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October 29, 2020

Office of the Administrator
c/o James C. Owens, Deputy Administrator

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

Submitted electronically via www.regulations.gov

RE: Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Automated Vehicle Transparency and Engagement for Safe Testing (AV TEST) Initiative, Docket No. DOT-NHTSA–2020–0070

Dear Deputy Administrator Owens,

The Center for Auto Safety ("the Center") appreciates the opportunity to provide comments on the notice and request for comment regarding the Automated Vehicle Transparency and Engagement for Safe Testing (AV TEST) initiative. The Center, founded in 1970, is an independent, member supported, non-profit consumer advocacy organization dedicated to improving vehicle safety, quality, and fuel economy. In 2020, we are celebrating 50 years of advocacy for consumer automotive safety and informed choice.

The AV TEST initiative proposes using government resources for the purpose of providing "information to the public about Automated Driving System (ADS) testing operations in the U.S. and applicable State and local laws, regulations, and guidelines."[1] Instead, the public would be better off visiting the promotional website of each AV manufacturer after conducting their own Google search. At least that way, there would not be any confusion about the biased nature of the promotion or the lack of government oversight.

Motor vehicle crashes remain one of the primary causes of premature death, and the leading cause of death for those under age 30. These crashes cost the U.S. approximately $1 trillion every year. Sadly, NHTSA has estimated the first six months of 2020 have resulted in the highest death rate per vehicle mile traveled in the U.S. in over a decade. The Center firmly believes ADS technology can play a significant role in a safer transportation future and is committed to seeing

[1] Federal Register/ Vol. 85, No. 128 / Thursday, July 2, 2020 / Notices; Collection Activities; Notice and Request for Comment; Automated Vehicle Transparency and Engagement for Safe Testing (AV TEST) Initiative; https://www.govinfo.gov/content/pkg/FR-2020-07-02/pdf/2020-14227.pdf

its successful and safe integration into our transit ecosystem. Yet, NHTSA's refusal to even require the submission of test data relating to ADS development is an implicit encouragement of the deployment of unproven technology guided by artificial intelligence on public roads. These self-described self-driving vehicles are being unleashed on America in the hope that nothing too horrible will happen, in the absence of NHTSA analyzing validated engineering data demonstrating safe ADS performance.

I

In its response to earlier comments on its AV TEST proposal, NHTSA writes, "The program will support two main objectives. The first objective is to provide the public with access to geographic visualizations of testing at the national, State, and local levels. This information will be displayed on a graphic of the United States, with projects overlaid on the geographic areas in which the testing project is taking place."[2] Notably, this is the only data relating to testing that is required of the voluntary participants of AV TEST. Perhaps similar to NHTSA's avoiding oversight of AV testing, the agency is collecting data to alert the public what parts of the country to avoid.

While it is encouraging that "NHTSA shares the commenters' view that detailed technical material often provides valuable information…,"[3] an appreciation of technical material should be at the heart of NHTSA's mission, not a marginal consideration. Federal regulation of automotive safety must be based on objective empirical data, not on conjecture or wishful thinking as NHTSA's current approach to AV development seems to be.

In light of on the record concerns raised by the National Transportation Safety Board (NTSB) as well as the Center, as to the adequacy of the proposed voluntary non-safety data collection, NHTSA responds,

> "The objective of AV TEST Initiative is to provide members of the public with a centralized database of high-level information about ADS testing activities and State and local laws, recommendations, and initiatives. It is, therefore, outside of the scope of the project to make any reporting mandatory or to expand the collection to include technical information or information that NHTSA would use to evaluate the safety of ADS operations."[4]

This response is both illogical and entirely reflective of the agency's acceptance of its role as a cheerleader for industry. While completely within the agency's authority, and necessary to establish a baseline for the safety of unproven technologies, NHTSA steadfastly refuses to mandate submission of any information by AV manufacturers and developers, to the detriment of the public. Here at the Center we are fairly accustomed to being brushed off by NHTSA, but the NTSB deserves more than this meager response. There is no further justification for delay in NHTSA collecting of safety performance data from AV manufacturers, particularly as General

[2] Notice and Request for Comments [Docket No. NHTSA-2020-0070] Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Automated Vehicle Transparency and Engagement for Safe Testing (AV TEST) Initiative; 85 FR 61093, September 29, 2020, https://www.govinfo.gov/content/pkg/FR-2020-09-29/pdf/2020-21417.pdf

[3] Supra Note 2.

