



**Comments of the
Motor & Equipment Manufacturers Association
to the
National Highway Traffic Safety Administration
U.S. Department of Transportation**

RE: Notice of Request for Comments on Request for Extension of a Currently Approved Information Collection; Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS)

Docket No. NHTSA-2021-0070; OMB Control No. 2127-0754

November 29, 2021

Introduction

The Motor & Equipment Manufacturers Association (MEMA)¹ submits these comments to the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation (DOT) on its request for comments to renew a previously approved collection of information, per the September 30, 2021 *Federal Register* notice.² Specifically, the information collection references the NHTSA Standing General Order 2021-01 (Order), as amended,³ which requires the entities served with the Order to report incidents involving vehicles with automated driving systems (ADS) and Level 2 advanced driver assistance systems (ADAS). Prior to issuing the Order, NHTSA was granted emergency approval by the Office of Management and Budget (OMB) for a period of six months, which enabled the agency to implement the Order and collect the information required.

MEMA shares and supports NHTSA's goals to prevent and reduce crashes, fatalities, and injuries and to ensure the safe implementation and development of new and emerging vehicle technologies. The Order states that the agency's "oversight of potential safety defects in vehicles operating on publicly accessible roads using ADS or Level 2 ADAS requires that NHTSA have timely information on incidents involving those vehicles."⁴ However, broadly speaking, MEMA is concerned about several procedural and substantive aspects of the Order and the information collection. In particular, MEMA is concerned that the quality, utility, and clarity of the information being collected could be negatively impacted unless and until NHTSA addresses several outstanding issues. Moreover, there

¹ MEMA represents over 900 member companies through its four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); MERA - The Association for Sustainable Manufacturing; and Original Equipment Suppliers Association (OESA). MEMA represents vehicle parts manufacturers that develop innovative technologies and manufacture original equipment (OE) and aftermarket components and systems for use in passenger cars and commercial trucks. Vehicle suppliers represent the largest sector of manufacturing jobs in the United States. [U.S. Labor and Economic Impact of Vehicle Supplier Industry](#), MEMA and IHS Markit. February 2021.

² 86 Fed.Reg. at 54287.

³ "Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS)," NHTSA Standing General Order 2021-01, issued June 29, 2021, amended August 5, 2021.

⁴ *Ibid.* (emphasis added)

is the added concern that the agency underestimated its burden analysis – particularly the burden on vehicle suppliers. Essentially, NHTSA will likely accrue very little valuable or timely information from the supply base, yet it is imposing this significant burden.

Therefore, MEMA urges OMB not to renew the information collection for three years and asks NHTSA to instead review its Order and conduct a complete public notice-and-comment process. That notwithstanding, MEMA further provides input for NHTSA's consideration related to the agency's burden estimate as well as to several aspects of the Order that necessitate clarifications for the industry, generally, and for vehicle suppliers, specifically. Having a more open dialogue with the industry about vehicle safety technologies like ADAS and ADS will enhance overall understanding. MEMA looks forward to working with NHTSA to improve elements of the Order to make it more workable for the served entities and more valuable to the agency.

Vehicle Suppliers' Role in Developing Complex, Innovative Technologies

Vehicle parts manufacturers – also known as vehicle suppliers – conceive, design, and manufacture the original equipment (OE) components, systems, and technologies that make up more than 77 percent of the value in new vehicles and the aftermarket parts and materials for the service, maintenance, and repair of over 282 million vehicles on U.S. roadways. A typical vehicle can include over 30,000 components and subsystems. Vehicle suppliers' innovation provides a multitude of technologies and a wide range of products – including complex, highly integrated systems – to improve vehicle safety, emissions, and efficiency. This technology development allows the U.S. vehicle industry to be globally competitive and lead the world on the path of enhanced mobility for all citizens.

When developing these systems with multiple customers in mind, vehicle suppliers conduct extensive research and test validation. The roll-out of these technologies requires substantial lead-time, long-term planning, and major economic resources. Technology development and investments are planned carefully to align with vehicle production cycles. In many cases, an OE vehicle parts manufacturer may supply the same component or system to a wide variety of new vehicle manufacturer customers. As such, OE suppliers often do not have visibility into the full scope of issues regarding how its specific equipment interacts in a new vehicle with other OE components/systems provided by either other OE suppliers, the vehicle manufacturer, or a third-party software application. A specific vehicle supplier's component may experience a field issue that may be caused by other components and/or systems in a vehicle, where the root cause is not known to the supplier. Alternatively, there may be a redundant system or component that reduces or eliminates a safety concern created by a "defect" in the equipment of a supplier.

