INFORMATION REDACTED
PURSUANT TO THE
FREEDOM OF
INFORMATION ACT (FOIA),
5 U.S.C. 552(B)(6)

CONFIDENTIAL BUSINESS INFORMATION
EXEMPT FROM DISCLOSURE UNDER 5 USC § 552(b)(4)

M. KRISTIN GLAZNER
SVP, General Counsel and Chief Human
Resources Officer, & Secretary

Direct Dial: 765.771.5595
kristin.glazner@wabashnational.com

January 10, 2022

Mr. Joshua Neff
Office of Defects Investigation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Wabash Response to Information Request Re DP21-004

Dear Mr. Neff,

Wabash National Corporation ("Wabash") timely provides this response to your December 9, 2021, request for information ("Request") in connection with Defect Petition DP21-004 (the "Petition") related to side underride guards on van-type semi-trailers ("trailers"). The information contained herein is confidential and includes highly proprietary design and engineering work in which Wabash has made a substantial investment; accordingly, this information has been submitted under the agency's confidential business information protocols per 49 CFR Part 512.

A threshold issue Wabash identified is that the petitioners' request does not meet the regulatory standard for a defect investigation or established agency and case law interpretations of what qualifies as a defect. Wabash presents this analysis in Section II and gives responses to NHTSA's ten questions in Section III.

I. Introduction

At the outset, I would like NHTSA to understand that Wabash is a deeply responsible company with a nearly forty-year history of innovations that have advanced the entire industry forward, all the while keeping true to our Midwestern roots and values. In fact, it is our values and culture that inspire us to constantly pursue improvements to our products in ways that can change the world. We believe visionary leadership requires a commitment to corporate responsibility. We believe our people, our products, and our operations should positively contribute to all aspects of society.

The most talented engineers in the industry work at Wabash, and we have put our problem-solving expertise to work on the most pressing issues affecting commercial transportation and manufacturing. When it comes to highway safety, we are constantly evaluating new and different ways to make our products safer for operators and other motorists sharing the road. Wabash was the first U.S. trailer manufacturer to build and test to Canada's more rigorous rear impact standards and the first to design a brake light system that enhances collision avoidance by making trailer braking more visible to motorists.

[redacted]

[redacted]

II. Defect Analysis

A. *Petitioners' request does not meet the regulatory standard for granting a defect investigation petition.*

In considering Petitioners' request for a defect investigation, the agency's regulatory standard at 49 CFR § 552.8 requires NHTSA to undertake a "technical review" and to consider "appropriate factors, which may include, among others, allocation of agency resources, agency priorities and the likelihood of success in litigation which might arise from the order" in deciding whether to grant or deny this petition.[1] This technical review[2] must properly apply the established safety-related defect analysis in assessing whether a defect investigation may be merited.

While a complete list of the factors NHTSA considers when considering a defect petition is not publicly available, in denying prior petitions, NHTSA recently cited "[a]gency priorities and the likelihood of success in litigation that might arise from a determination of noncompliance or a defect related to motor vehicle safety."[3] Other reasons included failure to identify a safety-related defect, likelihood of an order to result from the investigation, and the need to "allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission."[4]

Weighing the petition under the factors outlined above yields no support for granting it. As explained below, Petitioners' claim of a safety defect is unlikely to succeed in any technical review because it is out of line with six decades of federal statutes, case law, and NHTSA guidance and enforcement actions. As a result, any agency determination of a defect related to motor vehicle safety based on Petitioners' assertions could be particularly vulnerable in litigation arising from that determination.

While Congress and NHTSA set the agency's priorities, given NHTSA's history of very limited action on side underride guards – including no substantive response in more than seven years to a pending side underride guard rulemaking petition and still-open 2013-2014 National Transportation Safety Board ("NTSB") recommendations on side underride guards – one could conclude that assessing the costs, benefits, and feasibility of side underride guards on trailers has been a longstanding challenge for the agency, if not a lower regulatory priority. Significantly, Petitioners have not offered any new research, test data, or analyses that would merit a shift in the agency's focus on this subject.

