

November 29, 2021

BY ELECTRONIC SUBMISSION

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

Re: **Request for Comments on Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS)**

Docket No. NHTSA-2021-0070

Dear Acting Administrator Cliff:

The Consumer Technology Association (“CTA”)® submits these comments on 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”), No. NHTSA-2021-0070.

The Consumer Technology Association’s (CTA)® members are the world’s leading innovators – from startups to global brands – helping support more than 18 million American jobs, including many who are working to make the driving experience safer with self-driving vehicles. Our membership includes a wide range of companies working to bring self-driving vehicle (“SDV”) innovations to America’s roadways. This includes vehicle and component manufacturers, software developers and transportation platforms engaged in a multidisciplinary approach to this emerging and growing industry. U.S. consumers desire safety improvements, better mobility and less time

wasted in traffic, with 66% indicating that they are interested in replacing their cars with self-driving vehicles, according to CTA research.¹

CTA believes that ADS has the transformative power to positively impact lives. SDVs can reduce the number of accidents, primarily caused by human-error, increase accessibility and mobility, reduce inequities in transportation access, create new efficiencies by reducing traffic congestion, promote green transportation options, generate new American jobs and have substantial economic impact.

Accordingly, CTA commends the U.S. Department of Transportation (“USDOT”)² for working to cultivate innovation for SDVs, including the development of the Department’s Comprehensive Plan. Leadership by the USDOT, and its agencies, such as the National Highway Traffic Safety Administration (“NHTSA”), the Federal Highway Administration (“FHWA”), the Federal Motor Carrier Administration (“FMCSA”), and Federal Transit Administration (“FTA”), has enabled a substantial amount of SDV testing and on-road deployment that only continues to increase across the country. CTA also commends USDOT for its forward-thinking approach in anticipation of increased SDV activity in the future.

CTA agrees that safety is fundamental in the successful deployment of SDVs. CTA agrees with USDOT’s focus to “prioritize safety while preparing for the future of transportation.”³

Unlike the serious national challenges in obtaining factual information after the rapid onset of Covid-19, the creation of carefully considered reporting of data on SDV incidents is a national opportunity to smooth the American shift to safe self-driving with all of its attendant benefits.

II. CTA encourages NHTSA to include the following as guiding principles to accelerate the transformative potential of ADS

Technology Neutrality

Any incident reporting for ADS safety must take a technology-neutral approach. The use and implementation of performance-based standards, wherever such standards are put in place, is the best method for ensuring this neutrality going forward.

¹ <https://shop.cta.tech/collections/research/products/self-driving-vehicles-consumer-sentiment-2021>

² U.S. Department of Transportation, Comprehensive Plan (AV 4.0), pgs. V, 26.

³ AV 4.0, pg. iii

NHTSA and industry should work together to develop any new incident reporting requirements. NHTSA should ensure objective, performance-based standards that all industry actors can strive to meet. These standards should be incorporated in incident reporting, regardless of the specific approaches of individual companies. A technology-neutral approach will advance NHTSA's safety goals by applying proven results from companies, that are creating safer and more efficient transportation options. NHTSA should encourage innovation now to ensure safer vehicles are brought to American roadways.

Global Competitiveness

The U.S. must protect and encourage American innovation to ensure it does not lose the global race to capture the SDV industry. Accordingly, any incident reporting should not be overly burdensome or create barriers for American companies developing SDV technology in the U.S.

Additionally, any incident reporting requirements should run in tandem with updating and modernizing regulations affecting the SDV industry. Modernized regulations will promote regulatory consistency across jurisdictions and allow for streamlined SDV operations both nationwide and internationally. USDOT's efforts in these essential areas are appreciated.

Flexibility

NHTSA should promote a flexible approach to ADS incident reporting to the degree needed. Any incident reporting collection from NHTSA should account for the fact that there will be many different types of SDVs and there may be the need for varied questions and processes based on the type and purpose of an SDV. To the degree NHTSA develops incident reporting for ADS and ADAS, the agency should continue to allow multiple avenues to satisfy any requirements depending on how it applies to different entities.

