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Agency Information Collection Activities; Notice and Request for Comment
Automated Vehicle Transparency and Engagement for Safe Testing (AV TEST) Initiative
85 Federal Register 39975, July 2, 2020

The undersigned organizations, with the shared goal of improving public safety and consumer information, file these comments in response to the National Highway Traffic Safety Administration's (NHTSA, Agency) notice and request for comments on a new information collection proposal for the Automated Vehicle Transparency and Engagement for Safe Testing (AV TEST) Initiative.

Introduction

The carnage and financial toll borne from crashes on our roadways are unacceptable. According to NHTSA, an estimated 36,120 people were killed in traffic crashes in 2019.[1] Moreover, crashes injure millions of people each year as well as impose a financial burden of well over $800 billion in total costs to society -- $242 billion of which are direct economic costs, equivalent to a "crash tax" of $784 on every American.[2]

In the future, autonomous vehicles (AVs), including passenger vehicles and commercial vehicles, may bring about meaningful and lasting reductions in motor vehicle crashes. However, that potential remains far from a near-term certainty or reality. In the interim, NHTSA should be focusing on proven safety systems currently available that can prevent or mitigate the crashes that occur each year on our streets and highways that cause too many needless deaths and injuries. As the Agency states in the current notice "[t]he prevalence of automotive crashes in the United States underscores the urgency to develop and deploy lifesaving technologies that can dramatically decrease the number of fatalities and injuries on our Nation's roadways."[3] NHTSA estimated in 2015 that since 1960, more than 600,000 lives have been saved by motor vehicle safety technologies such as seatbelts, airbags, child seats, and electronic stability control.[4]

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[1] National Center for Statistics and Analysis (2020, May). Early estimate of motor vehicle traffic fatalities for 2019 (Crash•Stats Brief Statistical Summary. Report No. DOT HS 812 946). National Highway Traffic Safety Administration. (Statistics are from the U.S. Department of Transportation unless otherwise noted).

[2] "The Economic and Societal Impact of Motor Vehicle Crashes, 2010," NHTSA (2015).

[3] 85 FR 39976 (Jul. 2, 2020).

[4] Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012, DOT HS 812 069 (NHTSA, 2015).

Furthermore, the National Transportation Safety Board (NTSB) has included increasing implementation of collision avoidance technologies in its Most Wanted Lists of Transportation Safety Improvements since 2016.[5]

Currently available proven collision avoidance systems include automatic emergency braking (AEB), lane departure warning (LDW), blind spot detection (BSD), rear AEB and rear cross-traffic alert. The Insurance Institute for Highway Safety (IIHS) has found that:

- AEB can decrease front-to-rear crashes with injuries by 56 percent;
- LDW can reduce single-vehicle, sideswipe and head-on injury crashes by over 20 percent;
- BSD can diminish injury crashes involving lane changes by 23 percent;
- Rear AEB can reduce backing crashes by 78 percent when combined with rearview camera and parking sensors; and,
- Rear cross-traffic alert can reduce backing crashes by 22 percent.[6]

These crash avoidance safety systems are often sold as part of an additional, expensive trim package along with other non-safety features, or included as standard equipment only in high end models or vehicles. In fact, Consumer Reports (CR) recently released a report that found an astounding upcharge of more than $16,000 for AEB with pedestrian detection in the second most popular vehicle sold in the U.S.[7] This inordinate charge underscores that the NHTSA must require that these crucial vehicle safety technologies be standard equipment and provided to everyone purchasing a new vehicle. Moreover, the NHTSA must implement minimum performance standards to ensure these technologies function as expected. Consumers are paying with their lives and their wallets because of NHTSA regulatory inaction.