[4] Supra Note 2.

Motors plans to petition the agency any day now for exemptions from Federal Motor Vehicle Safety Standards for their AV offerings.[5]

Ironically, NHTSA's September 29 notice and request for comments was signed by the Associate Administrator of the National Center for Statistics and Analysis, yet the response guarantees that there will be no systematic data collection to support meaningful statistical analysis of test results. The proposed, voluntary data collection instead only supports analysis of metadata related to the location, numbers, and types of participants. The AV Test program is a great opportunity to establish standards and metrics to enable public evaluation of AV safety based on test results and could provide a means, similar to NCAP, to compare the safety of AV offerings. Instead, the AV TEST program, as proposed, is a tragic waste of resources, an insult to the NHTSA professional staff who are perfectly capable and no doubt eager to analyze hard data on AV test safety, and a disservice to the public.

The absence of minimal test data that is required of all participants instead implies that the study has no real purpose related to understanding AV safety. As proposed, the manufacturer of a cup holder for AV use has equal footing with a major vehicle OEM in AV TEST participation. Establishing meaningful minimum participant data content will effectively bring into focus those developers who can offer a meaningful impact on AV development and public safety. NHTSA's refusal to require such data be collected from every entity testing AV technology on the road is also a disservice to responsible AV developers who wish to differentiate themselves in the market by their investment in operational safety.

In the interest of assuring public safety, NHTSA should withdraw its AV TEST proposal and instead initiate rulemaking on scope and content of mandatory data and metrics required of all developers seeking permission to conduct tests on public roads, and only upon completion of that rulemaking resume planning for the AV TEST program to report those data and metrics to the public.

II

NHTSA also might consider withdrawing its membership in the USDOT Traffic Records Coordinating Committee (TRCC). The TRCC's mission is to provide federal leadership to maximize traffic safety data collection and analysis and provide the resources needed to support that collection. The TRCC is supposed to support data improvements across government in order to improve uniformity, advance electronic data collection, and encourage data access and use.[6] Regretfully, the proposed AV TEST program does just the opposite, abdicating federal leadership, reducing the efficiency and effectiveness of data collection without providing supporting analysis or necessary resources to carry out this task. While Congress debates preempting the ability of individual states to ensure the safety of ADS on their streets, NHTSA is busy attempting to delegitimize its regulatory authority, leaving consumers with no recourse or influence over testing that risks public safety.

The few details provided by the notice[7] with respect to the information to be submitted by ADS companies (on the days they feel like submitting it) only highlights the failure of the program to capture data that can help analyze the operational safety of what is happening on public roads. Simply requiring: Country, State/Province, City, Public or Private Road Type, and similar

[5] https://www.reuters.com/article/us-autonomous-cruise-nhtsa-idUSKBN2762SP
[6] https://www.transportation.gov/trcc
[7] Supra at Note 2.

information as well as "whether the vehicle has a safety operator,"[8] makes it clear that NHTSA might as well be asking for the "color of each test vehicle" in terms of the relevance to safety. A manufacturer could participate in the program, discover a fatal incident involving one of its test vehicles and not have to include it in their AV TEST report.

The specificity provided in the response is limited to, "… drop-down options for many of the data fields to ensure greater uniformity across submissions. For example, the data field for road type provides the following drop-down options: freeway, highway, parking lot, rural, street, business campus, path/sidewalk, university, unknown, or not specified. NHTSA believes this feature will improve data uniformity while providing sufficient flexibility for unique operations. For features that do not have drop-down options, NHTSA has also taken steps to minimize error. For example, the data field for number of vehicles at a test site has character restrictions." [9] These are hardly the critical data needed to assess the risk attendant to an AV approaching a children's playground, for example. If the AV TEST program is not about enabling public assessment of any risks posed by AVs, then it has no safety value.

Further, this vague and vacuous definition of elective data entry raises the question of how it was even possible for the agency to estimate the total annual hours. This lack of specificity could create the impression for a cynical observer that the entire initiative is intended to simply be a promotional sideshow for AV developers, and a distraction from the agency's refusal take any meaningful action to ensure AV safety.

