



ADVOCATES  
FOR HIGHWAY  
& AUTO SAFETY

June 13, 2022

The Honorable Thomas R. Carper, Chair  
The Honorable Shelley Moore Capito, Ranking Member  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Chairman Carper and Ranking Member Capito:

Thank you for holding tomorrow's hearing, "Implementation of the Infrastructure Investment and Jobs Act and the Inflation Reduction Act by the Federal Highway Administration." With deaths and injuries on our Nation's roads at historically high levels, the safety advances included in the law by this Committee must be implemented by the U.S. Department of Transportation (DOT) in a comprehensive and expeditious manner. Advocates for Highway and Auto Safety (Advocates) respectfully requests this letter be included in the hearing record.

### **Motor Vehicle Crashes are a Devastating and Costly Public Health Crisis Which Demands Immediate Action**

On average, 118 people were killed every day on roads in the U.S. in 2021,<sup>1</sup> totaling nearly 43,000 fatalities for the year. An additional 2.5 million people were injured.<sup>2</sup> This represents a 27 percent increase in deaths in just a decade.<sup>3</sup> Early projections for 2022 show traffic fatalities remain high.<sup>4</sup> Certain road users experienced notable numbers of deaths. Pedestrian fatalities increased 13 percent, and bicyclist deaths were up two percent from 2020 to 2021.<sup>5</sup> Large truck crashes killed nearly 5,800 people in 2021.<sup>6</sup> Conservatively, the annual economic cost of motor vehicle crashes is approximately \$340 billion (2019 dollars).<sup>7</sup> This means that every person living in the U.S. essentially pays an annual "crash tax" of over \$1,000. Moreover, the total value of societal harm from motor vehicle crashes in 2019 was nearly \$1.4 trillion.<sup>8</sup>

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<sup>1</sup> Overview of Motor Vehicle Traffic Crashes in 2021, NHTSA, Apr. 2023, DOT HS 813 435. (Overview 2021).

<sup>2</sup> Overview 2021.

<sup>3</sup> Traffic Safety Facts 2020: A Compilation of Motor Vehicle Crash Data, NHTSA, Oct. 2022, DOT HS 813 375, (Annual Report 2020); and Overview 2021; [comparing 2012 to 2021].

<sup>4</sup> Traffic Safety Facts: Crash Stats, Early Estimate of Motor Vehicle Traffic Fatalities in 2022, NHTSA, Apr. 2023, DOT HS 813 428. (Early Estimates 2022).

<sup>5</sup> Overview 2021.

<sup>6</sup> Overview 2021.

<sup>7</sup> The Economic and Societal Impact of Motor Vehicle Crashes, 2019, NHTSA, Dec. 2022, DOT HS 813 403. (Economic and Societal Impact 2019).

<sup>8</sup> Economic and Societal Impact 2019.

## **The Infrastructure Investment and Jobs Act (IIJA) Must be Implemented with Expediency and Thoroughness**

Fortunately, commonsense solutions were advanced by this Committee during the consideration of the IIJA.<sup>9</sup> While vehicle safety technology does not fall into the Committee’s jurisdiction, the Safe System Approach is incorporated in the IIJA and undertakes a holistic method to improve safety in the roadway environment. Vehicle safety technology and roadway infrastructure improvements designed to upgrade safety have great potential to complement each other and collaboratively save lives. For example, the IIJA authorizes safety upgrades to the Highway Safety Improvement Program (HSIP) that will help to protect vulnerable road users, such as infrastructure features that calm traffic and reduce vehicle speeds as well as includes provisions requiring automatic emergency braking (AEB) for passenger motor vehicles and large trucks.<sup>10</sup> According to the Insurance Institute for Highway Safety (IIHS), AEB has the capability to reduce car front-to-rear crashes with injuries by 56 percent and large truck front-to-rear crashes by 41 percent.<sup>11</sup> The ripple effect of these crash reductions is wide-ranging and includes less damage to infrastructure, less congestion caused by crashes, and less expenditure of first responder resources, among others. While Advocates applauds the National Highway Traffic Safety Administration (NHTSA) for recently issuing a Notice of Proposed Rulemaking (NPRM) which includes a requirement that the car AEB system detects pedestrians to fulfill this mandate, the agency must promptly issue a comprehensive final rule and advance a comprehensive truck AEB NPRM and other required rules to save lives and meet the deadlines set by Congress, at a minimum.<sup>12</sup> Advocates looks forward to working with the Committee and the U.S. DOT to optimize safety outcomes in a robust and equitable manner.