The USDOT has already taken important steps toward the promotion of this flexible approach in the recent Automated Vehicles Comprehensive Plan (AVCP). In recent years, the USDOT has focused on ensuring a consistent, safety-first environment for the regulation of SDVs. With the release of the AVCP, the department has begun ensuring that use-cases for different types of SDVs are not treated exactly the same. For example, an autonomous shuttle designed to be compliant with the Americans with Disabilities Act should be treated differently from a driverless package delivery vehicle that will never have a human inside. Continuing to promote flexibility within the ADS

safety framework will allow safety advances from SDVs to be shared with traditional automobiles. The result will benefit all drivers and pedestrians.

Differentiation between ADS and Manual Driving

The glaring difference between the ADS incident reporting being considered and the current Federal Motor Vehicle Safety Standards (“FMVSS”), which typically apply to human-operated vehicles, is that the ADS framework will essentially focus on the driver (i.e., the ADS function). In contrast, the driver in a human-operated vehicle is typically not subject to regulation by NHTSA. It appears that NHTSA is grappling with this issue in recent Federal Register publications. The SDV industry needs a model in place that does not rely on a patchwork of different regulatory and licensing regimes. A framework for ADS safety, which includes incident reporting, would be a major step towards this standardization.

As NHTSA considers a potential incident report collection for ADS and ADAS, it is relevant that driver error causes most vehicle crashes. As one example, a study by NHTSA determined that the critical reason for a vehicle crash was assigned to the driver 94% of the time.⁴ By automating the driving function SDVs can provide even greater safety to vehicle occupants and pedestrians. These safety benefits should be considered by NHTSA when incident reporting collection is occurring and being published, especially any information that is public-facing.

Protect Users and Consumer Education

Safety is a central concern to CTA, and we applaud USDOT’s leadership in efforts to integrate self-driving and automated technologies safely. Maintaining strong public confidence in the safety benefits of SDVs will help drive consumer adoption of the technology. CTA has been proactive about consumer education related to SDV capabilities.

CTA is a founding member of the Partners for Automated Vehicle Education (PAVE) Campaign, a coalition of industry, nonprofit and academic institutions working to educate the public and policymakers about SDVs. Accordingly, CTA supports USDOT’s commitment to enforce existing laws and ensure that the public is not deceived or misled about the performance capabilities and limitations of advanced and automated vehicle technologies.

Facilitate Coordinated Efforts

⁴ NHTSA, Critical Reasons for Crashes Investigated in the National Motor Vehicle Crash Causation Survey (Feb. 2015).

Promoting consistent standards and policies will help develop market certainty and harmonization of law. A uniform approach across the federal government will promote maximum effectiveness.

Programs such as the AV TEST Initiative demonstrate the tremendous potential of public-private collaboration that can help advance safety and transparency for ADS and SDVs, through the efficient flow of safety information. Also, it is worth noting that AV TEST already provides an avenue for developers to share data about AT testing and pilots. This should be considered within developing incident report collections.

II. Reporting requirements must be reasonable and not overly burdensome

CTA agrees that NHTSA should understand how ADS and ADAS incidents impact road safety. However, definition of “notice” contained in the Order is overly broad and we believe it should be tailored in a more narrowed fashion. Specifically, NHTSA should make clear that “Notice” should come from industry, first-hand, to ensure that accounts of any incident are reported properly and do not infuse any bias or false information. This would also ensure that media reporting – and specifically false reports from social media – are not the source for reporting incidents or collecting that information.

The Order should also permit for a more reasonable timeline to submit an Incident Report. Currently, reporting organizations have only one day to submit an Initial Report in certain circumstances. CTA agrees that NHTSA should collect this information in a timely fashion, however, we would encourage adoption of more flexible timelines and an approach, such as recalls, where there is dialogue between reporting entities and NHTSA. The agency has not demonstrated a compelling reason why a requirement of one day to submit is necessary. More, NHTSA has an interest in providing flexibility and more time so that reporting is achieved in a thorough, non-duplicative and accurate manner.

We urge NHTSA to eliminate Request No. 2 reporting altogether as this creates a significant disparity between ADAS and ADS requirements in the Order, which is not supported by facts or data. In addition, there is a lack of clarity with the Report No. 2 reporting threshold which leads to various degrees of over-reporting for ADS entities and the reporting of very minor crashes, which serves no practical utility under 5 CFR 1320.8(d)(i). This reporting is time intensive for ADS entities due to the lack of clarity in the threshold, and thus is an unreasonably high burden under 5 CFR 1320.8(d)(ii). If NHTSA does not eliminate Request No. 2 requirements, clarity should be provided regarding the threshold for reporting. We suggest that this threshold be defined as either police reported crashes that are not covered under Request No. 1 or a revised “property damage” definition with a monetary threshold of \$1,000.

