition to this proposal due to the extraordinary additional burden that would be created by imposing such a requirement for no obvious value for the EWR program, especially since most dealer field reports do not involve “incidents” in the same way that death and injury claims/notices do.

#### 6. Privileged Field Reports and Other Privileged Documents

The 2023 Report acknowledges the existing EWR regulation excludes documents covered by attorney-client privilege or work product doctrine, but nevertheless, proposes to require “non-privileged summaries of information that are covered by [privilege] claims” and a summary of all records that are covered by legal claims of privilege. Auto Innovators strongly opposes this proposal for three significant reasons.

First, it would create substantial reporting burdens while providing no value for the early warning program. Under the EWR rules, NHTSA will already be notified of every claim or notice of an injury or fatality promptly after the manufacturer learns of it, and will be obtaining substantial information about each fatality automatically, under the proposal discussed above. Learning that there might be privileged documents related to a given injury or fatality does not add anything of value to NHTSA’s state of knowledge about the incident.

Second, privileged documents related to fatality, injury or property damage claims are normally created by (or at the direction of) counsel and (to the extent they are created by outside counsel) are not routinely kept in the business records of the manufacturer. And, privileged documents are created throughout litigation up to (and including) the time of trial, which is often a period of years after the initial claim was filed and reported to NHTSA. At some point, these documents lose any value as “early

warning” of anything. Moreover, the burden associated with identifying these documents manually and preparing “non-privileged summaries” of them for years following an initial claim has never been estimated by NHTSA but would be substantial.

Last, NHTSA’s proposal impermissibly intrudes into the essence of the legal privilege. The proposal to require creation of a privilege log for “all records that are covered by legal claims of privilege” if they would otherwise qualify as an EWR-reportable record (like a field report) would compel the disclosure to NHTSA of facts that are protected from disclosure to opposing counsel in litigation. For example, the retention of a non-testifying expert to conduct a site inspection is not currently required to be disclosed to plaintiffs in litigation. See, e.g., Federal Rule of Civil Procedure 26(b)(including but not limited to (b)(4)(D)) and similar state rules. NHTSA’s proposal would require disclosure of that fact (along with an allegedly “non-privileged summary” of the expert’s work) to NHTSA, which would then waive the protection of that information in the litigation. This proposal would significantly compromise the manufacturers’ longstanding and well-established legal rights to prepare for litigation, while adding nothing of value to the EWR program.

#### 7. Aggregate Data

The 2023 Report proposed eliminating consumer complaints from the aggregate data reporting requirements because the data is not useful in identifying potential safety defects. Auto Innovators agrees with this proposal and welcomes this change. As noted above, we recommend eliminating property damage claims from the aggregate data reporting requirements as well.

The 2023 Report also proposed revising the definition of reportable warranty claim to exclude work performed under service campaigns. Auto Innovators also supports this proposal.

#### 8. External Communications Involving Over-the-Air Updates

Auto Innovators took note of NHTSA’s interest in obtaining information about over-the-air (“OTA”) updates that are sent to motor vehicles. As noted in the July meeting, Auto Innovators can support a proposal to modify the external communication rule (49 C.F.R. 579.5) which would require notification to NHTSA when an OTA update is sent to more than one motor vehicle, as long as the existing reporting threshold remains in the rule; namely, that the communication (in this case, the OTA update) relates to a defect, whether or not safety related.

Again, thank you for meeting with us in July. If you or your colleagues have any questions about the items discussed in this letter, or items we discussed in July that are not addressed in this letter, please reach out to me at [spuro@autosinnovate.com](mailto:spuro@autosinnovate.com).

Sincerely,



Sarah Puro  
Vice President, Safety and Technology Policy  
Alliance for Automotive Innovation