November 29, 2021

Ann E. Carlson, Chief Counsel
U.S. Department of Transportation
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

Re: Notice and Request for Comment, Incident Reporting for Automated Driving Systems and Level 2 Advanced Driver Assistance Systems, Docket No. NHTSA-2021-0070, 86 Fed. Reg. 54287

Dear Ms. Carlson,

The Self-Driving Coalition for Safer Streets ("the Coalition" or "Self-Driving Coalition"), an organization of leading autonomous vehicle companies, writes today to provide comments on the National Highway Traffic Safety Administration's ("NHTSA") request to extend its "Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS)" information collection under Standing General Order 2021-01 ("SGO"), which was published in the Federal Register on September 30, 2021. The Coalition supports providing information to NHTSA about the safety of automated driving systems; however, we have concerns related to the information collected under the SGO that we hope can be addressed before extending the collection further. The Coalition is prepared to work with NHTSA to address these concerns and ensure that the data reported to NHTSA are both accurate and useful in service of legitimate safety goals that the agency is pursuing.

Background on Coalition

The Self-Driving Coalition is comprised of the world's leading technology, ridesharing, trucking, and automotive companies dedicated to the safe and swift deployment of autonomous vehicles. Members include Argo AI, Aurora, Cruise, Embark, Ford, Kodiak, Lyft, Motional, Nuro, TuSimple, Uber, Volvo Cars, Waymo, and Zoox.[1] Our mission is to advance and promote the benefits of autonomous vehicles (*i.e.*, vehicles equipped with an automated driving system designed to function without a human driver as a level 4 or 5 system under SAE J3016) and to support the safe and rapid deployment of these innovative and potentially life-saving technologies.

The Coalition shares NHTSA's goals of promoting vehicle safety and saving lives, and we encourage the safe, swift, and responsible deployment of autonomous vehicles to help achieve these goals. The recent increases in the Nation's highway fatalities—the first half of 2021 witnessed the worst fatality rate in 15 years—underscores our shared urgency to develop autonomous vehicle technology that can address the human behavioral mistakes that are contributing to this trend. Additionally, we believe that clear, national reporting standards can be

[1] *See* SELF-DRIVING COALITION, https://www.selfdrivingcoalition.org/.

an important means to increase public understanding of autonomous vehicles and support their deployment. As evidence of our commitment to transparency and support for increasing public understanding of autonomous vehicles, each member previously committed to participate in NHTSA's AV TEST Initiative and has consistently collaborated with NHTSA on matters pertaining to autonomous vehicle technology. Further, members voluntarily elect to publish safety assessments that contain detailed information meant to educate the public and the agency about the SAE Level 4 or 5 technology being tested or deployed. Our members also currently comply with significant, existing reporting requirements, such as those in states like California and Pennsylvania. As the agency is aware, manufacturers also comply with substantial data reporting obligations that require reports to NHTSA on a wide variety of information that could indicate the existence of a potential safety defect.[2]

The Coalition's Concerns with the SGO Information Collection

The Coalition supports providing information about the safety of automated driving systems and believes it is important for NHTSA to have access to information that will allow it to achieve its statutory mandate of reducing "traffic accidents and deaths and injuries resulting from traffic accidents."[3] However, the Coalition has significant concerns that the reporting process established by the SGO may generate flawed data of questionable utility to the agency while placing a heavy reporting burden on AV developers that could unintentionally impede deployment of safety-enhancing ADS technology. Our comments, organized below in response to the questions NHTSA has been required to seek comment on under 5 CFR 1320.8(d), are summarized as follows:

1. *Request Number 2 Should Be Eliminated, as the Information It Seeks Is of Limited Value*

Request Number 2 seeks information on any and all crashes not covered by Request Number 1. As explained further below, the SGO's over-expansive definition of "crash" would mean this request would include de minimis events that have no bearing on the agency's stated purpose for the information collection and provide the agency with no meaningful, safety-relevant information. Rather than seeking and maintaining large numbers of reports with minimal value, NHTSA is better positioned to perform its safety functions if it focuses on the information collected by Request Number 1, especially if that request is modified as articulated below. Eliminating Request Number 2 also resolves the discrepancy in reporting requirements between driver assistance and AV developers, as ADAS developers are currently exempt from Request Number 2, despite having many more vehicles on the road.