Nor would an investigation resulting from granting the petition constitute an efficient allocation of agency resources in light of the additional research needed, as explained in Section III.10, and the untested and unproven nature of the technology in question. Wabash takes issue with the Petitioners' assertion that "side underride guard technology is available, has been well-studied, and would be an easy and inexpensive solution to the known hazard of side underride collisions to the traveling public."[5] To the contrary, the Government Accountability Office ("GAO") concluded in its 2019 report that additional research is needed to "resolv[e] the challenges associated with side underride guards" and make such guards "closer to being a feasible solution."[6] Today, no more than a handful of the more than five million

[1] 59 CFR § 552.8.
[2] 49 CFR § 552.6.
[3] NHTSA Denial of Motor Vehicle Defect Petition, 86 FED. REG. 55108 (Oct. 5, 2021).
[4] NHTSA Denial of Motor Vehicle Defect Petition, 83 FED. REG. 22743, 22744 (May 16, 2018); NHTSA Denial of Motor Vehicle Defect Petition, 85 FED. REG. 65136, 65137 (Oct. 14, 2020).
[5] Petition from Eric Hein, et al. to the Dep't of Transp. 3 (Sept. 14, 2021) (hereinafter, the "Petition").
[6] U.S. Gen. Accounting Office, GAO-19-264, *Truck Underride Guards: Improved Data Collection, Inspections, and Research Needed* (2019) (the "GAO Report").

trailers on U.S. roads are equipped with a conceptual model of a side underride guard. This does not equate to a well-studied, practically available, and commercially viable product.

In *United States v. General Motors Corp. ("Wheels")*, the D.C. Circuit Court cited a Senate Report on the National Traffic and Motor Vehicle Safety Act (the "Safety Act") explaining that the definition of motor vehicle safety "crystalizes the legislative intention to protect the public against vehicle performance posing an 'unreasonable risk of accidents.'"[7] As the Senate hearings on this legislation made clear, the word "unreasonable" was placed in the bill deliberately, to signify a "commonsense" balancing of safety benefits and economic cost."[8] NHTSA has a responsibility to consider the stage of readiness of the available countermeasures and economic realities, and to balance this against safety benefits conferred.[9]

B. *Lack of a side underride guard on a trailer is not a safety-related defect under the well-established analysis implementing the Safety Act.*

As established in federal statute,[10] interpreted by federal courts,[11] and enforced by NHTSA through guidance[12] and enforcement actions,[13] the analysis for determining whether a safety-related defect exists in a manufacturer's product is a two-part test, where both elements must be answered affirmatively. The **first** element asks, is a given concern a defect (*i.e.*, are there a significant number of failures in normal operation)? **After** a determination is made that a defect exists, the **second** element asks, is the defect an unreasonable risk to motor vehicle safety? This element examines the severity of the harm (*i.e.*, the customer consequences of the failure) and the frequency of the occurrence of such harm.[14]

1. *Petitioners' reasoning does not follow this established defect analysis.*

Petitioners assert that "the substantial amount of research and data on the number of deaths and serious injuries from collisions with semitrailers without side underride guards is clear; failure to include a side underride guard amounts to a defect in the semitrailer's design, construction and performance."[15]

Petitioners' narrative appears to ignore the first part of the safety defect test, instead jumping to the conclusion that a defect exists by pointing at incidents where a side underride guard was not present on a trailer and highlighting the severity of the crash outcome. Petitioners appear to summarily conclude that **because** side underride crashes can result in injuries and fatalities and virtually no trailers on U.S. roads today include side underride guards, failure to include a side underride guard constitutes a defect in the trailer's design, construction, and performance.