Vehicles equipped with ADS or L2 and above ADAS are extremely complicated. A system is made up of multiple sub-systems from varying suppliers, including both hardware and software. The advanced active safety systems that provide steering, braking (or accelerating) support to the driver have varying levels of complexity depending on the systems' performance application and tasks. Take, for instance, an ADS domain electronic control unit. That ECU depends on a multitude of sensors that "talk" to the brake, power steering, and powertrain systems. Other component and architecture inputs can include things like satellite navigation, radars, cameras, LiDARs, ultrasonic sensors, driver monitoring systems, vehicle-to-everything (V2X) communications, and other vehicle telematics. Again, depending on the function and application of the system, there could be a wide range of inputs/outputs from the system depending on how it is integrated into the vehicle and other OE equipment.

Comments on the Request for Extension of the Currently Approved Information Collection

MEMA urges OMB to not extend the currently approved information collection for a three-year term. MEMA also asks NHTSA to clarify critical aspects of the Order in the context of the practical utility and value of the information as well as to reevaluate its assessment of the burden on vehicle suppliers. Below, MEMA addresses the key questions related to assessing an information collection request.

Is the proposed collection of information necessary for the proper performance of the functions of the agency, including whether the information will have practical utility?

MEMA is concerned that the lack of a public notice-and-comment period compounded by several elements of the Order's reporting requirements that remain unclear for many served entities – particularly vehicle suppliers – create an atmosphere of regulatory uncertainty and confusion. Furthermore, the structure of the Order is such that entities will have added compliance cost burdens for notification and reporting on top of their current regulatory and voluntary reporting burdens without any certainty that the information collected will be of value and/or utility. Also, vehicle suppliers are being lumped in with the end-users of the equipment – meaning the vehicle manufacturers and fleet operators. Vehicle suppliers do not fit into the same models as these other entities whether it be complete knowledge of how components are integrated into the vehicle's architecture or visibility and access to notifications about crashes and incidents.

Current Voluntary and Mandatory Reporting and Recordkeeping System is Effective

The vehicle industry – including vehicle manufacturers, vehicle suppliers, technology developers, operators, safety advocates, and many other key stakeholders – have long engaged with the DOT and its agencies to exchange views and share information, including education about emerging technologies and assessing the impact regulatory requirements may have on vehicle safety systems. In addition, there is a foundation of both voluntary and mandatory reporting requirements currently in place that provide a wide range of information from the vehicle industry to the DOT. For the past few years, various industry stakeholders have submitted Voluntary Safety Self-Assessments (VSSAs) making information public from developers of automated vehicles (AVs) and related technologies about how they address safety, assess challenges, and develop best practices and solutions. Also, NHTSA's early warning reporting (EWR) requirements currently require quarterly reporting, including incidents involving fatalities or injuries. Additionally, the Federal Motor Carrier Safety Administration (FMCSA) requires motor carriers to maintain a register of certain types of crashes – including those with a fatality or injury – and to make such a register available upon request.

Procedural Concerns

In the hours and days immediately after NHTSA served the Order, MEMA and other vehicle industry stakeholders expressed concerns and sought immediate clarifications about the requirements from the agency. In the wake of NHTSA's hasty action, industry stakeholders submitted multiple recommendations and suggested modifications to improve the efficiency and utility of the Order and the information collected from the Reporting Entities, while still meeting the objective of the Order. Although NHTSA held an invitation-only virtual workshop for the served entities and published an FAQ on its website, several elements of the Order's requirements remain unclear to many of the Reporting Entities, even months after the Order was served.

If NHTSA had opted instead to go through a standard notice-and-comment process and submit an information collection request (ICR) to the OMB, it is likely that many of the ongoing questions surrounding the reporting requirements could have been addressed in that same general timeframe as well as yielded a clearer understanding and/or resolution on these matters before OMB approved and finalized the information collection. Instead, NHTSA opted to seek emergency approval from OMB for this collection. According to OMB's rules for paperwork burden and emergency processing, an agency must demonstrate that it "cannot reasonably comply with the normal clearance procedures" for any of the following reasons: (1) public harm is reasonably likely to result if normal clearance procedures are followed; (2) an unanticipated event has occurred; or (3) the use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.⁵

MEMA believes NHTSA did not meet the requirements to merit an emergency clearance of its ICR.⁶ Current mechanisms in place – such as EWR, defect and noncompliance reporting, voluntary VSSA reporting, and investigatory and enforcement tools – are all available to NHTSA to sufficiently address any issues about which the agency may have a present concern. The OMB granted NHTSA emergency clearance for its information collection (OMB Control No. 2127-0754) within one day of submission – the same day on which NHTSA served the Order to the entities listed.⁷ To our knowledge, there was not any urgent "public harm" or "unanticipated event" to justify an emergency clearance instead of utilizing the normal clearance process, public notice and comment, to seek approval for its ICR so that the agency could evaluate L2 ADAS or ADS operating on public roads.