2. *The One-Day Reporting Requirement Should Be Eliminated*

The one-day reporting requirement found in Request Number 1 is not necessary for the proper performance of NHTSA's safety mission, and should be eliminated, so that reports are filed in the first instance under the 10-day reporting period also found in Request Number 1. NHTSA

[2] *E.g.*, 49 U.S.C § 30166(m).
[3] 49 U.S.C. § 30101.

appears to agree that one-day reports have limited practical utility noting that "it is anticipated that, for some of these reportable crashes, the reporting entity will have minimal information on the day after it receives notice."[4] A 10-day window would still provide NHTSA with timely information to assess potential safety implications, while allowing reporting entities reasonable time to gather relevant facts for reporting.

3. *The SGO Should Follow the Established Standards for the Protection of Confidential Business Information and NHTSA Should Simplify the Overall CBI Process*

The SGO establishes an unprecedented presumption that certain information is not confidential business information ("CBI"). This presumption is made even though the information being collected is comparable to that collected by long-standing NHTSA programs, all of which have been able to meet the agency's safety mission while retaining greater CBI protections than the SGO. Additionally, the current system requires reporting entities to send separate confidentiality reports to the NHTSA Chief Counsel's office. Given that NHTSA has already taken steps to make the online reporting process more efficient, the agency should consider creating a process to submit CBI-related requests through the same web portal to reduce the burden of the Order.

4. *The SGO Should Avoid Requiring Duplicative and Unnecessary Incident Reports*

Currently, the SGO requires the submission of Incident Reports from every covered entity involved in a crash. This requirement means that if two covered entities are cooperating on a project, they will have to submit two separate reports, leading to duplicative data. We recommend NHTSA allow entities to "tag" a report with information on any other covered entities that were involved with the covered vehicle in the report. Likewise, Request Number 4, which requires entities to file monthly Incident Reports even if they don't have any incidents to report, is an unnecessary burden on reporting entities that provides NHTSA with no additional information and should be eliminated.

5. *The Definition of "Notice" Should Be Clarified*

As written, the SGO's definition of notice is unduly expansive, including mere "allegations" of a crash that arise from any source. This construction puts subject entities on notice for any social media post or passing comment published in a way that could be construed as "notice," making accurate reporting nearly impossible for some so-called "incidents." NHTSA should revise the definition of "notice" to include verifiable and credible instances.

[4] Agency Information Collection Activates; Notice and Request for Comment; Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS), 86 Fed. Reg. 54,287, 54,288 (Sept. 30, 2021) [hereinafter *Request for Comment*].

The Coalition's concerns with the data collection, enumerated above, are explained in further detail below. We additionally include comments setting forth the Coalition's concerns with the process surrounding the SGO's issuance.

Response to Request for Public Comment

I. Whether the Proposed Collection of Information Is Necessary for the Proper Performance of the Functions of the Department, Including Whether the Information Will Have Practical Utility

Several aspects of the information collection as currently structured in the SGO limit the practical utility of the information collected and may undermine the safety mission that is the stated goal of the collection.

A. Request Number 2's Information Collection Lacks Practical Utility

For manufacturers and operators of ADS-equipped vehicles, Request Number 2 seeks Incident Reports on the 15th calendar day of each month detailing any crashes not reportable under Request Number 1. Request Number 1 requires the submission of information related to any crash that leads to a fatality, injury requiring transport to a hospital, vehicle tow-away, airbag deployment (either in the subject vehicle or another involved vehicle) or involving a vulnerable road user. Request Number 2 seeks information on all "crashes" involving an ADS-equipped vehicle where the ADS was engaged at any time during the period of 30 seconds immediately prior to the crash. The expansive definition of crash (something we discuss further below) could encompass incidents resulting in only a scratch or a scenario where a vehicle is rear-ended by another vehicle, unrelated to the operation of the ADS.

Request Number 2 is unnecessary for NHTSA's stated goal of ensuring that ADS manufacturers are meeting their statutory obligations to ensure their vehicles are "free of defects that pose an unreasonable risk to motor vehicle safety." Request Number 1 contains a broad range of incidents, including those that might pose an unreasonable risk to motor vehicle safety, while Request Number 2 distracts from those incidents. NHTSA at least should clarify a minimum threshold for reporting under Request Number 2 to avoid burdening subject entities with a large number of insignificant reports. For example, the definition of "property damage" could be revised to include a monetary threshold (we recommend $1,000) to exclude some of the most minor instances of contact events. While these solutions would not go as far toward protecting the data set from minimal-value reports as eliminating Request Number 2 would, they would still help improve the practical utility of the collected information.

