



ADVOCATES
FOR HIGHWAY
& AUTO SAFETY

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**Framework for Automated Driving System Safety
Advanced Notice of Proposed Rulemaking
85 Federal Register 78058, December 3, 2020**

Advocates for Highway and Auto Safety (Advocates) files these comments in response to the National Highway Traffic Safety Administration's (NHTSA, Agency) Advanced Notice of Proposed Rulemaking (ANPRM) on the development of a framework for Automated Driving System (ADS) safety.¹ In order to properly ensure the safety of vehicles with ADS, the Agency must require that they meet minimum federal safety standards instead of relying on inadequate and ineffective voluntary guidelines and initiatives.

Motor Vehicle Deaths Remain Unacceptably High

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 2019.² 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.³ When adjusted solely for inflation, total costs increase to nearly a trillion dollars annually. The American public is paying with their lives and their wallets because of regulatory inaction on proven safety advances by the Agency charged with saving lives, preventing injuries, and reducing economic costs due to road traffic crashes.⁴

In the future, autonomous vehicles (AVs), including passenger vehicles and commercial motor vehicles, may bring about meaningful and lasting reductions in crashes. However, that potential remains far from a near-term certainty or reality. In the interim, NHTSA should be focusing on verified safety systems currently available that can prevent or mitigate the crashes that occur

¹ 85 FR 78058 (Dec. 3, 2020).

² 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. *Note*: statistics are from the U.S. Department of Transportation unless otherwise noted.

³ "The Economic and Societal Impact of Motor Vehicle Crashes, 2010," NHTSA (2015).

⁴ NHTSA, About NHTSA, Mission.

each year on our streets and highways that cause too many needless deaths and injuries. As the Agency has stated “[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.”⁵ 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.⁶ 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 2016.⁷

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.⁸

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.⁹ This inordinate charge, putting these safety technologies out of reach for most families’ budgets, underscores the need for NHTSA to require them as standard equipment in all new vehicles. Moreover, the NHTSA must implement minimum performance standards to ensure these technologies function as expected and needed.

According to NHTSA, 10,710 people died in crashes involving impaired driving across the Nation in 2019, nearly a third of all traffic fatalities. Solutions to meaningfully reduce the incidence of impaired driving and the resulting fatalities, injuries and costs include technology such as IIDs and other systems including sensing and monitoring technology. These systems can help identify impairment and prevent vehicles from being operated by an individual who is intoxicated from alcohol. Laws requiring all convicted drunk drivers to use an IID have been shown to be effective. For example, an IIHS study on the effects of Washington's interlock

⁵ 85 FR 39976 (Jul. 2, 2020).

⁶ Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012, DOT HS 812 069 (NHTSA, 2015).

⁷ NTSB Most Wanted List Archives, https://ntsb.gov/safety/mwl/Pages/mwl_archive.aspx

⁸ 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>

⁹ 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).

requirement found that the law was associated with an 8.3 percent reduction in single-vehicle late-night crash risk, suggesting a general deterrent effect of the expanded interlock requirement.¹⁰ Advocates supports a federal sanction on states that fail to enact an all-offender IID law, such as the withholding of a portion of a state's federal highway construction funds.

The further development of touch-based and/or passive breath sensor technology that detects if a driver is alcohol intoxicated also holds tremendous potential to help reduce impaired driving crashes. In fact, last summer the Insurance Institute for Highway Safety (IIHS) released research showing that impairment detection systems could save upwards of 9,000 lives each year.¹¹ Moreover, other systems can identify impairment through varying means and show great promise. Specifically, technology for driver monitoring, eye tracking, hands-on-the-wheel detection, and other indicators is already being developed, and even installed by some manufacturers, to target many key crash causes such as impairment, distraction, and drowsy driving.¹² In fact, a feature that recently appeared in *MADDvocate*, "*Tragedy Inspires a New Direction for Advanced Drunk Driving Prevention Technology*," recounted information from industry sources that "the technology has been available for six or seven years. But...will only become available if the government mandates it."¹³ It is egregious and unacceptable that this requirement that could save thousands of lives each year languishes. NHTSA must take substantive immediate action to help prevent these senseless tragedies by requiring advanced impaired driving prevention technology subject to a minimum performance standard in all new vehicles.