How to enhance the quality, utility, and clarity of the information to be collected?

MEMA has several open issues to bring to the attention of NHTSA and OMB; issues we believe should be addressed immediately and demonstrate that the information collection has shortcomings regarding the quality, utility, and clarity of the information Reporting Entities are being required to submit. NHTSA essentially treats all Reporting Entities similarly without recognizing potential redundancies or practical realities about knowledge transfer – particularly in large organizations/companies.

Definition of "Notice" is Too Broad

NHTSA notes in its Order that the definition of "notice" is broader than currently defined by 49 CFR §579.4 under the rationale that the agency wants to be able to determine if it can still trigger an investigation into the actual incident. First, MEMA notes that some elements of this definition are problematic. In the Order, receipt of notice includes "*any internal or external source and in any form (whether electronic, written, verbal, or otherwise) about an incident that occurred or is alleged to have occurred ...*" First, the phrase "verbal or otherwise" is much too broad. Second, vehicle suppliers should be expected to report only eligible incidents that occur within their test fleet of prototype vehicles, as these vehicles are directly under the vehicle supplier's control. As mentioned above, a supplier's knowledge about how their components and systems function once integrated with various vehicle manufacturers' architectures and/or other equipment manufacturers' components

⁵ 5 CFR 1320.13(a)(2)

⁶ MEMA understands that NHTSA has the authority to collect information, but we question the legal authority of the agency to collect the information in this manner. We understand this is just a Paperwork Reduction Act notice, but we reserve our right to revisit and are not waiving this argument should it ever become relevant.

⁷ Per Notice of Office of Management and Budget Action; ICR Reference No. 202106-2127-003, June 30, 2021.

is limited. Suppliers may have little to no knowledge about what happens to their parts in the field after they have been integrated and they certainly may not usually have the kind of real-time data that would be necessary to comply with the timely reporting requirements of the Order. Several of our members indicated that vehicle suppliers are not likely to receive a report about an incident or crash (unless it involves the supplier's own test fleet / prototype vehicles) until months or, in some cases, years after the crash occurred.

Furthermore, the term "notice" is defined to include media reports. According to NHTSA, media reports include social media posts. There are innumerable social media platforms in existence; it is not at all practical to require any entity to be expected to monitor or even be aware of the millions of posts that are disseminated hourly. Moreover, MEMA asks NHTSA and OMB to contemplate that the social media ecosystem is largely unchecked (as may also be the case with online articles or website posts) where information presented may not be objective or even valid and may contain erroneous information. Therefore, social media and website posts are not appropriate sources of "notice." Notably, the agency has expressly exempted media reports from other regulatory reporting obligations, such as the EWR provisions of the TREAD Act.⁸

MEMA requests that the Order's definition of "notice" is amended by NHTSA before OMB extends the information collection. Specifically, MEMA urges NHTSA to exclude information from media and social media reports unless those reports are directly presented, electronically or through writing, to the reporting entity.

Definitions of "Crash" Needs Clarification

To ensure that only safety-relevant information is reported to NHTSA, the definition for "crash" needs to be clearer. As written, it may lead to reports that include duplicate, inaccurate, or irrelevant information and, ultimately, may skew the data.

The Order defines "crash" to include incidents where a subject vehicle "contributes or is alleged to contribute ... to another vehicle's physical impact with another road user or property involved in that crash." The term "contributes" is itself undefined and is problematic because it is confusing and ambiguous and could result in inconsistent reporting from Reporting Entities. Likewise, the phrase "alleged to contribute" raises similar concerns and could lead to over-reporting of incidents that are not, in fact, crashes. These broad terms would effectively lead to a higher number of reported crashes than are actually occurring in the real world. MEMA urges NHTSA to clarify the meaning of "contributes" in this context and to exclude "alleged to contribute" from the definition of the term "crash."

