



November 29, 2021

Dr. Steven Cliff
Deputy Administrator
National Highway Traffic Safety Administration
Washington, DC 20590

**RE: Incident Reporting for Automated Driving Systems (ADS) and Level 2
Advanced Driver Assistance Systems (ADAS) (NHTSA-2021-0070)**

Dear Deputy Administrator Cliff:

The U.S. Chamber’s Technology Engagement Center (“C_TEC”) appreciates the opportunity to provide feedback to the National Highway Traffic Safety Administration’s (“NHTSA”) request for comments on a request for extension of the Standing General Order (“Order”) on “Incident Reporting for Automated Driving Systems (‘ADS’) and Level 2 Advanced Driver Assistance Systems (‘ADAS’).”¹ The request to approve the information collection would extend the Order for three years after receiving a six-month emergency approval to pursue the information collection. C_TEC believes that significant substantive concerns remain with the Order, which merits revision by NHTSA before receiving a three-year extension. C_TEC looks forward to working with NHTSA on further refining the scope of the Order and collaborating on other solutions to ensure the safety of innovative motor vehicle technologies.

I. Role of Reporting Requirements

In general, C_TEC believes that an appropriate mix of voluntary and mandatory reporting requirements can help enhance motor vehicle safety and instill public confidence in new motor vehicle technologies such as Level 2 ADAS and ADS. Both types of reporting requirements can contribute to motor vehicle safety given the valuable information they often provide to NHTSA that informs agency actions including enforcement and rulemaking. For example, NHTSA’s Voluntary Safety Self-Assessments (“VSSA”) allows developers of these technologies to publicly disclose and assess how they are addressing various elements of automated vehicle (“AV”) safety. This increases public confidence in the technology and fosters an ecosystem of best practices and approaches. In addition, NHTSA’s Early Warning Reporting rule requires manufacturers to submit quarterly reports on various issues, including incidents involving death or injury.² Likewise, Federal Motor Carrier Safety Administration (“FMCSA”) requires motor carriers to maintain a register of certain types of crashes, available to FMCSA upon request, and to include information such as the location and date of the crash, and the number of injuries and fatalities.³

¹ Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS), 86 Fed. Reg. 54287 (proposed Sept. 30, 2021).

² 49 C.F.R. § 579 (2020).

³ 49 C.F.R. § 390.15 (2020).

Moreover, C_TEC strongly supports legislation to enable the safe deployment of AV technology, such as the SELF DRIVE Act and the AV START Act. Both bills include mandatory reporting requirements such as safety assessment certifications for AV developers and revisions to crash data reporting that indicate the automation capabilities of a vehicle and the level of automation during the crash.⁴ C_TEC notes that these proposed statutory reporting requirements contain guardrails to ensure that the requirement remains related to its original purpose and imposes a minimal burden to reporting entities. Moving forward, it is imperative that NHTSA considers how any new reporting requirement intersects or overlaps with existing federal and state voluntary and mandatory reporting requirements. This would prevent duplication and ensure the effective flow of information to regulators. This is especially important considering the request for extension is for three years and will have a significant compliance impact on reporting entities.

II. Procedural Concerns

Ensuring motor vehicle safety requires effective and transparent collaboration between NHTSA and motor vehicle manufacturers, AV developers, and other relevant stakeholders. A collaborative process enables NHTSA and stakeholders to have a constructive dialogue about the capabilities and limitations of novel motor vehicle technologies and the impact of proposed regulatory actions. Unfortunately, the Order was originally developed without any input from affected stakeholders, including reporting entities, and bypassed an opportunity for prior comment considering NHTSA sought an emergency authorization. Subsequently, stakeholders provided numerous recommendations to improve the Order to streamline compliance costs for reporting entities while maintaining the objective of the Order. Unfortunately, none of the concerns were addressed in this request for extension, which will adversely impact the utility and quality of the information collected. Ultimately, the decision to extend the duration of this Order without revision will lead to regulatory confusion and increased compliance costs on AV manufacturers and ADS and ADAS developers. This will particularly affect startups that lack internal resources compared to other manufacturers and developers.

In addition, subsequent actions taken by NHTSA after publishing the Order demonstrates that NHTSA has sufficient regulatory tools to address any perceived safety defects posed by novel motor vehicle technologies. Thus, this Order may not be necessary. On August 13, 2021 NHTSA's Office of Defects Investigation opened a preliminary investigation of several Tesla models that used its "Autopilot" ADAS system in connection with several crashes with first responder vehicles.⁵ While the investigation is still ongoing, NHTSA's utilization of its authority to investigate potential defects in Level 2 ADAS motor vehicles indicates that the Order granted under an emergency authorization is not required for NHTSA to investigate any potential safety defects posed by motor vehicles covered under the Order.