---

[7] United States v. Gen. Motors Corp. ("Wheels"), 518 F. 2d 420, at 435 (D.C. Cir., 1975)
[8] *Id.*
[9] *See* GAO Report, *supra note* 6, at 1. The GAO found the average annual number of fatalities resulting from side underride collisions between 2008 and 2017 was 219. When compared to the annual average of 34,663 total traffic fatalities during that same time period, the fatalities resulting from underride constitute less than 1% (0.63%) of the total and 5.49% of the annual average of large truck fatalities over the same period.
[10] 49 USC § 30102(a)(3).
[11] *See, e.g.*, United States v. Gen. Motors Corp. ("Pitman Arms"), 561 F.2d 923 (D.C. Cir. 1977).
[12] NHTSA Enforcement Guidance Bulletin 2016-02: Safety-Related Defects and Automated Safety Technologies, 81 FED. REG. 65705 (September 23, 2016); hereinafter "2016 NHTSA Safety Defect Bulletin."
[13] NHTSA Consent Order with General Motors Re: TQ14-001, ¶ 2 (May 16, 2014).
[14] *See Wheels*, 518 F.2d at 434 (emphasis added) (In *Wheels*, the D.C. Circuit Court of Appeals qualified that "[t]he Act was designed as a preventative measure 'supplementary of and in addition to the common law of negligence and product liability. Determinations of fault or liability relevant to the award of damages at common law are **not controlling on the interpretation of the scope of this prophylactic defect notification legislation**.").
[15] Petition, at 3.

This is not the analysis required for a safety defect determination. The development of a potentially effective, yet unproven, side underride guard, in and of itself, in no way makes every trailer without a side underride guard defective under the Safety Act. There is no *de facto* defect.[16]

2. *Lack of a side underride guard does not meet the first element of the defect analysis and thereby cannot constitute a safety-related defect.*

The Safety Act defines a defect as "any defect in **performance, construction, a component, or material** of a motor vehicle or motor vehicle equipment."[17] Motor vehicle safety is defined as "the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the **design, construction, or performance** of a motor vehicle, and against unreasonable risk of death or injury in an accident."[18]

Under the Safety Act, a manufacturer is obligated to notify NHTSA and affected owners and dealers when the manufacturer learns a motor vehicle or item of motor vehicle equipment "contains a defect **and** decides in good faith that the defect is related to motor vehicle safety."[19] This same two-part standard governs safety defect determinations made by the agency itself.[20] In other words, in all cases, there must be a finding of (1) a defect, and that defect must be (2) related to motor vehicle safety (*i.e.*, imposes an unreasonable risk) to trigger the recall requirements of the Safety Act.

C. *Analysis of "Is it a defect?"*

Safety defect analysis requires the identification of a failure – defined as an error or mistake[21] – in the design, material, performance, or construction of a motor vehicle or an item of motor vehicle equipment. Federal courts have further defined this first element of the analysis by examining whether there are "a significant number of failures in normal operation."[22]

1. *No basis for finding a defect in performance.*

Sound defect analysis requires an examination of some segment of a manufacturer's vehicle or equipment population appearing to exhibit a failure mode, with a focus on the customer consequences of that failure mode.

There is no prerequisite to identify a root cause; a defect can be found even if the cause is not known, based solely on the performance of the affected population "**compared to that of other peer vehicles**."[23] In *Ctr. for Auto Safety, Inc. v. Nat'l Highway Traffic Safety Admin.*, the D.C. Circuit Court explained that part of NHTSA's fact-based determination of whether a defect related to a motor vehicle exists requires that the "agency must consider a vehicle's 'performance,' which clearly implies that consideration must