When the United States became the first nation to crash test new vehicles and publish the results for consumers more than four decades ago, it launched a new era of accountability by incentivizing manufacturers to produce safer vehicles that would perform well on the tests. Unfortunately, the U.S. New Car Assessment Program (NCAP) has not kept pace with the latest auto safety advances and now seriously lags behind its international counterparts. The "stars on cars" showroom stickers do little to provide consumers with the information they need to make informed car-buying decisions. As such, NCAP must be updated to accurately evaluate performance of modern vehicles. The enhancement of this program will be especially crucial as AVs are introduced to the marketplace.

Voluntary Initiatives Fail to Adequately Advance Safety Goals

Voluntary industry agreements and agency undertakings have consistently been demonstrated to be insufficient. 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-

¹⁰ Insurance Institute for Highway Safety, Interlocks cut alcohol-related crash deaths (May 24, 2016).

¹¹ Insurance Institute for Highway Safety, Alcohol-detection systems could prevent more than a fourth of U.S. road fatalities (Jul. 23, 2020).

¹² Andrew J. Hawkins, Volvo will use in-car cameras to combat drunk and distracted driving, *The Verge* (Mar. 20, 2019); Christian Wardlaw, How Subaru's Driver Focus Works, *Kelley Blue Book* (Sep. 25, 2020); Lexus Introduces World's First Driver Monitoring System, *Bloomberg* (Sep. 7, 2007). Additional automakers are introducing driver monitoring systems as part of SAE level 2 and 3 automated driving systems.

¹³ MADD, *MADDvocate*, Fight For a Future of No More Victims, p. 10 (Dec. 2020).

assessment (VSSA) reports and the subsequent three editions have not altered this process.¹⁴ Despite the fact that approximately 80 entities are testing AV technology,¹⁵ only 23 reports have been filed with U.S. DOT since the first Guidelines were released in 2016.¹⁶ Moreover, the U.S. DOT failed to implement standard requirements for the information to be provided in the VSSA. Further, some of the VSSAs posted on the NHTSA website are several years old calling into question the usefulness of the information contained in the documents. The end result has been manufacturers submitting incomplete, uninformative and sometimes outdated 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 2020 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 46 percent of General Motors vehicles and 13.5 percent of Fiat Chrysler vehicles were sold with AEB between September 1, 2019 through August 31, 2020. 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.¹⁷ 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 2004.¹⁸ This technology was never installed. The 2019 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.¹⁹

The common thread among all 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

¹⁴ U.S. DOT, Federal Automated Vehicles Policy (Sept. 2016); Automated Driving Systems: A Vision for Safety 2.0 (Sep. 12, 2017); Preparing for the Future of Transportation: Automated Vehicles 3.0 (Oct. 4, 2018); Ensuring American Leadership in Automated Vehicle Technologies: Automated Vehicles 4.0 (Jan. 8, 2020).

¹⁵ Brookings Institution, Autonomous cars: Science, technology, and policy (Jul. 25, 2019).

¹⁶ NHTSA, Safety Self-Assessments, available at: <https://www.nhtsa.gov/automated-driving-systems/voluntary-safety-self-assessment> (accessed Aug. 11, 2020).

¹⁷ 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>.

¹⁸ General Motors News Release, “General Motors Announces Important New Technology to Help Save Children Trapped in Hot Cars,” (April 26, 2001).

¹⁹ 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).

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.²⁰ Yet, the testing of AVs on public roads without proper protections in place is a significant threat to public safety as evidenced by the 2018 fatal crash of an Uber test vehicle in Arizona.²¹ 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.²²

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.

Advocates has led a group of 60 stakeholders in supporting “AV Tenets” that should be a foundational part of any AV policy.²³ The AV Tenets have four main, commonsense categories including: 1) prioritizing safety of all road users; 2) guaranteeing accessibility and equity; 3) preserving consumer and worker rights; and, 4) ensuring local control and sustainable transportation. Many promises have been made about AVs bringing reductions in motor vehicle crashes and resultant deaths and injuries, traffic congestion and vehicle emissions. Additionally, claims have been made that AVs will expand mobility and accessibility, improve efficiency, and create more equitable transportation options and opportunities. However, as noted above, these potentials remain far from a near-term certainty or reality. Without commonsense safeguards the possibilities are imperiled at best and could be doomed at worst. Additionally, the absence of protections could result in adverse effects including safety risks for all people and vehicles on and around the roads. Requiring that AVs meet minimum standards and that operations are

²⁰ Sec. 24404, Pub.L.114-94 (2015).

²¹ 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).

²² 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.