Another concern the Coalition has with Request Number 2 is that Level 2 ADAS equipped vehicles are exempt from its information collection, placing a greater burden on ADS developers. Beyond the lack of parity, it does not seem to fit NHTSA's safety mission to only collect data from ADS-equipped vehicles, which are still testing and not commercially available, while ignoring ADAS-equipped vehicles that are already available to consumers. If NHTSA sees practical utility

from collecting information on minor incidents unrelated to safety concerns, it is hard to understand why the same is not true of Level 2 ADAS equipped vehicles.

B. The SGO's Presumption of Disclosure Creates a New Burden for Protecting Confidential Business Information

As written, the SGO creates a presumption of disclosure that risks the disclosure of CBI. The SGO summarily concludes that the reported crash information, with three exceptions, "does not include any potential CBI exempt from public disclosure." As the basis for this assertion, NHTSA provides that this information "is widely available to the public from law enforcement agencies and through motor vehicle crash databases maintained by NHTSA." However, as discussed in detail below, the SGO's definitions of "crash" and "notice" are expansive and reach beyond what would be included in law enforcement and NHTSA databases and may include confidential information likely to cause substantial harm to the reporting entity's competitive position.

Outside of the three enumerated exceptions, NHTSA provides no mechanism to claim confidentiality treatment of the data, which creates a substantial risk of CBI disclosure. This contrasts with NHTSA's established CBI process as laid out in 49 C.F.R. Part 512, where a submitting entity identifies the information it seeks to protect and then receives a determination from NHTSA's Chief Counsel.[5] Here NHTSA has predetermined, before a report has been filed, that only a subset of the information that could be reported is worthy of even being considered for protection. This determination is surprising given the agency's different approach for protecting crash information in Early Warning Reports ("EWR") subject to 49 C.F.R. 579, Subpart C, which serves a similar purpose for the agency. Under the EWR regulations, manufacturers are required to submit to NHTSA information on property damage claims, consumer complaints, warranty claims, and field reports.[6] In the EWR context, NHTSA's Chief Counsel reviews requests for CBI protection and makes a determination based on the actual information subject to the request. NHTSA's Chief Counsel has even determined that information from EWR is likely to cause substantial harm if released.[7] Yet in the SGO, NHTSA has adopted a presumption of disclosure and categorically restricted the ability to seek CBI protection. NHTSA has not provided any explanation for its disparate treatment of these clearly analogous reports. Given that the EWR has continued to be of use to NHTSA while being subject to review for protected information, we submit that the same would be true for the data being collected by the SGO. It is unclear why a different standard or practice for CBI protection serves NHTSA's safety mission in this case, and we would therefore request that NHTSA apply the same process for protecting SGO data as it applies to EWR data.

[5] 49 C.F.R. § 512.15 (2021).
[6] *See generally* 49 C.F.R. § 579 (2021) (containing the ERW reporting requirements for various categories of vehicle manufacturers).
[7] 49 C.F.R. § 512 Appendix C (2021).

II. The Accuracy of the Department's Estimate of the Burden of the Proposed Information Collection

Based on information provided by our members, it appears NHTSA has significantly underestimated the burden of the SGO's information collection. In the Request for Comment, NHTSA estimates it would take 2 hours to complete a one-day ADS report, with an additional hour to update that report later.[8] Members reported that these initial submissions took between roughly 5 and 12 hours to complete, along with anywhere from 3 to 24 hours to complete the follow up reports, depending on the complexity of the incident. For the monthly reports, NHTSA had estimated less than an hour of effort per entity going as low as 15 minutes for months with nothing to report.[9] In this case, NHTSA's estimate of 15 minutes for months with no reports reflects the time commitment reported by our members. However, the agency's estimate that monthly reports that have actual incident information will have a roughly 1-hour burden per month is again far off, with members reporting the process takes between 2 and 24 hours, accounting for internal approvals and various team sizes.