Advocates remains deeply concerned about the agency’s backlog of overdue rulemakings and imminent deadlines for IIJA rules<sup>13</sup> especially considering the lack of a confirmed Administrator. Except for the brief tenure of Dr. Steven Cliff between May and September 2022, NHTSA has been without a confirmed Administrator since 2017. In addition, several senior positions within the agency are vacant. NHTSA’s mission “to save lives, prevent injuries, and reduce economic costs due to road traffic crashes, through education, research, safety standards, and enforcement” cannot effectively be accomplished as needed without proper staff and an Administrator. Together with other stakeholders, Advocates has urged the Biden Administration to take swift action to nominate a qualified Administrator.<sup>14</sup>

## **Experimental Autonomous Driving Technology Remains Unproven**

Several serious crashes involving cars equipped with autonomous driving technology, which is unregulated, have already occurred. Many have been subject to investigation by the National Transportation Safety Board (NTSB) and NHTSA which have and will continue to identify safety deficiencies, determine contributing causes, and recommend government and industry

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<sup>9</sup> Pub. L. 117-58 (2021).

<sup>10</sup> Pub. L. 117-58, § 24208 (2021).

<sup>11</sup> IIHS, Real World Benefits of Crash Avoidance Technologies (Dec. 2020).

<sup>12</sup> See: <https://www.nhtsa.gov/press-releases/automatic-emergency-braking-proposed-rule>.

<sup>13</sup> See: <https://saferoads.org/2021/06/28/117th-congress-infrastructure-investment-and-jobs-act/>; See also attached list of overdue rulemakings.

<sup>14</sup> Letter to President Joe Biden from leading traffic safety organizations (Jun. 6, 2023). Available at: <https://saferoads.org/wp-content/uploads/2023/06/Safety-Groups-Letter-Biden-NHTSA-Admin-June62023Final.pdf>

actions to prevent future deadly incidents. In fact, just a few days ago, *The Washington Post* reported that according to NHTSA data, there have been 17 fatal incidents, five serious injuries and 736 crashes involving Teslas in Autopilot mode since 2019.<sup>15</sup> According to data collected from July 2021 to April 2023 by Standing General Order (SGO) 2021-1 requiring manufacturers report to the agency certain crashes involving vehicles equipped with automated driving systems (ADS) or SAE Level 2 ADAS, there have been 281 crashes involving ADS and 916 with ADAS (including 21 resulting in a fatality).<sup>16</sup>

In addition, several San Francisco transportation agencies recently submitted comments to the California Public Utilities Commission detailing numerous dangerous incidents involving AVs operating in the city.<sup>17</sup> These events include:

- Interfering with emergency response operations including 18 incidents documented by the San Francisco Fire Department in which AVs put firefighters and the public at risk.
- Making planned and unplanned stops in travel lanes that have interfered with transit service and blocked traffic.
- Intrusions into construction zones where City employees were working.
- Obstructions caused by AVs having to interpret and respond to human traffic control officers.
- Erratic driving.<sup>18</sup>

These incidents are also on the rise. The agencies indicate that in 2023 reported monthly incidents involving AVs have increased six-fold.<sup>19</sup> In fact, last week an AV blocked San Francisco police from responding to a shooting.<sup>20</sup>

What San Francisco has been experiencing must not be replicated across the Nation by continuing to allow for the proliferation of AVs without any federal safety regulations for driverless systems. Many promises have been touted about AVs bringing reductions in motor vehicle crashes and resultant deaths and injuries, lowering traffic congestion and vehicle emissions, expanding mobility and accessibility, improving efficiency, and creating more equitable transportation options and opportunities. However, as Transportation Secretary Buttigieg acknowledged, these outcomes are far from certain.<sup>21</sup>

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<sup>15</sup> Faiz Siddiqui and Jeremy B. Merrill, 17 fatalities, 736 crashes: The shocking toll of Tesla's Autopilot, *Wash. Post*. (Jun. 10, 2023).