In general, updates should not be required unless there is something new to report. This should apply to all aspects of the Order (e.g. 10-day updates and monthly updates). Providing an "update" when there is nothing to report lacks practical utility under 5 CFR 1320.8(d)(i) and creates unreasonable burden under 5 CFR 1320.8(d)(ii).

We also recommend that NHTSA eliminate duplicative reporting between entities. Duplicative reporting does not serve a purpose for NHTSA and is overly burdensome for the reporting entities. We suggest that NHTSA add a field to the online form to allow the primary reporting entity to "tag" or list strategic partners from a drop-down list. That way, the partners are not required to submit a duplicative report but they are looped into the process with visibility to NHTSA.

IV. CTA has concerns about incident information collection and publishing information in a manner that would be misleading towards safe ADS and ADAS deployments

CTA has significant concerns about the type of information collected and how it will be published.

Specifically, we are concerned about the agency's definition of a "crash" within reporting. As NHTSA is aware, this statistic could be used in a biased way to create the appearance of more crashes, especially serious incidents, than what are really occurring on our roads. That would paint an inaccurate picture of an industry that is, by-large, deploying ADS and ADAS in a safe manner. A heavy hand in incident collection could lead to more incident reports and muddying the types of information that is critical to the safe deployments of ADS and ADAS. Also, collecting less tailored information that is more likely to be used in an inaccurate fashion is not beneficial to advancing safety efforts or the SDV industry. The reports, as currently designed, will occur without proper context or baseline.

Additionally, given the various types of use-cases and technology stacks being used by industry, there should be an understanding that any incident reporting should allow for flexibility and context. CTA disagrees with NHTSA's citation of California disengagement report statistics. While well-intentioned, many ADS and ADAS companies are not testing in California, especially in automated trucking, and the California disengagement numbers have portrayed an inaccurate picture of ADS safety. Disengagements without proper context do not tell the full story of whether or not a company is safely deploying vehicle technology.

CTA encourages NHTSA to consider adding sections to the forms used to collect incident information to include a place where companies can provide more context about the incident.

The proper classification of information will have a major impact on the ADS and ADS industry. As a result, the NHTSA form to collect data should be as targeted and nuanced as possible. This type of information will help NHTSA better understand the overall landscape and use resources effectively. Additionally, specifically tailored information will help the public better understand the industry and help policymakers develop more informed approaches to advance safety and innovation. NHTSA should seek industry input on how the information collected is disseminated so there is a clear distinction between the ADS and ADAS performance.

CTA has major concerns about how this information will be shared with the public. As consumers become more acquainted with self-driving vehicles, favorability with the technology has skyrocketed.⁵ It is important that any information shared with the public be provided in a non-misleading manner and in an accessible, understandable format.

III. Conclusion

CTA commends USDOT's leadership in promoting the safe implementation of ADS and ADAS.

CTA understands NHTSA's priorities in incident reporting for ADS. Safety is, and must remain, the paramount concern in evaluating any ADS technology or SDVs. Likewise, we value NHTSA's commitment to remain technology neutral and promote innovation. Reporting should not add an undue burden to industry.

As NHTSA understands, the automotive industry is modernizing ahead of the current FMVSS and we appreciate the agency's desire to take actions that will provide certainty for commercial operators without stifling innovation. The road to SDV deployment will be a global competition. Other countries may allow for the commercial deployment of SDVs as soon as 2022.

SDV developers, like most commercial operators, respond to regulatory certainty. That said, the public and SDV industry will not benefit from regulation for regulation's sake—NHTSA should avoid specific incident collection and reporting unless it is appropriate to do so based on a demonstrated safety need. Accordingly, NHTSA should also seek to provide certainty and clarity to the industry through guidance, grants of exemptions and disclosure/reporting requirements, rather than solely through the use of

⁵ Supra, note 1

rulemakings. All of these items are necessary parts of any ADS safety framework that NHTSA ultimately develops.

Please let us know what additional assistance or information we can provide.

Sincerely,

/s/ Michael Petricone

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