Voluntary Initiatives Fail to Adequately Advance Safety Goals

Voluntary industry agreements and agency undertakings, such as the AV TEST Initiative, have consistently been demonstrated to be insufficient and ineffective. For example, the first edition of the AV Guidelines issued by the U.S. Department of Transportation (U.S. DOT) encouraged the submission of voluntary safety self-assessment (VSSA) reports and the subsequent three editions have not altered this process.[8] Despite the fact that approximately 80 entities are testing AV technology,[9] only 23 reports have been filed with U.S. DOT since the first Guidelines were released in 2016.[10] Moreover, the U.S. DOT failed to implement standard requirements for the information to be provided in the VSSA. The result has been manufacturers submitting

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[5] NTSB Most Wanted List Archives, https://ntsb.gov/safety/mwl/Pages/mwl_archive.aspx

[6] IIHS, Real world benefits of crash avoidance technologies, available at: https://www.iihs.org/media/259e5bbd-f859-42a7-bd54-3888f7a2d3ef/e9boUQ/Topics/ADVANCED%20DRIVER%20ASSISTANCE/IIHS-real-world-CA-benefits.pdf

[7] Douglas, E., A High Price on Safety, Consumer Reports (Jun. 1, 2020). Preston, B, Lawmakers Should Require Proven Safety Systems on All New Cars, Consumer Reports (Jun. 29. 2020).

[8] U.S. DOT, Federal Automated Vehicles Policy (Sep. 2016).

[9] Brookings Institution, Autonomous cars: Science, technology, and policy (Jul. 25, 2019).

[10] NHTSA, Safety Self-Assessments, available at: https://www.nhtsa.gov/automated-driving-systems/voluntary-safety-self-assessment (accessed Aug. 11, 2020).

incomplete and uninformative glossy, marketing-style brochures with little, if any, substantive or relevant information from which to ascertain critical information about safety and performance.

Another example of the defectiveness and failures of voluntary agreements is the March 2016 pact among 20 automakers to have AEB in most new light vehicles as standard equipment by 2023. As of December 2019, two manufacturers, which account for nearly a third of the U.S. auto market, demonstrate this lackluster response to the detriment of public safety. Only 29 percent of General Motors vehicles and 9.5 percent of Fiat Chrysler vehicles were sold with AEB between September 1, 2018 through August 31, 2019. Moreover, the performance requirements in the agreement are exceptionally weak and consequently can result in these systems not performing as well as they should.

The most recent voluntary agreement was announced by the auto industry in September 2019 to put inadequate technology to prevent hot car deaths of children into cars by 2025. Once again, this type of a pact unnecessarily prolongs the timeline to get effective equipment into new cars which is available at a very minimal cost now.[11] In fact, General Motors announced it would equip its new cars with technology that "can detect motion as subtle as the breathing of an infant sleeping in a rear-facing child safety seat" in 2001 with the intent to begin rollout in 2004.[12] This technology was never installed. The 2019 ineffective voluntary agreement harkens back to that empty and unfulfilled promise while children continue to needlessly die or sustain serious injuries. The agreement also failed to include the vitally important component that the systems must detect and alert to the presence of children who have been unknowingly left in or gained access to hot cars.[13] According to KidsAndCars.org, about half of the hot cars deaths to date in 2020 were children who entered the vehicle on their own without knowledge of their parent or caregiver, demonstrating the failure of the voluntary agreement to offer a viable solution to the problem.

The common thread among all of these voluntary initiatives is that at any time, any or all automakers can decide to no longer comply with the agreement or partially comply in whatever capacity they desire without any ramifications, underscoring the importance and benefit of regulatory action by the NHTSA.

Ensuring the Safe Testing and Deployment of Automated Vehicles

Under the Fixing America's Surface Transportation (FAST) Act, automakers are permitted to test or evaluate an unlimited number of vehicles that do not comply with FMVSS.[14] Yet, the testing of AVs on public roads without proper protections in place is a significant threat to public safety

[11] Members of Congress, Safety Advocates and Grieving Parents Call for Technology Solutions to End Hot Car Tragedies as Fatalities Continue, Jul. 28, 2020, available at https://conta.cc/30Sdt2w
[12] General Motors News Release, "General Motors Announces Important New Technology to Help Save Children Trapped in Hot Cars," (April 26, 2001).
[13] Auto Alliance Driving Innovation and Global Automakers, Helping to Combat Child Heatstroke, Automakers Commit to Introducing New Vehicles with Rear Seat Reminder Systems (Sept. 4, 2019).
[14] Sec. 24404, Pub.L.114-94 (2015).