<sup>16</sup> Standing General Order on Crash Reporting: For incidents involving ADS and Level 2 ADAS; NHTSA, available at <https://www.nhtsa.gov/laws-regulations/standing-general-order-crash-reporting>, last accessed May. 1, 2023.

<sup>17</sup> San Francisco Comments to the Draft Resolution Approving Authorization for Waymo Autonomous Vehicle Passenger Service Phase I Driverless Deployment Program, R.12-12-011 (May 31, 2023). Available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sfstandard.com/wp-content/uploads/2023/06/SF-Comments-on-Waymo.pdf>

<sup>18</sup> *Id.* at pgs. 9-11.

<sup>19</sup> *Id.* at p. 3.

<sup>20</sup> Self-driving car blocks police responding to San Francisco shooting, *KTVU* (Jun. 11, 2023). Available at: <https://www.ktvu.com/news/self-driving-car-blocks-police-responding-to-san-francisco-shooting>

<sup>21</sup> Nilay Patel and Andrew J. Hawkins, Pete Buttigieg is Racing to Keep Up with Self Driving Cars. *The Verge* (Jan. 6, 2022).

In sharp contrast to what is happening in the U.S., other countries are taking a more calculated, careful and cautious approach to the development of AVs.<sup>22</sup> Often-repeated claims about the U.S. “falling behind” other countries in the “race” for AVs are simply not true. For example:

- China continues to require permits or restricts operations of AVs on its roads to only those areas approved by the authorities.<sup>23</sup>
- Germany continues to require permits, approvals, and limits areas of operation for AVs.<sup>24</sup>
- In Japan, the introduction of Level 4 vehicles will be controlled and limited to specific, lightly populated areas.<sup>25</sup>
- Even the latest United Nations Economic Commission for Europe (UNECE) regulations will limit operations to restrict risks and oversee approval through testing and other requirements.<sup>26</sup>

In sum, no country is selling fully automated vehicles for unfettered use to the public and by many accounts, none will be for a significant amount of time.<sup>27</sup> According to the most recent KPMG analysis, the U.S. ranks fourth in the world for AV readiness, while China is at number twenty. While the U.S. is not behind other countries in allowing AVs to go to market, we are behind in establishing comprehensive regulations to ensure public safety will not be jeopardized or diminished. As Dr. Missy Cummings, Professor, George Mason University, College of Engineering and Computing, noted during a briefing convened by Advocates in March 2023:

I was a military officer; I spent three years on the Defense Innovation Board advising the Secretary of Defense. China is a real threat, a real problem that we have to address from a national security perspective. What it [China] is not is a threat to our commercialization of autonomous vehicles. And any insistence that it actually takes away from the emphasis that we need to place on national security. So, what I would really like everyone to do is back off the China fear mongering. China is not beating us to the commercialization of autonomous vehicles...<sup>28</sup>

Advocates and numerous stakeholders developed the “[AV Tenets](#),” policy positions which should be a foundational part of any AV policy. It has four main, commonsense categories including: 1) prioritizing safety of all road users; 2) guaranteeing accessibility and equity; 3) preserving consumer and worker rights; and, 4) ensuring local control and sustainable transportation. The AV Tenets are supported by a coalition of more than 60 groups and are

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<sup>22</sup> Autonomous vehicles: cross jurisdictional regulatory perspectives update, Oct. 7, 2022.

<sup>23</sup> China drafts rules on use of self-driving vehicles for public transport; Aug. 8, 2022, Reuters; and Baidu bags China’s first fully driverless robotaxi licenses, Aug. 7, 2022, Reuters. Real driverless cars are now legal in Shenzhen, China’s tech hub, Jul. 25, 2022, TechCrunch+.

<sup>24</sup> Germany completes legal framework for autonomous driving | Federal Cabinet approves new ordinance, Apr. 2022, Malterer, M.

<sup>25</sup> Japan to open roads to autonomous vehicles in 2023, Nov. 28, 2022, Wessling, B., The RobotReport.