²³ The AV Tenets are attached to these comments as Appendix A.

subject to adequate oversight throughout development and deployment will save lives as well as costs for both the consumer and the manufacturer.

Conclusion

NHTSA must stop perpetuating a “hands off” approach to “hands-free” driving. 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.²⁴

Sincerely,



Peter Kurdock
General Counsel

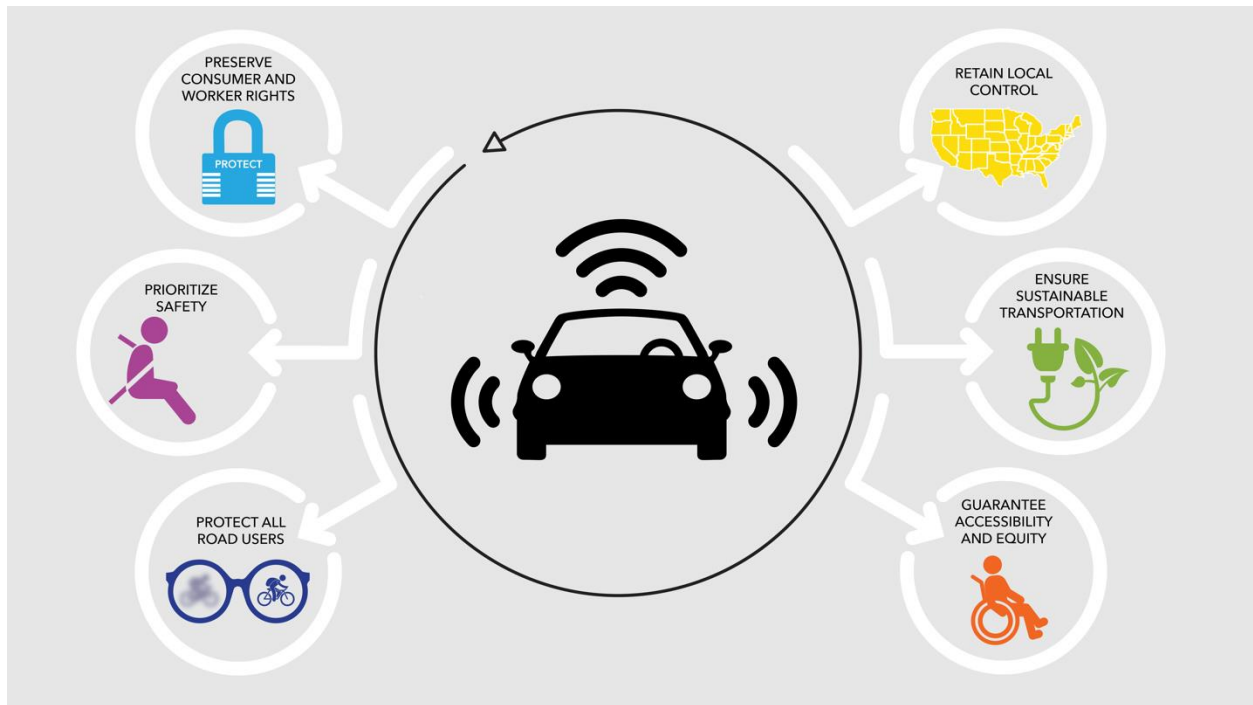


Shaun Kildare
Senior Director of Research

²⁴ NTSB Tempe Crash Report.

Autonomous Vehicle (AV) Tenets¹

November 30, 2020



Prioritizing Safety of All Road Users

Safety Rulemakings: All levels of automated vehicles² must be subject to comprehensive and strong federal standards ensuring they are safe and save lives. While the U.S. Department of Transportation (DOT) has the authority to issue motor vehicle safety standards for all levels of automated vehicles, for the last four years, it has abrogated this responsibility by focusing its efforts on inadequate voluntary initiatives. When Congress considers legislation on AVs, it is imperative that the protection of all road users is the guiding principle and that legislation requires the DOT to commence rulemakings on safety standards and issue final rules by a prompt date certain with a reasonable compliance date. The rulemakings must address known and foreseeable safety issues, many of which have been identified by the National Transportation Safety Board (NTSB) and other research institutions, including:

- **Revising Federal Motor Vehicle Safety Standards:** Any actions by the National Highway Traffic Safety Administration (NHTSA, Agency) to revise or repeal existing Federal Motor Vehicle Safety Standards (FMVSS) in order to facilitate the introduction of AVs must be preceded by and conducted in a public rulemaking process and cannot be undertaken by internal Agency actions. Any revision must meet the safety need provided by current standards.
- **Collision Avoidance Systems:** Certain advanced safety technologies, which may be foundational technologies for AVs, already have proven to be effective at preventing and mitigating crashes

¹ These tenets are limited to vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less unless otherwise noted; however, it is imperative that automated delivery vehicles (including those used on sidewalks and other non-roadways) and commercial motor vehicles be subject to comprehensive regulations, including rules regarding the presence of a licensed, qualified driver behind the wheel.