as evidenced by the 2018 fatal crash of an Uber test vehicle in Arizona.[15] Preventing similar tragedies resulting from this haphazard "beta testing" of these vehicles on public roads requires fundamental and sensible safeguards including:

- Require that any entity that is testing or evaluating an AV agree to immediately suspend testing if a safety critical event resulting in death or serious injury occurs during testing. The suspension should be in place until the vehicle and testing procedures can be evaluated by the NHTSA and corrective measures have been taken by the manufacturer.
- Require any entity that is testing or evaluating an AV to agree to provide to the NHTSA any and all documentation provided to state authorities.
- Require any entity that is testing or evaluating an AV to agree to establish an Institutional Review Board as defined in 21 CFR Part 56 to evaluate any testing involving human subjects including those who share the roads with these vehicles.[16]

These actions, as opposed to a voluntary initiative, will help to ensure that AVs that are tested on our Nation's roads do not pose an unnecessary threat to the public. In sum, NHTSA should stop perpetuating a "hands off" approach to "hands-free" driving.

AV TEST Initiative

The inherent flaws in the AV TEST Intitiative make it highly unlikely that it will help to ensure the safe testing of AVs, including automated commercial vehicles, on public roads or provide the public with helpful and accurate information. As the Agency declares in the present notice "[p]articipation is completely voluntary and each participant will choose its respective degree of involvement and the frequency of its submissions. Therefore, the frequency of a participant's responses vary due to a variety of factors…."[17] Since participation is completely voluntary, the data submitted will likely not be uniform, timely, or include essential safety information. In a word, it will be completely unreliable.

Additionally, as has been the case with the VSSAs transmitted to U.S. DOT, absent a standard for submissions under the AV TEST Intitiative, the information provided will have little value to assist in evaluating or comparing the AV testing taking place. Similarly, the NHTSA's estimate that 40 AV developers, vehicle manufacturers and operators will participate in the initiative each year is likely inaccurate based on the record of VSSAs submitted to U.S. DOT since 2016. To date, as noted above, only 23 VSSAs have been submitted despite the fact that approximately 80 entities are testing AV technology because doing so is voluntary. In addition, the program focuses on the voluntary submission of information from the manufacturers and operators, and state and local authorities. There is no requirement that the public, who will share the roads with

[15] NTSB, Collision Between Vehicle Controlled by Developmental Automated Driving System and Pedestrian, Tempe, Arizona March 18, 2018, Accident Report, NTSB/HAR-19/03 (Nov. 19, 2019) (NTSB Tempe Crash Report).
[16] Statement of Catherine Chase, President, Advocates for Highway and Auto Safety on "Highly Automated Vehicles: Federal Perspectives on the Deployment of Safety Technology", U.S. Senate Committee on Commerce, Science, and Transportation, Nov. 20, 2019.
[17] 85 FR 39976.

these test vehicles as motorists, bicyclists and pedestrians including individuals with disabilities such as sensory, cognitive, and physical disabilities, wheelchair users, and people with neurological conditions, will be able to provide crucial input in any meaningful manner. However, these substantial and critical issues could be addressed and resolved if the initiative was mandatory, incorportated public participation and included precise requirements for the information to be provided.

Conclusion

In sum, it is highly unlikely that the AV TEST Initiative will meet the stated goals of providing the public with accurate and complete information regarding current testing operations because of the innate flaws associated with voluntuary agreements. The present notice also is lacking in details to such an extent that it effectively precludes the public from providing informed comments on the proposed information collection. In order to ensure the safe operations of AVs as well as facilitate the development of the technology, the NHTSA should be instituting the testing safeguards noted above as well as focusing on developing FMVSSs to address the serious and deadly shortcomings with the current state of AV technology already identified by experts including the NTSB.[18]

Sincerely,

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[18] NTSB Tempe Crash Report.

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