⁴ Safely Ensuring Lives Future Deployment and Research In Vehicle Evolution (SELF DRIVE) Act, H.R. 3388, 115th Cong. § 4(a) (2017); American Vision for Safer Transportation through Advancement of Revolutionary Technologies (AV START) Act, S. 1885, 115th Cong. § 13(c) (2017).

⁵ NHTSA ODI Preliminary Investigation No. PE 21-020, <https://static.nhtsa.gov/odi/inv/2021/INOA-PE21020-1893.PDF>.

III. Substantive Concerns

As highlighted in our September letter, C_TEC has four major, substantive concerns regarding the Order. We seek to collaborate with NHTSA to appropriately scope this Order to reduce the compliance burden on reporting entities while providing helpful data to NHTSA.

First, C_TEC seeks greater clarification on the definition of a “crash” included in the Order to ensure that only concrete safety-relevant information is reported to NHTSA. The inclusion of incidents where a subject vehicle contributes or is alleged to contribute to another vehicle’s impact with another road user is problematic. The term “contributes” is undefined in the Order, which could result in confusion and inconsistent reporting for reporting entities. Likewise, the usage of “alleged to contributes” raises similar concerns as discussed above and could lead to over-reporting of incidents that are not in fact crashes. In effect, this would lead to a higher number of reported crashes than would actually occur, providing an inaccurate picture of ADS and ADAS safety and impact the quality and clarity of the information provided. C_TEC suggests that NHTSA exclude incidents that are alleged and clarify the term “contributes.”

Second, C_TEC believes the definition of “notice” contained in the Order is too broad and should be significantly narrowed. The term “notice” encompasses information from any medium, any source, and includes both incidents that have occurred and that have been alleged to occur. C_TEC is concerned that including all types of media, which encompasses social media and blogs, may lead to false and duplicative reports. Also, claims made through the media and social media may not be received by the reporting entity. Thus, it would be burdensome for a reporting entity to track and compile. The calculation made in this request does not account for these types of claims. NHTSA should redefine “notice” to exclude information from media and social media reports unless those reports are directly presented, electronically or through writing, to the reporting entity.

Third, the Order gives reporting entities just one day to submit an initial Incident Report for certain incidents after receiving notice of the incident. The Order also requires an updated Incident Report on the tenth day after receiving notice of the incident. While timely notification of an incident is important, NHTSA has not demonstrated any compelling need to be informed of all these broadly defined crashes the day after they occur. C_TEC believes that the single day requirement is too short and is a significant compliance burden for reporting entities. Moreover, the haste of a single day deadline may also lead to the submission of inaccurate and duplicative information, especially considering that, under the current Order, reporting entities are required to provide notice of unverified incidents and alleged incidents. The inclusion of the updated Incident Report seems to recognize that concern, which begs the question of the purpose of the single day requirement. Also, we are concerned that the Order uses calendar days instead of business days. The use of calendar days may, in some circumstances, provide insufficient time to produce an accurate and informative Incident Report given weekends and holidays. C_TEC recommends that NHTSA strike the single day requirement and only require reporting entities to submit an Incident Report on the tenth business day.

Finally, NHTSA notes that the purpose of the Order is to ensure that reporting entities are “meeting their statutory obligations to ensure that their vehicles and equipment are free of defects that pose an unreasonable risk to motor vehicle safety...”⁶ C_TEC seeks clarification from NHTSA about the practical utility of the Order through the agency’s plan to publish any of the information collected under this Order. We also ask how NHTSA plans to contextualize the information. We are concerned that public reports of this type of information may lack context and may not fully convey the differences between Level 2 ADAS and ADS motor vehicles. C_TEC requests that NHTSA consult with industry stakeholders on best practices to ensure information shared with the public is complete and validated. This will allow NHTSA to effectively convey this information to the public to ensure continued public understanding of ADS and ADAS technologies.

IV. Conclusion

C_TEC appreciates NHTSA’s continued work to improve motor vehicle safety and your willingness to consider the concerns raised in this letter. We look forward to working with NHTSA to address these concerns. Doing so would effectively ensure the safe deployment of motor vehicles equipped with ADS and ADAS and provide a practical compliance regime for reporting entities.

Sincerely,



Matt Furlow
Director, Policy
U.S. Chamber Technology Engagement Center
(C_TEC)

⁶ Standing Gen. Ord. 2021-01, 4-5.