² Partially automated vehicles (SAE International Level 2) and conditional / highly automated vehicles (SAE International Levels 3, 4, 5).

across all on-road modes of transportation and must be standard equipment with federal minimum performance requirements. These include automatic emergency braking with pedestrian and cyclist detection, lane departure warning, and blind spot warning, among others. A lack of performance standards has contributed to instances of dangerous malfunctions of this technology, highlighting the need for rulemakings for collision avoidance systems and other fundamental AV technologies. As collision avoidance technology continues to improve and evolve, it should also be required to detect and prevent collisions with all vulnerable road users and objects in the operating environment.

- **“Vision Test” for AVs:** Driverless cars must be subject to a “vision test” to guarantee an AV will operate on all roads and in all weather conditions and properly detect and respond to other vehicles, all people and objects in the operating environment including but not limited to Black and Brown people, pedestrians, bicyclists, wheelchair users and people with assistive technology, children and strollers, motorcycles, roadway infrastructure, construction zones and roadside personnel, and interactions with law enforcement and first responders. Any algorithm that will inform the technology must be free of bias. Risk assessments for AVs must ensure adequate training data which is representative of all users of the transportation system. Manufacturers and developers must be required to meet basic principles in the development and use of algorithms including: the use of algorithms should be transparent to the end users; algorithmic decision-making should be testable for errors and bias while still preserving intellectual property rights; algorithms should be designed with fairness and accuracy in mind; the data set used for algorithmic decision-making should avoid the use of proxies; and, algorithmic decision-making processes that could have significant consumer consequences should be explainable. The DOT must review algorithms and risk assessment procedures for potential issues, and any identified problems must be then corrected by the developer or manufacturer and verified by the DOT. Coordination and oversight should be led by the Office of the NHTSA Civil Rights Director in partnership with the Office of the Assistant Secretary for Research and Technology, NHTSA Office of Vehicle Safety Research, and NHTSA Chief Counsel's office. The Office of the NHTSA Civil Rights Director should be given adequate resources, expertise and authority to accomplish this role.
- **Human-Machine Interface (HMI) for Driver Engagement:** Research demonstrates that even for a driver who is alert and performing the dynamic driving task, a delay in reaction time occurs between observing a safety problem, reacting and taking needed action. For a driver who is disengaged from the driving task during autonomous operation of a vehicle (i.e., sleeping, texting, watching a movie), that delay will be longer because the driver must first be alerted to re-engage, understand and process the situation, and then take control of the vehicle before taking appropriate action. Therefore, an AV must provide adequate alerts to capture the attention of the human driver with sufficient time to respond and assume the dynamic driving task for any level of vehicle automation that may require human intervention. This mechanism must be accessible to all occupants, including people with disabilities and vulnerable populations.
- **Cybersecurity Standard:** Vehicles must be subject to cybersecurity requirements to prevent hacking and to ensure mitigation and remediation of cybersecurity events. The Federal Aviation Administration (FAA) has a process for the certification and oversight of all U.S. commercial airplanes, including avionics cybersecurity, although improvement is needed according to a recent Government Accountability Office (GAO) study.³ The DOT should be directed, in cooperation with the National Institute of Standards and Technology (NIST), to develop a cybersecurity standard for automated driving systems. The DOT should then require the cybersecurity standard be applied to all new vehicles. The DOT must be engaged in all relevant discussions on artificial intelligence.

³ United States Government Accountability Office, Aviation Cybersecurity, FAA Should Fully Implement Key Practices to Strengthen Its Oversight of Avionics Risks, GAO-21-86 (Oct. 2020).