NHTSA's estimates seem to focus only on filling out the proper forms, ignoring what is often a team effort to investigate an incident and ensure the reported information is as accurate as possible. This omission means that every incident requires a great deal more effort than NHTSA's estimates. Members want to ensure the information they report to NHTSA is correct, and that diligence requires more time. NHTSA's estimates also fail to include time spent reviewing incidents that occur but are not reportable. Given the expansive nature of the current definition of "notice," reporting entities are required to investigate a potentially large number of "incidents," only some of which will end up being reported to NHTSA. Based on the experiences of our members, the current SGO reporting system is much more of a burden on reporting entities than NHTSA estimated. This burden could be lessened if the agency follows the recommendations made in these comments, narrowing overly expansive definitions, and clarifying and streamlining the reporting process.

III. Ways to Enhance the Quality, Utility, and Clarity of the Information to Be Collected

The current structure of the SGO has several deficiencies that undermine the quality, utility, and clarity of the information that is being collected. These issues include several of the definitions used, aspects of the reporting criteria and data requirements, and inconsistencies within the Incident Reporting Form.

A. Definitions and Terminology

There are several definitions and inconsistent uses of terminology within the SGO that undermine the quality, utility, and clarity of the data collected.

[8] *Request for Comment*, *supra* note 4, at 54,291.
[9] *Id.*

1. The Definition of "Notice" Is Overbroad and Could Lead to the Submission of False or Duplicative Reports

The SGO's expansive definition of "notice" is overbroad and may inadvertently cause well-intentioned operators and developers to submit false positives and duplicate reports. The SGO currently defines notice as including "information you have received from any internal or external source and in any form (whether electronic, written, verbal, or otherwise) about an incident that occurred or is alleged to have occurred[.]" By allowing for notice in any form, the SGO risks giving weight to rumors or inaccurate reporting, especially with the quick turnaround required for reporting. Our proposed alternative definition of notice is as follows:

> [I]nformation you have received from any internal source in any form or from an external source submitted to the reporting entity ~~and~~ in written or electronic ~~any~~ form ~~(whether electronic, written, verbal, or otherwise)~~ about an incident that occurred ~~or is alleged to have occurred~~; including, but not limited to vehicle reports, test reports, crash reports, ~~media reports,~~ consumer or customer reports, claims, demands, and lawsuits. A manufacturer or operator has notice of a crash or a specified reporting criterion (i.e., a resulting hospital-treated injury, fatality, vehicle tow-away, air bag deployment, or the involvement of a vulnerable road user) when it has actual notice of facts ~~or alleged facts~~ sufficient to meet the definition of a crash or a specified reporting criterion~~, regardless of whether the manufacturer has verified those facts~~. Media reports, including blog and social media posts, do not constitute "notice."

This revised version provides a consistent and clear definition of what forms of notice trigger the SGO's reporting requirement. This revision helps eliminate the issuance of reports based on extremely limited and/or possibly false "notice" from second- or even third-hand accounts. This proposed definition ensures that those reports that are made to NHTSA are clear and have useful, quality data.

2. The Definition of "Crash" Is Vague and Would Lead to Useless Reporting

The SGO's definition of a "crash" is vague and may lead to reported data that has limited or no bearing on safety. Under the current definition, subject entities are required to report not only on crashes about which they have direct knowledge, but also on those for which a vehicle is "alleged to contribute [to a crash] (by steering, breaking, acceleration, or other operation performance) to another vehicle's physical impact with another road user or property [in a crash]." Here the SGO is requiring a subject entity to file a report regardless of the veracity or completeness of the allegation, meaning even a second-hand social media post could trigger the reporting requirement. The second sentence of the definition also, inconsistently with the first sentence, appears to include cases where a vehicle "contributes" to a crash even if the AV did not come into contact with any other road users, which is subjective and difficult to comprehensively capture. This permits bad data to intermix with good data and compromises the utility of the data set, which creates a significant challenge for the agency to identify credible data that supports further investigations. We propose an alternative definition of "crash," as follows:

> "Crash" means any physical impact between a vehicle and another road user (vehicle, pedestrian, cyclist, etc.) or property that results ~~or allegedly results~~ in ~~any~~ property damage (excluding damage to the vehicle itself), injury, or fatality. ~~For clarity, a subject vehicle is involved in a crash if it physically impacts another road user. or if it contributes or is alleged to contribute (by steering, braking, acceleration, or other operational performance) to another vehicle's physical impact with another road user or property involved in that crash~~.

