



ADVOCATES
FOR HIGHWAY
& AUTO SAFETY

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**Event Data Recorders
Notice of Proposed Rulemaking
87 Federal Register 37289, June 22, 2022**

Advocates for Highway and Auto Safety (Advocates) files these comments in response to the National Highway Traffic Safety Administration's (NHTSA, Agency) Notice of Proposed Rulemaking to extend the time period and increase the frequency at which pre-crash data is captured by a vehicle's event data recorder (EDR).¹ Adequate crash data must be collected and made publicly available to improve understanding of crash causation, advance effective countermeasures and better inform consumers.²

Motor Vehicle Crashes are a Public Health Crisis and Continue to Skyrocket

According to NHTSA, 42,915 people were killed in motor vehicle crashes in 2021.³ This represents a 10.5 percent increase from 2020 and the highest number of deaths since 2005.⁴ In addition, fatalities across a number of categories rose from 2020 to 2021 including speeding (five percent), alcohol-involved crashes (five percent) and unrestrained occupants of passenger vehicles (3 percent).⁵ Preliminary data from 2022 shows that the total number of fatalities increased by 7 percent in the first quarter alone from 2021.⁶ The NHTSA currently values each life lost in a crash at \$11.8 million.⁷ The crashes, injuries and fatalities impose a financial burden of over \$1 trillion in total costs to society -- \$313 billion of which are direct economic

¹ 87 FR 37289 (Jun. 22, 2022).

² Pursuant to current U.S. DOT practice that makes anonymized EDR data public as part of its crash investigation and data collection programs including the Crash Investigation Sampling System (CISS).

³ Early Estimate of Motor Vehicle Traffic Fatalities in 2021, NHTSA, Apr. 2022, DOT HS 813 283.

⁴ *Id.*

⁵ Early Estimates of Motor Vehicle Traffic Fatalities And Fatality Rate by Sub-Categories in 2021, NHTSA, May 2022, DOT HS 813 298.

⁶ Early Estimates of Motor Vehicle Traffic Fatalities for the First Quarter of 2022, NHTSA, Aug. 2022, DOT HS 813 337.

⁷ John Putnam, DOT Deputy General Counsel, Guidance on the Treatment of the Economic Value of a Statistical Life (VSL) in U.S. Department of Transportation Analyses – 2021 Update.

costs.⁸ This is equivalent to a “crash tax” of \$944 on every person living in the U.S.⁹ In 2019, crashes alone cost employers \$72.2 billion.¹⁰

Capturing Sufficient Vehicle Performance Data is Essential to Improving Motor Vehicle Safety

There is no requirement that vehicles be equipped with an event data recorder (EDR) despite numerous recommendations to take such action by the National Transportation Safety Board (NTSB).¹¹ Advocates has called on NHTSA “to require the installation of EDRs in all newly manufacturer vehicles”¹² since 2003 in response to the Agency’s initial request for comments regarding the technology.¹³ Further, while there is a requirement for what data voluntarily installed EDRs must capture and Advocates supports the NPRM’s proposal to both expand the pre-crash time period and frequency at which this data is captured. These data elements continue to be insufficient to capture the performance of advanced driver assistance systems (ADAS).

With the increasing number of vehicles with ADAS and automated driving systems (ADS) being tested and/or sold to the public, standardized recording and access to event data are necessary for the proper oversight and analysis of crashes. Many vehicles on the road today are already producing voluminous data, and the amount and type of data will only increase as the technologies evolve. Many stakeholders need that data for numerous and varied important reasons including safety. For example, the Insurance Institute for Highway Safety (IIHS) studies the safety performance of vehicles. The ratings issued by IIHS often are used by consumers when purchasing a vehicle. Making additional data about the on-road performance of vehicles with ADAS more widely available will increase understanding of the capabilities and limitations of ADAS and contribute to consumer confidence.¹⁴

However, the lack of standardization and collection of data is already hampering understanding and investigations of vehicles with ADAS and ADS. For example, as a result of the 2016 fatal Tesla crash in Florida, the NTSB recommended that NHTSA implement data collection requirements for all new vehicles equipped with automatic vehicle control systems and to define

⁸ Economic costs include lost productivity, medical costs, legal and court costs, emergency service costs, insurance administration costs, congestion costs, property damage, and workplace losses. These numbers are based on 2010 figures and solely account for inflation.

⁹ “The Economic and Societal Impact of Motor Vehicle Crashes, 2010,” NHTSA (2015). These numbers are based on 2010 figures and solely account for inflation.