- ***Electronics and Software Safety Standard:*** Vehicles must be subject to minimum performance requirements for the vehicle electronics and software that power and operate vehicle safety and driving automation systems individually and as interdependent components.
- ***Operational Design Domain (ODD):*** The NHTSA must issue federal standards to ensure safeguards for driving automation systems to limit their operation to the ODD in which they are capable of functioning safely. An ODD includes elements such as: the type of roadway, geographical area, speed range, vehicle operating status, and environmental and temporal conditions in which the vehicle is capable of operating safely; any roadway or infrastructure asset required for the operation of the vehicle, such as roadside equipment, pavement markings, signage, and traffic signals; and, the means by which the vehicle will respond if the defined ODD changes or any circumstance which causes vehicle to operate outside of its defined ODD. The rule shall also: specify requirements for how the vehicle will safely transition to a minimal risk condition as a result of a malfunction or when operating outside of the ODD, including the necessity for human intervention that is accessible to all occupants including people with disabilities and vulnerable populations; and, the ability of the vehicle to comply with local laws as part of whether the vehicle is operating inside the ODD.
- ***Functional Safety Standard:*** Requires a manufacturer to ensure the design, development, verification and validation of safety-related electronics or software demonstrates to NHTSA that an AV will perform reliably and safely under the conditions the vehicle is designed to encounter. Additionally, NHTSA must validate that the manufacturer's certifications of functional safety are accurate and reliable by conducting their own testing as needed.
- ***Safe Fallback:*** Every driving automation system must be able to detect a malfunction, a degraded state, or operation outside of ODD and safely transition to a condition which reduces the risk of a crash or physical injury. In the event of a failure, it is essential that the occupants of a driverless car have the ability to assume manual control to complete or command a safe transition to reach a safe location and safely exit the vehicle. This mechanism must be accessible to all occupants, including people with disabilities and vulnerable populations. Commercial vehicles, including those used for public transportation or freight, present distinct challenges, such as the need to identify qualifications necessary to operate, that will need to be addressed separately.
- ***Crash Procedures Standard:*** Requires manufacturers to have procedures in place, including proper shutdown protocols, for when an AV is involved in a crash to ensure the safety of all occupants of the AV, other road users and emergency responders.
- ***Standard for Over-the-Air (OTA) Updates:*** Requires consumers be given timely and appropriate information on the details of the OTA update and ensures any needed training or tutorials are provided. Limits the circumstances in which manufacturers can update a vehicle OTA and provides requirements for OTA updates that necessitate a recall or an additional demonstration of safety. OTA updates that enhance the safety of a vehicle should not be optional or require the consumer to incur any additional expense. During the update process cybersecurity must be maintained. In developing the OTA standard, NHTSA should develop rigorous testing around the most effective way to push out OTA updates to owners and operators of vehicles. Updates must be accessible for all users, including people with disabilities. In addition, information on OTA updates should be available in multiple languages, similar to compliance with Section 508 of the Rehabilitation Act of 1973 (Pub. L. 93-112), and via video with closed captioning as appropriate, as well as other means of communication to promote access. In a commercial setting, it will be especially critical for there to be clear protocols for how and when OTA updates are carried out.

Safety and Performance Data: With the increasing number of vehicles with different automated technologies being tested and some being sold to the public, standardized data elements, recording, and access to safety event data are necessary for the proper oversight and analysis of the performance of the driving automation systems. Vehicles on the road today are already producing enormous amounts of data,

and the amount and type of data will only increase as driving automation evolves. There are many stakeholders who need that data for numerous and varied reasons, most importantly safety. The DOT must issue a FMVSS requiring all vehicles to be equipped with technology that captures all necessary data to understand and evaluate the safety performance of AVs on the road. Moreover, following best practices, data on disengagements and near-misses would help to identify flaws in the technology and may allow cities and states to proactively invest in infrastructure improvements or update the design of dangerous intersections and corridors to ensure safety for all street users. Real-time data on vehicle speeds, travel times, and volumes enables states, cities, and communities to manage congestion and speed, uncover patterns of excessive speeds, evaluate the success of street design projects, and ultimately improve productivity and quality of life. It could also facilitate emergency response by summoning and providing important information to emergency personnel, assist in the safe extraction of occupants, and provide a way for first responders to safely disable and secure the vehicle. Safety and performance data should be made available to relevant stakeholders such as state and local governments, federal agencies, operators or dispatchers of the vehicle itself, independent research bodies, law enforcement, first responders, insurers, and the public, with appropriate privacy protections.