<sup>26</sup> New rules to improve road safety and enable fully driverless vehicles in the EU, Jul. 6, 2022, UNECE.

<sup>27</sup> Lawrence Ulrich, Driverless Still a Long Way From Humanless, N.Y. Times (Jun. 20, 2019); Level 5 possible but “way in the future”, says VW-Ford AV boss, Motoring (Jun. 29, 2019).

<sup>28</sup> Advocates for Highway and Auto Safety, Virtual Capitol Hill Briefing: Expert Panel on Autonomous Vehicle Safety (Mar. 7, 2023). See: <https://saferoads.org/briefing-expert-panel-on-autonomous-vehicle-av-safety-3-7-23-public/>

based on expert analysis, real-world experience and public opinion. Requiring that AVs meet minimum standards, including for cyber security, and that operations are subject to adequate oversight, including a comprehensive database accessible by vehicle identification number (VIN) with basic safety information, will save lives and boost consumer confidence in this burgeoning technology. Further, the IIJA directed the Federal Highway Administration (FHWA) to conduct a study on the impacts of AVs and to report to Congress. That report should have been presented to this Committee and the House Transportation and Infrastructure Committee one year after the enactment of the IIJA and is now overdue.

A Caravan public opinion [survey](#) commissioned by Advocates in February 2023 showed Americans across the country and across generations are concerned with driverless cars and trucks on our roadways. In fact, four out five respondents reported being concerned about sharing the roads with driverless cars. In addition, while there is widespread concern about the use and deployment of driverless vehicles, 64 percent of those polled feel that their concerns could be adequately addressed by minimum government safety requirements.<sup>29</sup>

Since enactment of the IIJA, Advocates has been urging DOT to meet its deadlines and exceed its directives for advanced driver assistance systems (ADAS) including AEB. The current void of regulations for ADAS renders all road users at preventable risk to danger and avoidable damage to the infrastructure an ongoing threat. Furthermore, these technologies are some of the essential building blocks for the potential of AVs in the future and can save lives now. Therefore, it's especially crucial that they are regulated and perform safely.

We laud the Committee for holding this oversight hearing to ensure that DOT meets its mission to ensure the safest transportation system in the world. Road safety infrastructure upgrades coupled with proven vehicle safety technology will be a game changer. Advocates looks forward to continuing to work with you to improve safety on our Nation's roadways.

Sincerely,



Catherine Chase, President

cc: Members of the U.S. Senate Committee on Environment and Public Works

Encls: Unified List of Regulations Delayed and At Risk of Delay June 2023

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<sup>29</sup> Online CARAVAN Survey (Feb. 2023). See: <https://saferoads.org/wp-content/uploads/2023/03/Advocates-Caravan-AV-Poll-Report-.pdf>



## 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 Fall 2022 Semi-Annual Regulatory Agenda.

### *National Highway Traffic Safety Administration (NHTSA)*

- **Rear Seat Belt Reminders (DUE – October 1, 2015)**
  - Advocates and Public Citizen filed Petition for Rulemaking on November 21, 2007.
  - NHTSA issued Request for Comments on Petition on June 29, 2010.
  - Mandated in MAP-21 (Sec. 31503).
  - Final Rule to be issued 3 years from date of enactment – October 1, 2015.
  - NHTSA granted Petition and issued ANPRM on September 27, 2019.
  - NHTSA estimated that a NPRM would be issued in January 2023.
  - NPRM currently under review at OIRA.
  
- **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 estimated that a Final Rule would be issued in December 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 estimated that a Final Rule would be issued in March 2023.
  
- **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.
  
- **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 March 2023.
  
- **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 estimated that a Supplemental NPRM would be issued in March 2023.
  
- **Corporate Responsibility For NHTSA Reports (DUE – December 4, 2016)**
  - Mandated in FAST Act (Sec. 24112).
  - NHTSA estimated that a NPRM would be issued in April 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 estimated that a Supplemental NPRM would be issued in February 2023.

### *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
  - FMCSA estimates that Supplemental NPRM will be issued in June 2023.

### *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.

### *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.