¹⁰ Cost of Motor Vehicle Crashes to Employers 2019, Network of Employers for Traffic Safety, March 2021.

¹¹ NTSB Safety Recommendations H-97-018; H-97-018; H-99-53.

¹² Comments of Advocates for Highway and Auto Safety, page 1, dated Feb. 28, 2003 (Advocates 2003 Comments), filed with U.S. DOT Docket No. NHTSA-2002-13546-0062; Notice 1.

¹³ *Event Data Recorders*, 67 Federal Register 63493 (Oct. 11, 2002).

¹⁴ Advocates supported NHTSA issuing Standing General Order 2021-01 (General Order) in June 2021. Under the General Order, entities are required to report certain crashes involving vehicles equipped with Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS). While the General Order does not provide data on vehicle performance during a crash, NHTSA must continue to make the data obtained through the General Order available to the public in a timely manner.

a standard format for reporting this data.¹⁵ The NTSB also called for this data to be readily available, at a minimum, to the NTSB and NHTSA. As the NTSB notes, “a standardized set of retrievable data is needed to enable independent assessment of automated vehicle safety and to foster automation system improvements.”¹⁶ Unfortunately, NHTSA has not yet acted on this critically important recommendation. This data also should be made public.¹⁷ IIHS reiterated the need for EDRs in the August 7, 2018, Status Report, “IIHS has asked the agency to require event data recorders to encode information on the performance of automated driving systems in the moments before, during and after a crash. This information would help determine whether the human driver or vehicle was in control and the actions each entity took prior to the event.”¹⁸

As the Agency notes in the NPRM, Congress required NHTSA to undertake this rulemaking in Section 24303 of the Fixing America Surface Transportation (FAST) Act enacted in 2015.¹⁹ Pursuant to the law, NHTSA was required to submit a report to Congress on the issue by December 2016 and complete this rulemaking by December 2018. The Agency submitted the report to Congress in September 2018 and has yet to complete this rulemaking.²⁰ As NHTSA notes in the current NPRM, EDR data can “assist in the determination of crash causation and better understand driver pre-crash behavior.”²¹ As such, the failure to meet a clear Congressional deadline on an issue that NHTSA recognizes can improve safety at a time when crashes are dramatically increasing is confounding and deeply disappointing. Moreover, this is just one of numerous Congressionally mandated actions the Agency has failed to complete by the deadline.²² By Secretary Pete Buttigieg’s admission, the increase in traffic crash fatalities is “a crisis.”²³ Requiring and improving EDRs and completing other overdue and essential rules must be a top priority.

While Advocates supports NHTSA’s proposal in the NPRM to require a minimum of 20 seconds of pre-crash data and increase the pre-crash recording frequency to 10 samples per second (Hz), some vehicle manufacturers have reported over 25 seconds of data, as NHTSA notes in the NPRM.²⁴ Therefore, the Agency should further examine the benefits and practicability of extending the required time period of pre-crash data.

¹⁵ NTSB, Collision Between a Car Operating With Automated Vehicle Control Systems and a Tractor-Semitrailer Truck Near Williston, Florida May 7, 2016, Accident Report NTSB/HAR-17/02 (Sep. 12, 2017).

¹⁶ *Id.*

¹⁷ Pursuant to current U.S. DOT practice that makes anonymized EDR data public as part of its crash investigation and data collection programs including the Crash Investigation Sampling System (CISS).

¹⁸ IIHS, Status Report, Reality Check-Research, deadly crashes show need for caution on road to full autonomy, Vol. 53, No. 4 (Aug. 7, 2018).

¹⁹ Pub. L. 114-94 (2015).

²⁰ 87 FR 37291 (Jun. 22, 2022).

²¹ *Id.* at 37293.

²² See attached list of overdue rulemakings.

²³ NHTSA, USDOT Releases New Data Showing That Road Fatalities Spiked in First Half of 2021 (Oct. 28, 2021).

²⁴ 87 FR 37293 (Jun. 22, 2022).

Conclusion

In order to improve safety, NHTSA must require EDRs in all new vehicles and ensure that comprehensive data is being collected in a standardized format to properly assess the performance of modern vehicles.

Sincerely,



Peter Kurdock
General Counsel



Shaun Kildare
Senior Director of Research



OVERDUE & AT-RISK SAFETY REGULATIONS

Statutory deadlines to issue final rules are in **red**.

All dates provided by agency for rulemaking actions are per the Spring 2022 Semi-Annual Regulatory Agenda.