[16] *See* 2016 NHTSA Safety Defect Bulletin, *supra* note 12, at 65708. (A defect **can** be *de facto* "safety-related" but first a defect must be established.).
[17] 49 USC § 30102(a)(3) (emphasis added).
[18] 49 USC § 30102(a)(9) (emphasis added).
[19] 49 USC § 30118(c)(1) (emphasis added).
[20] *See* 49 USC § 30118(b)(1) requiring the Secretary of Transportation, before issuing a defect or noncompliance order, to give a manufacturer "an opportunity to present information, views and arguments showing that there is no defect or noncompliance or that the defect does not affect motor vehicle safety."
[21] *Wheels*, 518 F.2d at 433.
[22] *Id.* at 427.
[23] 2016 NHTSA Safety Defect Bulletin, *supra* note 12, at 65708 (emphasis added); *See also* United States v. Gen. Motors Corp. ("X-Cars"), 841 F.2d 400, 411-12 (D.C. Cir., 1988) ("In addition, where appropriate, the determination of the existence of a defect may depend upon the failure rate in the affected class of vehicles compared to that of other peer vehicles.")

be given to the manner in which the vehicle is used."[24] In other words, "usage is clearly relevant to a determination of whether a vehicle contains a safety-related defect."[25] Accordingly, the appropriate performance comparison is one between peer vehicle populations actually in use – not between every single vehicle of a given type made by all manufacturers in the U.S. and a hypothetical version of such vehicle type. There is no actual usage or performance to measure or compare in Petitioners' hypothetical comparison, thus no basis for a finding of a failure or defect in performance.

Almost forty years earlier, the D.C. Circuit Court first defined the appropriate analysis for a defect in performance in *Wheels* in this way: "Whether a defect exists in a particular case thus turns on the nature of the component involved, the circumstances in which the failures occurred, and the number of failures experienced."[26] This is a "fact-specific inquiry."[27]

Determination of a defect in performance (1) requires an examination of actual performance, (2) examines the specific circumstances in which a failure occurs, (3) compares the failure rates of the suspect population of vehicles to comparable / peer vehicles, and (4) thus "is a fact-specific inquiry." Accordingly, this analysis necessarily cannot be an assessment of every mile driven by every known trailer in the U.S. against a hypothetical standard of how such trailer could perform if it were equipped with a side underride guard, where side underride guards are not known to be installed on any of the vehicles made by the eight manufacturers that are the subject of this information request.[28]

2. *No basis for finding a defect in design or construction.*

Where the engineering or root cause of a failure is known, NHTSA need not analyze the performance record of a vehicle.[29] Petitioners have also asserted that lack of side underride guards on trailers constitutes a defect in design and construction. Petitioners' assertion does not align with prior NHTSA-influenced safety defect investigations and guidance related to design and construction defects.

Per NHTSA's 2016 Safety Defect Bulletin, a "design or configuration that fails to take into account and safeguard against the consequences of reasonably foreseeable driver distraction or error" may constitute a defect.[30] By this definition, the design or construction defect is a **failure to warn**, rather than, as Petitioners assert here, the absence of a component not yet shown to be effective or commercially viable.

NHTSA provided the following example: "[A]n unconventional electronic gearshift assembly that lacks detents or other tactile cues that provide gear selection feedback makes it more likely that the driver will attempt to exit the vehicle with the mistaken belief that the vehicle is in park. If the **vehicle's design does not guard against reasonably foreseeable driver error by providing an effective warning . . .**"[31] and the vehicle is not in park, that failure in design may constitute a defect.

In contrast, a manufacturer's fuel tank placement in its vehicles was investigated extensively by NHTSA, due to concerns with increased risk of fire in high-speed rear crashes. NHTSA viewed the unprotected location of the gas tank as a safety defect. Ultimately, this vehicle design for a certain population of vehicles was found by the manufacturer not to constitute a design defect because "the resultant damage [in high speed crashes] to the struck vehicles in most of these cases would not have been prevented by

[24] Ctr. for Auto Safety, Inc. v. Nat'l Highway Traffic Safety Admin., 342 F. Supp. 2d 1, 13 (D.C. Cir., 2004)
[25] *Ctr. for Auto Safety*, 342 F. Supp. 2d at 14.
[26] *Wheels*, 518 F.2d at 427.
[27] 2016 NHTSA Safety Defect Bulletin, *supra* note 12 at 65708.
[28] Nor are there vehicles in the European Union with side underride guards whose performance could serve as a comparison, as the ECE 73 standard is to protect bicyclists and pedestrians, not to prevent vehicle underrides. [redacted]
[29] *See* 2016 NHTSA Safety Defect Bulletin, *supra* note 12, at 65708 (citing *Wheels*, 518 F. 2d at 432).
[30] *Id.* at 65709.
[31] *Id.* at 65708 (emphasis added).

taking any reasonable countermeasure step with respect to the vehicles, and would have occurred in vehicles of other makes and models."[32] Then-Secretary of Transportation Ray LaHood accepted this decision.