This revised definition clarifies exactly what a "crash" is within the scope of the SGO and eliminates the "allegedly" language that otherwise leads to unnecessary and potentially vague or useless reports.

3. Inconsistent and Unclear Terms Could Result in Inconsistent Reporting and Data with Less Utility

Finally, there are several terms that should be changed across the SGO for the sake of clarity and consistency. The term "incident," which is not defined in the text of the SGO, should be replaced with "crash." In its current form the SGO uses these terms inconsistently, and choosing to use only the defined term crash would provide greater clarity in the SGO's text. Additionally, the term "publicly accessible road" should be replaced with "public road," to provide a clear definition of where a crash must occur to be reportable.

B. The Crash Criteria in Request Numbers 1 and 2 Should Be Revised

We recommend that NHTSA modify Requests Number 1 and 2 (should Request Number 2 be retained) to improve the quality of the data collected. The criteria for crashes subject to reporting under Request Number 1 should be revised so that the Request applies only to higher severity crashes, while property damage thresholds should be added to Request Number 2. These changes would clarify exactly what is to be reported.

We believe that the criteria for Request Number 1 as currently written could lead to expedited reporting of low severity crashes. We first suggest removing the towing criterion from Request Number 1, so that reporting under Request Number 1 would still apply if a vulnerable road user is injured as a result of the crash; if a vulnerable road user is struck without injury by any vehicle involved in the crash; if a vehicle that a vulnerable road user is using or riding is damaged as a result of the crash; or if a vulnerable road user is involved in a crash that meets any other reporting criteria. We understand that the vehicle tow-away trigger is used in some regulations (*e.g.*, FMCSA's post-accident alcohol and drug testing rules)[10] as a likely indicator of more severe crashes. In the case of ADS-equipped vehicles, however, it is often standard procedure for manufacturers and operators to tow ADS-equipped vehicles from the scene of minor collisions, such as where the vehicle is rear-ended at a low speed. Such vehicles often are not disabled, and towing is not necessarily an indicator of the crash's severity.

[10] *See* 49 C.F.R. § 382.30.

In addition, with respect to Request Number 2, the absence of any minimum property damage threshold and the reference to an impact with any form of "property" may lead to reporting of extremely minor contacts that provide no information relevant to ADS safety under the request. As suggested above, we believe a property damage threshold of $1,000 would serve well to separate crashes from mere incidents bereft of safety significance.

C. The 30-Second Look Back Period for Reportable Crashes Will Collect Unnecessarily Large Amounts of Data

One of the criteria for reporting under all three Requests is engagement of the ADS (or ADAS for Requests Number 1 and 3) at any point during the 30 seconds immediately preceding the commencement of the crash. We believe that looking back 30 seconds will lead to reporting of a significant number of events where the ADS played no part in the ensuing crash. For example, a driver could decide to disengage the ADS and drive in a conventional mode 29 seconds before being involved in a crash, and the crash would still need to be reported. We instead suggest selecting a 5 second look back period. This duration is consistent with collision reconstruction practices, and is the one laid out in the SAE Automated Vehicle Safety Consortium's report "Best Practice for Data Collection for Automated Driving System Dedicated Vehicles to Support Event Analysis,"[11] which is itself based on the SAE J1698 Event Data Recorder standard.[12]

D. The Incident Report Form Should Be Revised for Clarity

To enhance the quality and clarity of the information collected, there are several changes to the Incident Report Form that should be made. Instead of the phrase "Highest Injury Severity" in the Crash Description section of the Incident Report Form, we suggest the phrase "Highest Severity Injury Reported" to acknowledge that a reporting entity will not typically have direct knowledge of injuries or the extent of injuries. We also suggest removing "Police Report" from the "Data Availability" list on the Incident Report Form, as while law enforcement responds to many (but not all) crashes, relatively few crashes lead to further investigation. When a law enforcement officer responds to a crash, a police report is typically filed, but is often not available for review for some time. To prevent having to issue an additional filing solely because a police report becomes available after the filing deadline, we suggest removing "Police Report" from the "Data Availability" list, and instead include a separate checkbox to indicate whether law enforcement responded to the crash.