Notification and Reporting Timing is Unreasonable

The Order's reporting deadline of one calendar day following notice of a crash is too short to allow Reporting Entities to gather enough information to prepare an initial report that would be meaningful to NHTSA. A rushed deadline of one calendar day creates risks of both confusion and the reporting of information that has not had an opportunity to be verified.⁹ Due to the broad definitions given for "notice" and "crash," vehicle suppliers that are Reporting Entities, per the Order, have had to establish 24/7 monitoring and create staff architectures to keep them "on call" to manage and comply with the Order. This has put additional burdens on vehicle suppliers for little added safety benefit. MEMA urges NHTSA to

⁸ 49 CFR 579.4(c), definition of "notice"

⁹ Holidays complicate reporting challenges, particularly for global organizations.

reconsider the timing of the Order's reporting obligations. We outline some of the common issues below:

- Timely Information – As MEMA noted previously, apart from their own prototype/test vehicle fleets, vehicle suppliers often do not have timely access to field incidents. Because suppliers typically provide their components or systems to a wide range of customers (i.e., vehicle manufacturers or other suppliers), visibility as to how its specific equipment interacts with other components, systems, and/or software provided by separate entities for a myriad of vehicle models and trim levels is virtually impossible. MEMA further notes that the State of California requires manufacturers “who are testing autonomous vehicles” to report within 10 days of an incident.¹⁰
- No Information – In other cases, vehicle suppliers may simply not have the requested information at all. Yet, these vehicles suppliers are still required to submit a “no incident” report, which, in and of itself, is a burden and strain on resources (more about this in the next section).
- Duplicative Information – Multiple Reporting Entities could be obligated to report on the same crash/incident (e.g., a vehicle manufacturer and one or more equipment suppliers). NHTSA should consider an exemption for equipment manufacturers (vehicle suppliers) in cases where vehicle manufacturers have, or should have, already reported on the same crash. Precedent exists for this in the reporting obligations under 49 CFR Part 573 (i.e., only the vehicle or equipment manufacturer must report certain recalls or defects – but not both). In addition, increasing the Order's notification time from one calendar day could provide multiple Reporting Entities more opportunity to coordinate with each other and avoid duplicating effort and, more importantly, information.

As noted, there are existing obligations to report domestic and foreign incidents of defects and non-compliance with safety standards, and related campaigns or recalls, with a deadline of five business days after the incident is identified.¹¹ As well as the State of California reporting requirements allowing reports within 10 days of the incident. Therefore, given this well-established precedent and rationale detailed above, MEMA urges NHTSA to amend the Order to extend the initial reporting deadline from one calendar day to 10 business days so that it is aligned with the California reporting requirements. However, if that is not an option – at minimum – MEMA requests NHTSA extend the timeline from one calendar day to five business days to align with the agency's other well-established reporting deadlines, such as Part 573.

Clarification Needed on “Motor Vehicle Equipment” and “Level 2 ADAS”

The Order defines “Motor Vehicle Equipment” as (emphasis added): “any pre-production, prototype, or production ADS or Level 2 ADAS, including software or any other component of such system, that is installed on a motor vehicle, or used to control or operate a motor vehicle.” Because there can be literally hundreds of different components – including the vehicle's underlying braking system – it is imperative that NHTSA clarify the purpose and intent of needing such a vast array of information. Such a broad definition is extreme overreach as it could be interpreted as even applying to parts that have no

¹⁰ Title 13, Division 1, Chapter 1, Article 3.7 – Testing of Autonomous Vehicles, State of California, Department of Motor Vehicles

¹¹ See 49 CFR §573.3(e)-(f), 573.6, 573.7; 49 U.S.C. § 30166(l), 49 CFR § 579.11-12

relevancy in relationship to an ADS or ADAS. This is one of the most critical areas of the Order that necessitates clarification.

Additionally, the SAE J3016 document referenced by NHTSA (both in the Order and in the *Federal Register* notice) was created as an industry technical standard that speaks to the functionality of the system, not the composition of the system. These are complex and nuanced systems; there are no “off-the-shelf” systems, per se. The SAE J3016 was created to provide common nomenclature and understanding about the overall functions of the various levels; it was not intended for the purposes of information collection or reporting requirements.

Furthermore, it is critical to have clarity from NHTSA about its interpretation of a “Level 2 ADAS” because multiple systems and components within the vehicle can be interpreted as providing and/or supporting the L2 functionality. This could include not only the “brains and sensing” components (e.g., radar, cameras), but also the actuators (e.g., electric power steering, braking system, powertrain system) and/or the electronic stability control (ESC) system (e.g., any component that could support or be directed by the L2 system). This also raises the point that there could be a component application that impacts a L2 ADAS or ADS system that may not have a safety function or impact, per se, but does have an impact on vehicle performance.