As these two examples make clear, there cannot be a design defect without a failure. As explained above in the discussion of a defect in performance, the D.C. Circuit Court in *Wheels*, citing a Senate Report on the 1966 Safety Act, described a failure as an "error or mistake in design, manufacture, or assembly."[33] Here, as in the fuel tank investigation, there is no such error or mistake in design. There is no reasonable countermeasure in as-yet-unproven side underride guards, and Petitioners have offered no distinction between the nature of damage in a side underride crash involving a Wabash trailer compared to a similar crash of trailers of any other makes and models.

Petitioners do not point to any error or mistake by any manufacturer. Instead, they claim that **the consequences** of a side underride crash deem the lack of a side underride guard to be a safety defect – again, ignoring the first element of safety defect analysis. It is unlikely, however, that the lack of a component of unproven effectiveness constitutes an "error," which is defined by Merriam-Webster as "an act that through ignorance, deficiency, or accident departs from or fails to achieve what should be done."[34] The design of trailers is primarily a product of their function. Side underride guards are not an accepted element of trailer design or construction by **any** trailer manufacturer in the United States and thus are not installed as original equipment on any trailer manufactured by any of the eight manufacturers from which NHTSA has requested information.

Wabash knows of no court decision, agency rule or guidance supporting the Petitioners' assertion that the absence of a component, in and of itself, constitutes a design defect. While Petitioners cite *Wheels* to support their claim that a design defect includes "a safety part missing from a vehicle (*i.e.*, lacking side underride guards; see *Wheels*, 518 F2d at 436 . . . .)," *Wheels* does **not** mention or in any way address "a safety part missing from a vehicle" or even the concept of a defect in design. Rather, *Wheels* addresses whether NHTSA can properly find a defect in **performance** where the operator of the vehicle subjects a component to reasonably foreseeable abuse.[35]

Taking the factors above into consideration, the lack of a side underride guard in and of itself does not meet the characteristics of a defect in design, construction, or performance.

III. Response to Ten Questions in NHTSA IR Letter

A. *Q and As*

1. State by model year the number of subject vehicles Wabash has manufactured for sale or lease in the United States since 2006. Include by model year the number of subject vehicles which were manufactured by Wabash with side underride guards as original equipment.

[32] FCA Letter to NHTSA re: EA12-005 at 1 (June 18, 2013).
[33] *Wheels*, 518 F.2d at 433.
[34] *Definition of Error*, MERRIAM-WEBSTER, *available at* https://www.merriam-webster.com/dictionary/error (last visited Dec. 28, 2021).
[35] See, *Wheels*, F. 2d at 434. Here, the D.C. Circuit concluded that "[t]the protection afforded by the [Safety] Act was not limited to careful drivers who fastidiously observed speed limits and conscientiously complied with manufacturer's instructions on vehicle maintenance and operation."

ANSWER:

Model year	# of subject vehicles manufactured by Wabash for sale/lease in the US	# of subject vehicles manufactured by Wabash with side underride guards as original equipment
2006	[redacted]	0
2007	[redacted]	0
2008	[redacted]	0
2009	[redacted]	0
2010	[redacted]	0
2011	[redacted]	0
2012	[redacted]	0
2013	[redacted]	0
2014	[redacted]	0
2015	[redacted]	0
2016	[redacted]	0
2017	[redacted]	0
2018	[redacted]	0
2019	[redacted]	0
2020	[redacted]	0
2021	[redacted]	0

2. State the current or estimated number of Wabash subject vehicles still in service for all model years.

ANSWER:

Wabash has no way of knowing the current number of subject vehicles that are still in service for any model year, and Wabash does not have a reliable way of estimating the number of subject vehicles that may still be in service for any model year.

