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Dr. Steven Cliff
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Standing General Order 2021-01: Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS)

Dear Acting Administrator Cliff:

The U.S. Chamber's Technology Engagement Center ("C_TEC") writes regarding the National Highway Traffic Safety Administration's ("NHTSA") Standing General Order 2021-01 ("Order"), amended in August 2021, on "Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS)."¹ Specifically, C_TEC believes there are significant procedural and substantive concerns with the Order, which merits an immediate review of the Order by NHTSA and publication of the Order through the public notice and comment process. 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.

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 to increase public confidence in the technology and foster 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

¹ Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Assistance Systems (ADAS), Standing Gen. Ord. 2021-01 (issued Aug. 5, 2021).

² 49 C.F.R. § 579 (2020).

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

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 consider how any new reporting requirement, including the requirement established by this Order, intersects or overlaps with existing federal and state voluntary and mandatory reporting requirements to prevent duplication and ensure the effective flow of information to regulators.

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 developed without any input from affected stakeholders. NHTSA elected to utilize its information gathering authority to issue the Order rather than using the rulemaking procedures contained in the Administrative Procedure Act (“APA”). The cornerstone of the regulatory process, the purpose of the APA notice-and-comment rulemaking process is to empower the public and affected stakeholders to provide relevant data and perspectives that would allow for a well-reasoned outcome. Also, the rules implementing the Paperwork Reduction Act (“PRA”) also require an opportunity for public comment prior to imposing new information collection requirements.⁵ As discussed below, NHTSA sought emergency authorization to bypass that opportunity for prior comment before issuing its order. If NHTSA opted to pursue a notice-and comment-process, it may have been likely that many of the substantive concerns raised in this letter and by others could have been addressed without inhibiting the achievement of safety objectives of the Order. Ultimately, NHTSA’s initial decision to issue the Order prior to receiving comment will lead to regulatory confusion and increased compliance costs on AV manufacturers and ADS and ADAS developers, particularly affecting startups.

As referenced above, NHTSA requested that the Order be granted an emergency authorization from the Office of Management and Budget’s Office of Information and Regulatory Affairs (“OIRA”) under the PRA. The PRA allows for an emergency authorization to be granted under very narrow circumstances including to respond to “unanticipated events,” to prevent “public harm” as a result of using standard notice and comments procedures, or to address missing a statutory or court ordered deadline.⁶ NHTSA’s stated rationale for pursuing the Order is that ADS and Level 2 ADAS motor vehicles pose unique safety risks requiring preventive action to identify

³ 49 C.F.R. § 390.15 (2020).

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 5 C.F.R. § 1320.8(d)(1) (2020).

⁶ Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3507(j)(B).

any safety defects resulting in crashes.⁷ Under this rationale, it is unclear how any of the reasons to grant an emergency authorization apply to avoid PRA requirements. NHTSA has not provided any evidence to indicate the presence of a court order or statutory deadline, a specific unanticipated event, nor an immediate, preventable public harm. In fact, NHTSA's FAQ on the Order clarifies that NHTSA has not deemed any ADS or Level 2 ADAS motor vehicles to be unsafe, which indicates that any risks posed these types of vehicles does not merit immediate action.⁸

Finally, 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. 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.⁹ While the investigation is in its early stages, 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.

Substantive Concerns

In addition to procedural concerns, C_TEC has four major, substantive concerns regarding the Order and seeks to collaborate with NHTSA on resolving these concerns to appropriately scope any future iterations of this Order.

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. 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. 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 contribute" 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. 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 and thus it would be burdensome for a reporting entity to track and compile. NHTSA should redefine notice to exclude information from media and social

⁷ Standing Gen. Ord. 2021-01, *supra* 2.

⁸ Standing General Order on Crash Reporting for Levels of Driving Automation 2-5, <https://www.nhtsa.gov/laws-regulations/standing-general-order-crash-reporting-levels-driving-automation-2-5> (last visited on Sept. 16, 2021).

⁹ NHTSA ODI Preliminary Investigation No. PE 21-020, <https://static.nhtsa.gov/odi/inv/2021/INOA-PE21020-1893.PDF>.

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 and 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 considering 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...”¹⁰ C_TEC seeks clarification from NHTSA about how the agency plans to publish any of the information collected under this Order and 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 effectively convey this information to public to ensure continued public understanding of ADS and ADAS technologies.

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 and ensure that any future iterations of the Order effectively ensure the safe deployment of motor vehicles equipped with ADS and ADAS and provides a practical compliance regime for reporting entities.

Sincerely,



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

¹⁰ Standing Gen. Ord. 2021-01, *supra* 4-5.