E. Any Reported Data Should Be Clearly Delineated Between ADS and ADAS

While NHTSA has not yet issued any public reports or materials based on the information they have already collected since the SGO was published in July of 2021, it is important that any future report draw a clear distinction between Level 2 ADAS and ADS-specific information. Given the much wider deployment of ADAS technologies, the overwhelming proportion of crashes

[11] *See* AUTOMATED VEHICLE SAFETY CONSORTIUM, AVSC BEST PRACTICE FOR DATA COLLECTION FOR AUTOMATED DRIVING SYSTEM-DEDICATED VEHICLES (ADS-DVS) TO SUPPORT EVENT ANALYSIS (2020).
[12] *See* SAE INTERNATIONAL, EVENT DATA RECORDER (SAE J1698, 2017).

in the data being submitted to NHTSA will involve driver assist technology, not ADS-equipped vehicles. Therefore, we believe it is critical that NHTSA ensure that reported information pertaining to ADAS-equipped vehicles is distinguished from information that pertains to ADS-equipped vehicles to avoid conflation of these distinct technologies and that any published summaries clearly make this distinction. Autonomous vehicles with ADS designed to function without a human driver at level 4 or 5 system under SAE J3016 are distinct from vehicles equipped with ADAS technology and from vehicles equipped with an ADS but operate lower than Level 4 automation. Commingling information reported by all reporting entities could lead to significant public confusion over the capabilities of ADS versus ADAS that, in turn, could harm safety by causing consumers to misuse the technology. We recommend that NHTSA clarify how information reported by manufacturers and operators of ADS-equipped vehicles will be distinguished from other information provided under the SGO.

IV. Ways to Minimize the Burden of the Collection of Information on Respondents, Including the Use of Automated Collection Techniques or Other Forms of Information Technology.

As written, the SGO places a heavy and unnecessary burden on ADS developers to collect and report information to NHTSA. There are several ways to minimize the burden of collection by making minimal changes to what is to be collected or by modifying the administrative requirements of the reporting process. These changes will alleviate the burden on reporting entities while still providing NHTSA with the information it needs to fulfill its safety mission.

A. The One Day Reporting Requirement Emphasizes Speed Over Quality

Request Number 1 of the SGO requires companies to report certain crashes within one calendar day of receiving notice of an incident. This extremely compressed turnaround time exacerbates the concerns detailed above about the vague definitions and reporting criteria contained within the SGO. While the Coalition understands the agency's desire to be alerted to severe crashes quickly, a one-day timeline is unnecessary to provide the agency with timely information for assessing safety risk and creates an unnecessary sprint to quickly present information collected about the incident. The SGO itself reflects the deficiency of such a quick reporting requirement in that it requires an update to a one-day incident report after 10 calendar days. We therefore suggest eliminating the one-day reporting deadline in favor of the 10-day requirement for all non-fatal crashes involving the other criteria for reporting under Request Number 1. We further suggest that if the deadline for submission falls on a weekend or Federal holiday, the deadline should be extended to the next business day that is not a weekend or Federal holiday. This extension will further reduce the burden on a reporting entity at times when staffing may be minimal.

B. Duplicative Reports Add Work Without Adding Context

Another burden of the reporting system laid out in the SGO is the lack of a mechanism for preventing the duplication of reports. Under the current system, if two entities subject to the

reporting requirement are working together to test a single vehicle, they are required to submit separate reports for any reportable incident that may occur, and no process is provided to issue a joint report as an alternative. This requirement not only creates a duplication of effort on the part of the entities but also results in NHTSA receiving two sets of likely identical data to process, when one would have achieved the same ends. We recommend allowing entities that are working together on a vehicle, regardless of business relationship, to submit a single report for any reportable incidents resulting from their cooperative project. This alteration would eliminate duplicative reporting of events, reducing the burden of reporting overall without reducing the quality of the information collected.

C. Request Number 4 Creates a Superfluous Reporting Burden

Request Number 4 requires subject entities to file an Incident Report even in months when no reportable incident occurred with any of the entity's vehicles. Having to confirm the lack of any reportable information via an Incident Report creates more work than the alternative of only requiring Incident Reports when there is in fact an incident to report. Eliminating Request Number 4 would not only save time for reporting entities but would spare NHTSA from having to deal with empty reports that do not contribute to any understanding of what is occurring with ADS and ADAS deployments.