3. Please report Wabash's current percent of the subject vehicle market share.

ANSWER:

[redacted]

4. Provide a brief summary of any and all reports, claims, or other notices received by Wabash, or of which Wabash is otherwise aware, which relate to, or may relate to, the alleged defect in the subject vehicles or vehicles equipped with side underride guards.

ANSWER:

[redacted]

5. Does Wabash currently offer side underride guards as standard or optional equipment? If yes, is it a Wabash design or from another supplier? If from another supplier, identify the supplier and provide their contact information.

ANSWER:

No.

6. Produce copies of all installation, service, warranty, and other documents that relate to, or may relate to, the subject component in the subject vehicles.

ANSWER:

[redacted]

7. Provide a brief summary of all assessments, analyses, tests, test results, studies, surveys, simulations, investigations, inquiries and/or evaluations that relate to, or may relate to the subject component that have been conducted, are being conducted, are planned, or are being planned by, or for, Wabash.

[36] Petitioners seem to be suggesting that manufacturers are not properly reporting incidents under the TREAD Act (*i.e.*, "manufacturers were supposedly required to report . . ."). Petition at 3. However, Wabash has diligently filed TREAD reports for every accident involving a Wabash trailer of which it has been made aware. Notably, Petitioners cite only Petitioner Karth's own blog post as authority for this assertion. *Id.* at 4.

ANSWER:

[redacted]

8. AngelWing is one aftermarket manufacturer of side underride guards. Please assess the compatibility of this product with Wabash trailers. See the following link for additional information: http://www.angelwingskirts.com/

   a. Effect, if any, this guard will have on the structural integrity of Wabash trailers;

   b. The approximate weight adding this side underride guard will add to Wabash trailers;

[37] *See* 35 USC § 101. Note the United States Patent and Trademark Office ("USPTO") criteria for patents include that it be a new and useful process that it be novel and non-obvious. However, the criteria the USPTO reviews per statute and guidance do not indicate any investigation of effectiveness or demonstration of real-world testing. *See also Frequently Asked Questions: Patents*, WIPO, https://www.wipo.int/patents/en/faq_patents.html (last accessed Jan. 4, 2022).

c. The approximate reduction in cargo carrying capacity adding this side underride guard will have on Wabash trailers;

d. Effect, if any, this guard will have on the durability and service life of Wabash trailers;

e. The approximate cost, including materials and labor for installation of these guards both on new production and in-service Wabash units;

f. Effect, if any, this guard will have on the maneuverability and operating environment compatibility of Wabash trailers;

g. Your assessment of the effectiveness this side underride guard would have preventing injury and death of other roadway users when installed on Wabash trailers; and

i. Your assessment of any additional concerns, issues, or benefits this side underride guard may have.

ANSWER:

[redacted]

[38] We note that the Petition cites a publication from EPA for the statement that van and refrigerated trailers comprise more than 70% of registered semi-trailers. The Petitioners, however, ignore the central purpose of that publication, which was to discuss EPA's position regarding proposed greenhouse gas regulations that it sought to apply to the trailer manufacturing industry. EPA's position was that the weight of trailers should be reduced, which runs counter to the concept of equipping trailers with side impact guards weighing several hundred pounds.
[39] Petition at 3.