In its response to earlier comments, NHTSA writes without support or justification, "NHTSA continues to anticipate that its estimate of 40 private participants is realistic, with even higher levels of participation possible as AV TEST becomes more established and entities engaged in ADS testing activities increase."[10] Hope perhaps has a place in public discourse, but not in evaluation of public safety. Simply stated, participation in standardized releases of AV test data that demonstrate operational safety and allow for comparisons between AV developers should be the bare minimum investment needed in return for permission to test unproven AVs on public roads anywhere in the country.

III

In its explicit invitation for public comments, NHTSA invites responses to four questions:

> "(a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
> (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
> (c) ways to enhance the quality, utility and clarity of the information to be collected; and
> (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses."[11]

[8] Supra at Note 2, FN 6.
[9] Supra at Note 2.
[10] Supra at Note 2.
[11] Supra at Note 2.

From the foregoing, in response to (a) it should be clear that the Center believes that the proposed collection of information is not necessary for the proper performance of the functions of the agency, and in fact contradicts both the agency's mission and the public safety need that is supposed to be the agency's focus. In fact, the proposed collection of information is an explicit abrogation of NHTSA's responsibilities as a member of the USDOT Traffic Records Coordinating Committee.

In response to (b), the Center believes that it is impossible to assess the accuracy of the proposed collection's burden because there is insufficient definition of what the data will or should include, how it should be collected, or how it could be entered into a central database. Without that information, estimates are meaningless.

In response to (c), the Center proposes that NHTSA establish meaningful minimum AV test and operational standards and metrics to be used by participants to support safety assessment and comparisons among various offerings. This is a necessary step in pursuing NHTSA's responsibility for assuring public safety during AV tests on public roads.

And in response to (d), the Center believes that suggestions for means to minimize the burden of information collection are meaningless unless and until required datasets and formats are established. NHTSA has a requirement to establish those standards and require conformance in support of its statutory obligation to protect the public, both inside and outside of motor vehicles.

IV

In November 2019, the NTSB recommended[12] NHTSA require the collection of safety data for companies testing self-driving technology on public roads. This recommendation was made following NTSB's conclusion that Uber had "an inadequate safety culture" which led to a pedestrian being killed by an Uber AV test vehicle in Arizona. Uber has resumed testing AV technology on public roads, yet NTSB's recommendation remains open and ignored.

One year before that, in October 2018, the Center petitioned[13] the agency to begin a rulemaking mandating all companies testing self-driving technology on public roads submit safety information about their vehicles to the federal government. A response to such a petition is due four months from receipt. The petition, which was signed by hundreds of members of the public, continues to be ignored by NHTSA, which is not surprising given the current administration's proclivity to ignore rules and norms. One can only hope it will not require a tragedy for NHTSA and DOT to realize they are supposed to play an active role in AV and ADS safety and not just be along for the ride.

CONCLUSION

NHTSA is derelict in its duties by allowing unregulated operation of motorized vehicles with unknown and unproven safety performance characteristics on the nation's highways, regardless of whether they are conventional vehicles or contain automated driving features. Unfortunately, this information collection notice is focused not on protecting the public but on a publicly funded

[12] https://www.ntsb.gov/investigations/AccidentReports/Reports/HAR1903.pdf

[13] https://www.autosafety.org/center-for-auto-safety-petitions-nhtsa-to-begin-rulemaking-to-immediately-mandate-submission-of-safety-information-by-companies-testing-self-driving-technology-on-public-road/

publicity campaign for ADS manufacturers. Instead of engaging in the hard work of evaluating the safety of ADS technology and informing the public about its findings NHTSA continues to play publicist for the ADS and AV industry, rather than take minimal steps to require uniform, useful safety and technical information from everyone testing this technology on public roads.

NHTSA should be leading the country, and the world, in preparing for the development and implementation of rules and regulations ensuring the safety of ADS-equipped vehicles on public roads for all drivers, passengers, and pedestrians. A key step to achieving such a goal would be to collect useful information which would not only inform future standards but also educate the public of the comparative virtues and drawbacks of competitive offerings. The public deserves carefully curated, accurate, and timely information to understand what is happening in our communities until regulations have been promulgated and public confidence has been established. The proposed AV TEST program does not help establish that confidence.

Thank you for the opportunity to present our views on the notice and request for comments on this information collection related to the Automated Vehicle Transparency and Engagement for Safe Testing (AV TEST) Initiative.

Sincerely yours,

Jason Levine
Executive Director

cc: Secretary Elaine Chao, U.S. Department of Transportation