Manufacturer Submissions to NHTSA: Any submission to NHTSA by AV manufacturers or developers must be mandatory, publicly available and include thorough and adequate data and documentation. Additionally, NHTSA must be directed to review and evaluate all submissions to assess whether an approach to automated driving system (ADS) development and testing includes appropriate safeguards for operation on public roads. Moreover, submissions should be substantive and include, but not be limited to the following issues: ADS control capabilities; ODD; other limitations and constraints; methods and timing of driver engagement (if applicable); data definitions; recording; and, accessibility. Miles accumulated by simulation, as opposed to on-road testing, cannot substitute for on-road testing or serve as the sole basis for the data included in the submission. (See section below on Proper Oversight of Testing.) If NHTSA finds information indicating further operation of these vehicles on public streets poses a danger, the Agency must be able to intervene and enforce the law⁴ effectively, which will require not just the greater use of its existing authority but also new, stronger enforcement authorities that should be enacted by Congress (See section below on Additional Resources and Enforcement Authorities for NHTSA). If the Agency determines that a submission is deficient, manufacturers must be required to submit any additional information requested. The legislation should clarify that the Agency has civil and criminal penalty authority for false, fictitious or fraudulent submissions under 18 United States Code (USC) 1001. This submission process cannot be a substitute for NHTSA promptly issuing minimum performance standards through a public rulemaking process.

Proper Oversight of Testing: AV testing is already underway in many states and localities. Fundamental and commonsense safeguards must be instituted for testing on public roads including the establishment of independent institutional review boards (IRBs) to certify the safety of the protocols and procedures for testing of AVs on public roads. The IRB requirements established by the Department of Health and Human Services (HHS) in 45 Code of Federal Regulations (CFR) 46 should serve as a basis for the requirements for IRBs overseeing AV road testing and be modified as needed for this particular use. Test vehicles should be prohibited from providing a service for compensation. In Section 24404 of the Fixing America's Surface Transportation Act (FAST) Act (Pub. L. 114-94), Congress excluded test vehicles from having to comply with federal standards as long as those vehicles are not sold to the public.

⁴ Motor Vehicle Safety Act, Pub. L. 89-563 (1966).

NHTSA actions required:

- Develop empirical data reporting standards and metrics for such data;
- Mandate developer reporting of the metrics to the public to enable comparison of AV safety performance among developers;
- Require manufacturers to provide data on the safety and performance of test vehicles and systems and to report safety-critical events including crashes and incidents that occur during testing that result in death, injuries or property damage;
- Verify developer compliance with all applicable laws;
- Make safety-critical event information publicly available with the rebuttable presumption in favor of disclosure, unless it is deemed proprietary or confidential in accordance with federal law;
- Determine which safety-critical events must result in the suspension of testing until a thorough review is completed and additional safeguards are implemented and verified by the Agency, as necessary; and,
- Prior to the introduction of the AV into commerce, review and analyze testing for oversight and research purposes, including but not limited to rulemaking.

Additional Resources and Enforcement Authorities for NHTSA: Ensuring NHTSA has adequate resources, funds, staff, and enforcement authority is essential for the Agency to successfully carry out its statutory mission and address the multiple challenges presented by the testing and deployment of self-driving technologies. The Agency also should be given additional enforcement powers including imminent hazard authority, and enhanced authority to pursue criminal penalties and levy larger civil penalties to ensure industry accountability and thwart misconduct.⁵

Guaranteeing Accessibility for All

Access for Individuals with Disabilities and Older Adults: Nearly one in five people in the U.S. has a disability (more than 57 million), and 16 percent of the U.S. population is over the age of 65. Yet, significant barriers to accessible, affordable and reliable transportation remain across all modes, and many people with disabilities are unable to obtain a driver's license and cannot afford to purchase an accessible vehicle. Autonomous driving technology has the potential to increase access and mobility for older adults and individuals with disabilities, including those with sensory, cognitive, and physical disabilities, wheelchair users, and people with neurological conditions, who have varying needs as well as traditionally underserved communities. This goal can be realized by Congressional directive ensuring access for everyone, including accessible HMI, and ramps and securement for wheelchair users. Discrimination on the basis of disability in licensing for SAE International level 4 and 5 AVs must also be prohibited. In addition, the diverse needs of all members of the disability community and older adults must be accommodated for systems that require human engagement as well as when developing a safe fallback.