National Highway Traffic Safety Administration (NHTSA)

- **Motorcoach Anti-Ejection Countermeasures (DUE – October 1, 2014)**
 - Mandated in MAP-21 (Sec. 32703(b)(2)).
 - Congressional deadline for issuance of Final Rule – October 1, 2014.
 - Final Rule requiring seat belts on intercity buses issued in November 2013.
 - NPRM issued regarding emergency exits, window retention and release and glazing for portals on May 6, 2016.
 - NHTSA estimates that a Final Rule will be issued in November 2022.

- **Upgrade FMVSS No. 213 for Improved Child Occupant Protection (DUE – October 1, 2016)**
 - Mandated in MAP-21 (Sec. 31501(b)).
 - Congressional deadline for issuance of Final Rule – October 1, 2016.
 - NHTSA estimates that a Final Rule will be issued in September 2022.

- **Improved Child LATCH Restraint System (DUE – October 1, 2015)**
 - Mandated in MAP-21 (Sec. 31502).
 - Final Rule to be issued 3 years from date of enactment – October 1, 2015.
 - NHTSA issued NPRM on January 23, 2015.
 - NHTSA estimates that a Final Rule will be issued in October 2022.

- **Rear Seat Belt Reminders (DUE – October 1, 2015)**
 - Mandated in MAP-21 (Sec. 31503).
 - Final Rule to be issued 3 years from date of enactment – October 1, 2015.
 - NHTSA issued ANPRM on September 27, 2019.
 - NHTSA estimates that a NPRM will be issued in June 2022.

- **Notification of Vehicle Safety Recalls Via E-mail (DUE – August 29, 2016)**
 - Mandated in FAST Act (Sec. 24104).
 - Congressional deadline for issuance of Final Rule – August 29, 2016.
 - NHTSA issued NPRM on September 1, 2016.
 - NHTSA estimates that a Supplemental NPRM will be issued in August 2022.

- **Corporate Responsibility For NHTSA Reports (DUE – December 4, 2016)**
 - Mandated in FAST Act (Sec. 24112).
 - NHTSA estimates that a NPRM will be issued in August 2022.

- **Crash Avoidance Technologies on Vehicle Label (DUE – December 4, 2016)**
 - Mandated in FAST Act (Sec. 24322).
 - Congressional deadline for issuance of Final Rule – December 4, 2016.
 - NHTSA estimates that a NPRM will be issued in 2023.

- **Retention of Safety Records by Manufacturers (DUE – June 4, 2017)**
 - Mandated in FAST Act (Sec. 24403).
 - Congressional deadline for issuance of Final Rule – June 4, 2017.
 - NHTSA issued NPRM on May 15, 2019.
 - NHTSA estimates that a Supplemental NPRM will be issued December 2022.

Federal Motor Carrier Safety Administration (FMCSA)

- **New Entrant Assurance Process Proficiency Exam (DUE – April 1, 2014)**
 - Congress originally sought action in § 210 of the 1999 MCSIA.
 - FMCSA published an ANPRM in 2009.
 - MAP-21 (Sec. 32101(b)) requires a final rule be issued in 18 months – by April 1, 2014.
 - Appears on Long Term Actions List. Date for next regulatory action is undetermined.

Joint NHTSA/FMCSA Rulemakings

- **Heavy Vehicle Speed Limiters**
 - Grant of Petition for Rulemaking – Mar. 18, 2011.
 - NPRM was issued on August 26, 2016.
 - FMCSA issued ANSPRM on May 4, 2022.

Rulemakings Withdrawn

- **Mandatory Event Data Recorder Requirements**
 - NHTSA initiated rulemaking on Feb. 22, 2011.
 - NPRM issued on Dec. 13, 2012.
 - Rulemaking withdrawn February 8, 2019.
- **State Inspection of Passenger Carrying Vehicles**
 - Mandated in MAP-21 (Sec. 32710).
 - Requires FMCSA complete rulemaking to consider requiring states to annually inspect passenger carrying vehicles.
 - ANPRM published in April 2016.
 - Rulemaking withdrawn May 1, 2017.
 - RFC on withdrawal issued on May 10, 2022.
- **Carrier Safety Fitness Determinations**
 - Rulemaking was initiated on June 21, 2007.
 - Intended FMCSA to revise carrier safety ratings procedures in light of adoption of the CSA Program.
 - NPRM issued on January 21, 2016.
 - Rulemaking withdrawn March 23, 2017.
- **Evaluation of Drivers for Obstructive Sleep Apnea (OSA)**
 - FMCSA was considering regulatory actions that address the safety risks associated with drivers afflicted with non-treated OSA.
 - ANPRM was issued on March 10, 2016.
 - Rulemaking withdrawn August 8, 2017.