[redacted]

9. Safetyskirt is one aftermarket manufacturer of side underride guards. Please assess the compatibility of this product with Wabash trailers. See link for additional information: https://www.trailerguards.com/

   a. Effect, if any, this guard will have on the structural integrity of Wabash trailers;

   b. The approximate weight adding this side underride guard will add to Wabash trailers;

   c. The approximate reduction in cargo carrying capacity adding this side underride guard will have on Wabash trailers;

   d. Effect, if any, this guard will have on the durability and service life of Wabash trailers;

   e. The approximate cost, including materials and labor for installation of these guards both on new production and in-service Wabash units;

   f. Effect, if any, this guard will have on the maneuverability and operating environment compatibility of Wabash trailers;

   g. Your assessment of the effectiveness this side underride guard would have preventing injury and death of other roadway users when installed on Wabash trailers; and

   i. Please provide your assessment of any additional concerns, issues, or benefits this side underride guard may have.

ANSWER:

[redacted]

10. Furnish Wabash's assessment of the following in today's transportation system:

   a. The feasibility of side underride guards.

   b. The industry financial cost of side underride guards;

   c. The effectiveness side underride guards may have preventing traffic crash injuries and fatalities;

   d. The potential changes in the US transportation system side underride guards may require; and

   e. The reports included with this inquiry.

ANSWER:

a. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

---

[40] 49 USC § 30101.

[41] NTSB Safety Recommendations h-14-002; h-13-03.

[42] *Id.*

[43] 49 USC § 302.

[44] *See* NTSB Safety Recommendation h-14-002. ("NHTSA will follow-up with an analysis of the impacts of requiring side guards on trucks and trailers which NHTSA expects to complete by September 2020.").

[45] *See* GAO Report, *supra* note 6, at 18. ("NHTSA has not performed research on the overall effectiveness and cost of these guards, and manufacturers we interviewed told us that they are hesitant to invest in developing side underride guards without such research."); *See also* DOT OIG, ST2022009, *Weaknesses in NHTSA's Training and Guidance Limit Its Ability to Set and Enforce Federal Motor Vehicle Safety Standards*, (2021). "NHTSA has faced significant delays in processing rulemaking petitions to modify or set new FMVSS, which may put the Agency in noncompliance with Federal regulations."

[redacted]

b. [redacted]

[redacted]

[redacted]

[redacted]

[46] Note NHTSA granted the petition for rulemaking – but only for consideration of rear underride guards and not side underride guards.
[47] *See* GAO Report, *supra* note 6, at 24. ("[A] representative from one trailer manufacturer developing its own side underride guards estimated that it would be feasible to have these guards designed, tested, and available for sale within the next 2 years. However, the representative said that the manufacturer is hesitant to invest additional resources because of uncertainty about potential future regulatory requirements. Specifically, the manufacturer does not want to invest additional resources to develop a side underride guard that might later have to be redesigned to meet federal requirements, if such requirements were to be established and to differ from the manufacturer's design specifications.")
[48] NHTSA Interpretation to Howard Smolkin from NHTSA Chief Counsel Erika Z. Jones (1988).
[49] *See* GAO Report, *supra* note 6, at 24.

[redacted]

d. [redacted]

[redacted]

e. [redacted]

[redacted]

[50] *See Economics and Industry Data,* AMERICAN TRUCKING ASS'N, https://www.trucking.org/economics-and-industry-data#:~:text=Trucks%20move%20roughly%2072.5%25%20of,you%20can%20learn%20about%20here (last visited January 4, 2022).
[51] The maximum gross vehicle weight rating for semi-trailers is currently 80,000 pounds. *See* 23 CFR § 658.17.
[52] Petition at 3.
[53] Truck Trailer Mfr. Ass'n v. Envtl Prot. Agency, 2021 U.S. App. LEXIS 33585 (D.C. Cir. 2021).

[redacted]

IV. Conclusion

[redacted]

[54] *See* Commission Regulation 73/01, 2012 J.O. (L 122) 1, 9 (EC).
[55] Regulations Amending the Motor Vehicle Safety Regulations (Standards 121, 206, 223, and 301.2), SOR/2013-220 (Can.).

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

_____

M. KRISTIN GLAZNER
SVP, General Counsel and Chief Human Resources Officer
Corporate Secretary
Wabash National Corporation