Access for Underbanked Populations: Access to on-demand transport services is often predicated on the ability to make digital payments. Twenty-five percent of U.S. households are unbanked or underbanked, with higher incidence in working-age disabled households, lower-income households, less-educated households, younger households, Black and Hispanic households, and households with volatile income. AV-based transport services must consider a variety of ways in which payment for service can be made in order to ensure that this technology supports equitable access and the inclusion of all.

⁵ If NHTSA is not to have authority over the commercial operation of an AV, these same oversight powers must be conveyed to the respective modal agency responsible for overseeing the deployment of commercial AVs.

Equity: Transportation is an imperative part of life. It is the connector for people’s work, medical care, worship, recreation, essentials for life and all other tasks. As new modes of transportation continue to grow and evolve, investment and development must include a process where all people can safely participate.

Accessibility, Passenger Safety, and Transportation Services: The safety of passengers is not a monolith, and the measurement and descriptions of safety differ for all people in particular for those who are part of marginalized communities. The use of public transportation safely is currently partially in control of the operators of the modes and vehicles. Human interaction remains essential even when there is an AV and no operators. There must be clear plans that coordinate the safe transportation for all people including the need for delivery of medical care as well as laws that embrace social equity to protect those who are marginalized (Black and Brown people, Indigenous people, lesbian, gay, bisexual, transgender, queer, + (LGBTQ+) people, people with disabilities, women, older adults, and all other groups) in the implementation of these transportation services.

Preserving Consumer and Worker Rights

Consumer Information: Consumer information regarding AVs should be available at the point of sale, in the owner’s manual, including publicly accessible electronic owner’s manuals, and in any OTA updates. The vehicle identification number (VIN) should be updated to reflect whether certain features were built into the vehicle, either as standard or optional equipment. Additionally, similar to the user-friendly safecar.gov website, NHTSA must establish a website accessible by VIN with basic safety information about the AV level, safety exemptions, and limitations and capabilities of the AV driving system including those resulting from OTA updates. The U.S. New Car Assessment Program (NCAP) was the first government program to provide the public with comprehensive auto safety ratings, including crash test results. It is vital that Congress require NHTSA to act upon consumer and stakeholder recommendations to modernize U.S. NCAP ([See Claybrook/Advocates for Highway and Auto Safety paper](#)) and include ratings on how vehicles perform in crashes with motorcyclists, pedestrians and bicyclists. This enhancement of NCAP will be especially crucial as AVs are introduced into the marketplace. Consumer information should be available in multiple languages, similar to compliance with Section 508 of the Rehabilitation Act of 1973 (Pub. L. 93-112), and via video with closed captioning as appropriate, as well as other means of communication to promote access.

Privacy: Passenger vehicles have the potential to collect significant amounts of data that could interfere with personal privacy rights. Therefore, all manufacturers of passenger motor vehicles, including AVs, should be required to comply with robust data privacy safeguards and policies. Any personally identifiable information (PII) should only be collected or shared for purposes of delivering the services a consumer has requested or affirmatively opted-in to, with appropriately tailored exceptions for essential public purposes, safety, data security, compliance with regulatory requirements, and analytics/performance monitoring, among other purposes. Companies should be required to be transparent with consumers and workers operating a vehicle about the collection and sharing of information, protect information associated with the vehicle and the vehicle itself from data breaches, obtain consumers' express permission to sell or disclose their PII to third parties, and provide consumers the ability to access and delete PII that is not needed to support essential public purposes, safety, data security, compliance with regulatory requirements, and analytics/performance monitoring. The ability of NHTSA, the NTSB, and local law enforcement to access critical safety performance data, while preserving the integrity of personal, private or identifying data, in a timely manner for research, crash investigation and other governmental purposes must be preserved. In addition, radio spectrum needed for traffic safety purposes including vehicle-to-everything communications must be limited to non-commercial use.

Workforce Protections: The deployment of AV technology will have a significant impact on our Nation's workforce. While these technologies will create new business and employment opportunities, they will also lead to displacement and major shifts in jobs and job functions that will not necessarily be linked to those new opportunities, especially for those same individuals who are being displaced. Policymakers have a major role to play in determining whether AV deployment will help or harm working people and whether the benefits from these technologies will be broadly shared. Absent strong leadership, AV technology risks worsening severe inequalities already inherent in our society, predominantly for blue collar workers. Existing and foreseeable issues which stand to be greatly exacerbated by this technology must be addressed before this technology is broadly deployed on our roads. Similarly, unforeseeable issues throughout deployment will need to be resolved with input from affected stakeholders. Congress must ensure that workers and unions are partners in the development and implementation of AV technology and policy. It must recognize the projected negative effects of a transition to AVs, including but not limited to ensuring strong worker protections in federal funding and procurements, and providing worker support programs for current and future workers including training and re-skilling to ensure that displaced and otherwise affected workers are able to move into middle class jobs created by technological change. In order to achieve these goals, Congress must also take action to require companies and government agencies that plan to transition to AV fleets to be transparent and honest with their workers regarding budgets, plans - including training programs - and timelines for the implementation of new technology. In workplaces where the employees are unionized and thus bargain collectively, these issues should be negotiated.