This lack of clarity and broad agency interpretation has consequences. For example, even equipment manufacturers that do not manufacture any L2 ADAS or ADS equipment are required to submit a non-incident report each month. As a result, vehicle suppliers that are in this position are subjected to the burden of added legal costs and time spent related to constant internal monitoring, coordination, and monthly filing to essentially prove a negative. Such non-incident information is of little to no value to the agency and certainly does not address the expressed need for timely information. There is also precedent for not requiring “no incident” reports as part of NHTSA’s information gathering function. For example, under the TREAD Act, where the obligation to file EWR quarterly filing applies only if there is a reportable incident involving a fatality. As such, “nil” or “no incident” reports are not required.¹² Monitoring, collecting, and reporting “non-incident” reports places an undue burden on the impacted equipment manufacturer (vehicle supplier) by losing productivity and diverting resources.

Therefore, MEMA urges NHTSA to consider the impact such a broad scope has on equipment manufacturers and to clarify and narrow the scope and interpretation of the Order on impacted equipment. Also, MEMA requests NHTSA to amend the Order to exempt entities from reporting “non-incident” reports.

How to minimize the burden of the collection of information on those who are to respond?

As highlighted above, the broad scope and lack of clarity on key aspects of the Order result in regulatory ambiguity, uncertainty, and unnecessary burdens on the served entities – particularly equipment manufacturers.

NHTSA Does Not Properly Account the Burden of Vehicle Suppliers

Throughout the Order, NHTSA uses a “one size fits all” approach to how it assessed its burden estimates. For purposes of the information collection extension, NHTSA does not properly account for vehicle suppliers because it treats them in the same manner as a

¹² See 49 U.S.C. § 30166(m), 49 CFR § 579.27-29

vehicle manufacturer, which does not accurately reflect the different nature of the burden for a Tier One vehicle supplier. Suppliers are not vehicle manufacturers, who have direct knowledge about their vehicles and what components and systems are on each model and trim level. Suppliers are not operators or “fleet managers,” who control and have insight into a large number of vehicles actively in use on public roads.

Thus, the impact and burden on vehicle suppliers was not adequately addressed in this information collection extension request. As we addressed earlier, vehicle suppliers often do not have full insight about how their component or system is integrated into a vehicle’s architecture. Also, vehicle manufacturers do not always provide the details of where or how a supplier’s component is being sold. This is particularly complicated considering the wide array of vehicle models and trim levels.

To comply with the Order, vehicle suppliers will have to devise, implement, and maintain robust internal reporting procedures as well as continuous employee training.¹³ Some MEMA members report that they have had to spend significant hours training internal personnel on the Order’s reporting requirements. Training is made more complicated by the Order’s ambiguity on key terms and processes that we noted throughout these comments. Suppliers also noted that they have had to put individuals on 24/7 standby for very little actual tangible benefit, in terms of reporting eligible incidents to NHTSA.

Again, the Order’s requirements are in addition to a multitude of other, currently applicable mandatory and voluntary reporting that includes similar and/or overlapping data points. These mechanisms could include an array of cross-functional teams involving multiple business units and legal counsel. There are also the added internal analysis and preparations necessary before a report can be filed. Each incident could cost a vehicle supplier tens of thousands of dollars to support complying with the Order’s requirements.

Conclusion

In sum, MEMA asks NHTSA to amend the Order as discussed in our comments for the purposes of providing clarity on key definitions and elements of the Order’s reporting requirements for L2 ADAS and ADS. MEMA appreciates the consideration of NHTSA and OMB regarding these comments. Vehicle suppliers support NHTSA’s mission by developing a wide array of components and systems to improve vehicle safety and save lives, including the safe deployment of vehicles equipped with ADAS and ADS. MEMA looks forward to continuing to work with the agency on important safety issues and to find a path forward to ensure reporting is efficient, effective, and valuable for all parties. For more information, please contact Ann Wilson, senior vice president of government affairs at awilson@mema.org and Leigh Merino, vice president of regulatory affairs at lmerino@mema.org.

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¹³ Training employees on this matter is not a one-time event. Companies may have multiple divisions, specific disciplines of people who may be privy to this type of information. There may also be frequent turnover in employee populations.