

July 21, 2021

Dr. Steven Cliff, Acting Administrator
National Highway Traffic Safety Administration (NHTSA)
1200 New Jersey Ave. SE
Washington, DC 20590

Dear Acting Administrator Cliff,

As representatives of drivers, passengers, and vulnerable road users (VRUs) across the country, we were pleased to learn the National Highway Traffic Safety Administration (NHTSA) has required submission of crash/fatality/injury data on all SAE Level 2-5 vehicles. Standing General Order (SGO) 2021-01, Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS), issued by Chief Counsel Ann Carlson on June 29, 2021,¹ is a fundamental and necessary step towards ensuring both the safety and future acceptance of current ADAS and future ADS technology.

For years now, we have been asking NHTSA to collect crash information and related safety data, as part of the agency's approach to advanced vehicle systems. In 2018, building on the Department of Transportation's guidance in AV 1.0,² the Center for Auto Safety even petitioned your agency to mandate exactly such a process.³ Accordingly, we are supportive of the federal government finally choosing to take a first step towards sensible ADAS/ADS data collection. We hope this SGO is the beginning of overdue oversight intended to ensure that Americans remain safe from harm as these advanced technologies are integrated into the larger transportation ecosystem.

It is no secret that we believe there can be significant gains in vehicle safety for drivers, passengers, and all VRUs by standardizing and mandating existing advanced vehicle safety technology. There are far too many deaths and catastrophic injuries suffered on our roads that could be prevented or mitigated by existing technology, and there should be no delay in data collection to help ensure these advances are working safely as they do so. The SGO represents an excellent initial approach by the federal government to take on the difficult, but critical, task of evaluating and overseeing all of the vehicle technology being tested or commercially deployed on public roads.

¹ Standing General Order 2021-01, Incident Reporting for Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS), https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-06/Standing_General_Order_2021_01-digital-06292021.pdf

² Federal Automated Vehicles Policy 1.0, <https://www.transportation.gov/AV/federal-automated-vehicles-policy-september-2016>

³ CAS Petition for Rulemaking, October 19, 2018, <https://www.autosafety.org/wp-content/uploads/2018/10/Center-for-Auto-Safety-Petition-for-Rulemaking-to-mandate-Safety-Assessment-Letter.pdf>

In the short time since the announcement of the SGO, there has already been predictable criticism of the simple concept that a third-party agency, in this case NHTSA, should work on behalf of the American public and collect information from those who would use public roads as their proving grounds. In fact, the bulk of the critiques of the SGO echo longtime auto industry resistance to any standardized form of functional oversight and continue an irrational and unsafe tradition of secrecy when failures inevitably occur. In the absence of any rules regarding the performance of these crash avoidance and automated driving technologies, the very least that should be provided is transparency in the form of useful data on crashes involving them. Industry handwringing over provision of crash data rings particularly hollow when the subject is vehicular crashes on public roads resulting in deaths, catastrophic injury, or property damage.

There is a lesson to be learned from the agency's development and implementation of the Early Warning Reporting (EWR) rule, which could have served as a model for the current data collection but has never produced the robust defect detection system envisioned by Congress in the TREAD Act. Because the EWR rule was heavily influenced by manufacturers objecting to reasonable data collection, it has long failed to live up to its promise. EWR does not collect sufficiently detailed data on the front end of the process to enable NHTSA's enforcement division to act in a timely manner on mass defects when incidents are reported. We urge NHTSA to avoid making the same mistake twice.

We also encourage you to expand the amount of public information made available for each crash beyond simple crash summaries, to include sufficient detail to allow for independent examination of these incidents. Personally Identifiable Information, (PII) and any information threatening legitimate proprietary intellectual property or truly confidential business information, (CBI) are clearly not envisioned by the SGO, nor would disclosure of such be allowed under agency regulation. Objections to the SGO based on such a premise are straw men and should not be taken seriously.

On the other hand, the SGO leaves out certain vital categories of crash and hazardous operational data that could be of great assistance in NHTSA's mission to encourage vehicle safety for all on the roads. There are other easily reportable indicators of safety-critical control system failures that could provide valuable insight into ADAS/ADS safety. These additional reportable incident categories could be the basis for forward-looking metrics that could be useful for monitoring ADS/ADAS progress toward achieving their safety potential.

NHTSA should consider expanding the reporting scope to include the following:

- Significant deviations from planned control parameters such as trajectory and speed.
- Automated operation that deviates from traffic regulations but does not result in a crash (e.g., speeding, failure to stop or yield right of way, failure to recognize traffic light, failure to respond to manual traffic controls).
- Human takeover/disengagement of ADAS/ADS to avoid collision.
- Other programmed or unprogrammed safety-diminishing incidents (e.g., stopping on a railroad track, critical computer/software or sensor fault).
- Instances of other vehicles or VRUs taking evasive action to avoid collision.

Developers and OEMs should also report instances of other safety-critical failures uniquely associated with battery-powered and connected ADAS/ADS vehicles that are in the frontier of advanced driving technology and are of great interest to the public, including:

- Vehicle electrical and battery fires regardless of association with a crash.
- Cybersecurity breaches or lapses affecting connected vehicle operation.

It is important to note that should NHTSA choose to agree with these suggestions and begin collection of broader data from manufacturers on Level 2-5 systems, to support agency rulemaking and research activities, there are already protections for such manufacturer submissions in the agency's CBI rules. Further, as the industry possesses formidable ability to prevent disclosure of confidential data, we are quite confident that manufacturers can ensure that their propriety information, trade secrets, or anything else they legitimately need to protect, never sees the light of day. In fact, the industry's success at such opaqueness only underscores the need for the SGO.

This initiative has great promise to provide greatly needed information regarding ADAS/ADS vehicle operation on America's roads. We recommend that this initial step be followed up with NHTSA's long overdue response to the Center's petition for data collection rule making, and by mandating a needed comprehensive set of metrics and data collection to establish an ADAS/ADS safety baseline and track safety progress. Allowing vehicles to be on public roadways, for commercial use, or for testing purposes, should be based on empirical evidence of safety not on the promises of a speculative safety revolution.

Sincerely,

Jason Levine, Executive Director, Center for Auto Safety

Joan Claybrook, Former NHTSA Administrator, and Chair, Citizens for Reliable and Safe Highways

Catherine Chase, President, Advocates for Highway and Auto Safety

Jack Gillis, Executive Director, Consumer Federation of America

Jackie Gillan, Government Affairs Representative, Truck Safety Coalition

Janette Fennell, Founder and President, Kids and Car Safety