Whistleblower Protections: Employees or contractors of any manufacturer, supplier, or operator of software or hardware for AVs who want to report safety defects to NHTSA should not be prevented from doing so as the result of a non-disclosure agreement (NDA). The type of protections afforded whistleblowers in Section 31307 of the Moving Ahead for Progress in the 21st Century (MAP-21) Act (Pub. L. 112-141) as well as Section 24352 in the FAST Act (Pub. L. 114-94) must be extended in any AV bill. In addition, the Department of Labor prohibits a NDA that prevents an individual from providing information to the federal government. However, only a limited number of cases have been filed with the Occupational Safety and Health Administration. Therefore, more must be done to inform employees as to their rights and responsibilities when such a situation arises.

Consumer and Worker Rights⁶: The well-established rights of consumers to seek accountability in a court of law for injuries suffered as a result of AVs must be preserved. Nothing in this bill shall exempt a person from liability at common law or under a state law, or permit a consumer to be required to forgo their rights by a manufacturer or provider of AVs. Moreover, exploitative independent contractor relationships that shield AV companies from liability and deny workers basic workplace rights should be explicitly prevented.

Ensuring Local Control and Sustainable Transportation

Local, State and Federal Regulatory Roles: The statutory mission of the DOT established by Congress in 1966 is to regulate the performance of motor vehicles to ensure public safety, which now includes AVs. In keeping with existing law and practice, the federal government should prescribe regulations for the performance of these vehicles, leaving regulation of the operation of these vehicles to the states. Even after federal regulations are in place regarding AVs, existing federalism practices demand that states retain a legal right and a duty to their residents to develop proposals and implement solutions to ensure public safety. In addition, state and local governments have the authority to manage the operation of vehicles on their streets to address concerns such as safety, noise, local air quality, and congestion. Any action on the

⁶ Advocates for Highway and Auto Safety does not take a position on this issue.

regulation of AVs shall not preempt states and localities from regulating the operation of these vehicles just as they do for traditional motor vehicles.

In-Depth Study of AV Impacts on Transportation Systems and Environment: AVs could have direct and indirect negative impacts on safety, congestion, pollution, land use, accessibility, transportation infrastructure capacity and needs, energy consumption, public transit, jobs and job functions, mobility and equity. DOT must be directed to undertake a comprehensive study to inform policymakers and the public about how these vehicles will impact our existing transportation systems and ensure effective mitigation of problems identified. Implementation of infrastructure to support the safe operations of AVs, such as placement of electric vehicle charging stations, visible lane striping, and uniform and unobstructed signage, must be equitable for all communities to ensure equal opportunity for people of all racial and socioeconomic backgrounds.

NOTE: The AV Tenets outlined in this document do not constitute the entirety of each supporting organization's policy priorities related to AVs.

Glossary of Acronyms

ADS – Automated Driving System

AV – Autonomous Vehicle

CFR – Code of Federal Regulations

DOT – Department of Transportation

FAA – Federal Aviation Administration

FAST – Fixing America’s Surface Transportation Act, Pub. L. 114-94

FMVSS – Federal Motor Vehicle Safety Standard

GAO – Government Accountability Office

GVWR – Gross Vehicle Weight Rating

HHS – Health and Human Services

HMI – Human-Machine Interface

IRB – Institutional Review Board

LGBTQ+ -- Lesbian, Gay, Bisexual, Transgender, Queer, +

MAP-21 – Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141

NCAP – New Car Assessment Program

NDA – Non-Disclosure Agreement

NHTSA – National Highway Traffic Safety Administration

NIST – National Institute of Standards and Technology

NTSB – National Transportation Safety Board

ODD – Operational Design Domain

OTA – Over-the-Air

PII – Personally Identifiable Information

SAE – Society of Automotive Engineers

USC – United States Code

VIN – Vehicle Identification Number