Federal Motor Vehicle Safety Standards Essential for Safety of Autonomous Vehicles
-- John M. Simpson, Privacy Project Director, Nov. 10, 2016

Consumer Watchdog, a nonprofit, nonpartisan public interest group, is deeply concerned that an unjustified rush to deploy self-driving robot car technology without enacting adequate and enforceable regulations setting performance standards covering the vehicles threatens the safety of the nation's highways.

The National Highway Traffic Safety Administration's recently released "Federal Automated Vehicles Policy" section on "Vehicle Performance Guidance" merely sets forth a laundry list of policy concerns and aspirations. Essentially NHTSA is asking manufacturers to please drop the agency a letter outlining how they have dealt with 15 issues as part of a so-called "safety assessment." Apparently all it takes to deploy a fully automated robot car is a 47 cent postage stamp. Even worse, responding to NHTSA's request is completely voluntary.

Certainly the 15 issues on the assessment outlined in the Policy are important. That is precisely why NHTSA must enact mandatory Federal Motor Vehicle Safety Standards in most – if not all – of the 15 areas proposed in the safety assessment. For example, consider item 11, "Ethical Issues." What we are talking about here is – simply put – who a robot driver "decides" to kill, when confronted with that choice. Does the robot value the safety and lives of the car's occupants over the lives of pedestrians? At a minimum there must be an FMVSS requiring full disclosure of the robot's algorithms that would make such a profound decision. The public has a right to know when a robot car is barreling down the street whether it's prioritizing the life of the

passenger, the driver or the pedestrian, and what factors it takes into consideration. If these questions are not answered in full light of day, NHTSA need look no further than the Pinto to see that corporations will program these cars to limit their own liability, not to conform with social mores, ethical customs or the rule of law.

Over the years FMVSS covering the performance of such important innovations as seat belts, air bags, electronic stability control and rear view video cameras have greatly improved the safety of autos and their passengers. Consumer Watchdog cannot understand NHTSA's radical departure from its successful regulatory procedures and its failure to start rulemakings that would enact FMVSS applying specifically to HAV technologies. Could it be that NHTSA has succumbed to the hype of the self-driving car manufacturers? Self-driving technology may offer benefits in the future, but despite what the industry says, we have a long way to go to get there.

FMVSS covering HAVs are necessary and must be based on performance. Performance standards have the added benefit of spurring innovation as manufactures strive to develop the most efficient way to meet the standard. NHTSA must not enact design standards that would in effect leave the impression that the agency deems a particular technology "reasonably safe." Our legal system has traditionally helped ensure that manufacturers are liable for any defects for which they are responsible. A NHTSA premarket approval process or determination that a technology was "reasonably safe" would give a false sense of confidence, given NHTSA's limited resources, and undermine the legal rights of consumers who are injured by corporate negligence.

Even without FMVSS covering HAVs in effect yet, NHTSA has important enforcement authority through recalls when a defect poses a safety hazard. Consumer Watchdog believes it was a positive development that NHTSA issued a separate enforcement bulletin with the Autonomous Vehicle Policy reiterating its recall authority. Given the substantial criticisms of the agency for failing to act promptly in response to reports and complaints of vehicle defects, any pledge to increase the utilization of recall authority is, of course, welcome. Where recall authority is the only means available to protect safety, albeit retroactively, NHTSA must vigorously assert its Safety Act authority over automated technologies. For example, Tesla's Autopilot poses a safety defect because it failed to adequately account for reasonably foreseeable situations where a distracted or inattentive driver-occupant must retake control of the vehicle. The result was fatal crashes in Florida and China. NHTSA must act and recall Tesla's Autopilot. Consumer Watchdog today released a video showing that Tesla promoted its "Autopilot" feature with inflated claims and Elon Musk's wife driving with her hands off the wheel. After the deaths of two drivers, though, Musk blamed them for not keeping their hands on the wheel.

It is noteworthy that most of the Current Regulatory Tools section of the Policy is little more than helpful advice to manufactures on how to successfully circumvent current FMVSS. There is great detail about seeking "exemptions" and "interpretations" to accomplish this. There is useful detail on filing petitions, but this appears largely aimed at amending current FMVSS. While NHTSA did reassert its authority to address safety defects, there was no corresponding guidance on how consumers should report their safety concerns to the agency. NHTSA pledged to expedite processing requests for interpretations and exemptions. Instead, the agency should focus on making this process completely transparent with full public involvement.

Americans require more than Yes or No answers from manufacturers about how they will ensure robot cars will keep their drivers, passengers and others who share the roadways safe. For example, Consumer Watchdog has closely monitored the testing of self-driving cars in California and successfully pressed the Department of Motor Vehicles to make public reports of crashes involving the robot cars and annual "disengagement reports" detailing times when the autonomous technology being tested failed. From these reports we have learned that the self-driving technology was not able to deal adequately with such everyday things as low hanging branches, cyclists, construction zones or reckless behavior by others. In 450,000 miles, Google's test cars disengaged from the technology in favor of a human driver 350 times. Transparency about how the self-driving technology is working is essential. When HAVs can't handle the situation, or the technology fails, the public deserves to know. NHTSA must require disengagement reports similar to California's, including detailed video, lidar and radar records of crashes, be part of automakers submissions to illuminate how they are addressing Human Machine Interface and Crashworthiness concerns. Beyond the disengagement reports, NHTSA should collect and make public technical data and video associated with any incident. "See No Evil, Hear No Evil," should not be NHTSA's motto.

You have repeatedly said safety is the agency's top priority. You must not allow your judgment to by swayed by rosy, self-serving statements from self-driving car manufacturers companies about the capabilities of their self-driving robot cars. NHTSA has said that autonomous vehicle technology is an area of rapid change that requires you to remain "flexible and adaptable." Please ensure that flexibility does not cause you to lose sight of the need to put safety first. Innovation will thrive hand-in-hand with thoughtful, deliberate regulation. The

FMVSS process, when properly implemented and continuously enforced, has served Americans well for the last fifty years. To summarize, the development of the necessary FMVSS covering HAVs must be the agency's immediate priority.

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