D. The SGO's Definition of "Notice" Is Overbroad and Creates Further Reporting Burdens

A third means of minimizing the burden of reporting for entities is to modify the definition of "notice" currently included in the SGO, as detailed above. The current open-ended definition of notice, which includes information received "in any form (whether electronic, written, verbal, or otherwise)," requires an extreme level of surveillance on the part of a reporting entity. Under this system, any social media post can trigger a report, so long as it has "alleged facts" sufficient to meet reporting criteria. When coupled with the one-day reporting requirement for serious incidents, this has the potential to trigger many initial reports that may end up being false. This requirement is not only a burden on the reporting entities, but also on NHTSA, as it would require the agency to process many unnecessary reports.

E. The Current Process for Confidentiality Requests Is Overly Complicated

An additional information collection burden that should be addressed is the need to generate new confidentiality request letters each time an entity seeks to submit a report to NHTSA containing confidential business information ("CBI"). Under the current system, reporting entities must first specify CBI within the standard report and separately send a confidentiality request to NHTSA's Office of the Chief Counsel via email. While 49 C.F.R. 512.7 requires confidentiality requests to be submitted to the Chief Counsel, this would not seem to preclude creating an option to generate such letters within the existing reporting system, rather than forcing reporting entities to submit separate materials via email, especially given that the current system already allows reporting entities to identify the CBI they seek to protect.

Process Concerns

In addition to the Coalition's concerns with the substance of the information collection established by the SGO, we have serious concerns with the process that was used to impose the collection. When the SGO was originally issued in July of 2021, members of the Coalition, who comprise a large share of the autonomous vehicle industry, learned of its existence and 10-day effective date at the time of issuance, and were offered no opportunity to provide comments to the agency. We are concerned that NHTSA chose to impose these requirements on an entire industry referencing an investigative authority (49 U.S.C. § 30166(g)(l)(A) and 49 C.F.R. § 510.7) rather than through traditional rulemaking procedures pursuant to the Administrative Procedure Act ("APA"). The approach NHTSA decided to take undermines the core purposes underlying the APA—to obtain the public's input and ensure requirements are produced in a reasoned, deliberative process. This approach is particularly troubling because the agency has long undertaken notice-and-comment rulemaking in order to implement requirements like the EWR program instead of relying on ipse dixit assertions of enforcement authority.

The Coalition strongly supports the advancement of safety positive outcomes, and we believe it is critical that NHTSA seek stakeholder input by providing notice and an opportunity for public comment. Had NHTSA sought public input prior to the issuance of the Order, we would have embraced the opportunity to share the suggestions discussed above and engaged in a dialogue while these reporting requirements were in development. While these comments give the Coalition the chance to voice our concerns on the record, we are now pressed to do so while facing a three-year extension of the SGO's collection, rather than through the more deliberative APA process.

Conclusion

The Self-Driving Coalition shares NHTSA's commitment to safety and supports providing information about the safety of ADS-equipped vehicles. However, as detailed above, aspects of NHTSA's information collection under the SGO do not serve—and may undermine—NHTSA's efforts to collect meaningful data and study potential safety defects in ADS. By clarifying, modifying, or eliminating some of the requests within the SGO, NHTSA can better ensure the information being collected serves the agency's safety mission while not becoming an undue burden on reporting entities.

In addition, without needed changes, the SGO may have the unintended consequence of hindering the development, testing, and adoption of ADS technology. ADS has the great potential to improve public safety, enhance mobility for the elderly and disabled, reduce traffic congestion, improve environmental quality, and advance transportation efficiency. We strongly urge NHTSA to consider our suggested modifications to the SGO and take time to work with stakeholders to modify the SGO into an information collection that serves the agency's safety mission without creating barriers to innovation. Thank you for your consideration, and we look forward to continuing to engage with the agency on these important issues.

Sincerely,

Ariel S. Wolf
General Counsel
Self-Driving Coalition for Safer Streets

cc: Dr. Steven Cliff, Acting Administrator, National Highway Traffic Safety Administration
Carlos Monje, Under Secretary for Transportation Policy, U.S. Department of Transportation