



June 8, 2022

Submitted via regulations.gov

U.S. Department of Transportation
Docket Management Facility
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Request for Comments on the New Car Assessment Program, Docket No. NHTSA-2021-0002

Dear Deputy Administrator Cliff:

The undersigned Consortium for Constituents with Disabilities (CCD) Transportation Task Force members submit the following to the request for comments on the National Highway Traffic Safety Administration (NHTSA's) New Car Assessment Program (NCAP). We are grateful for the U.S. Department of Transportation's (DOT's) attention to the safety of people traveling outside of vehicles in the NCAP and its inclusion of pedestrian automatic emergency braking (PAEB) and other Advanced Driver Assistance Systems (ADAS).

CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance.

The Bipartisan Infrastructure Law (BIL) requires an update to the NCAP, including both the requirement for NCAP to measure the impact to the safety of people outside of cars, and the requirement for a 10-year roadmap for the future of NCAP. We appreciate NHTSA asking for input from stakeholders and respond to select questions below.

I. Crashworthiness Tests Must Utilize the Most Inclusive and Effective Mannequins

Question 32. Should the agency adopt the articulated mannequins into the PAEB test procedure? Why or why not?

The CCD Transportation Task Force recommends utilizing the most effective mannequins in any test procedures. In addition to use of articulated mannequins when testing for crashworthiness of pedestrians and vulnerable road users, NHTSA should also use short adult mannequins, women-specific test mannequins, mannequins seated in wheelchairs, and mannequins with

darker skin tones. NHTSA's own research has shown that women are 17 percent more likely to die and 73 percent more likely to be severely injured in car crashes than men. Testing with women specific test mannequins will help determine if vulnerable road users experience similar gender disparities, and hopefully help car manufacturers avoid that outcome. Testing with wheelchair using mannequins and shorter mannequins could highlight the additional dangers chair users and people of short stature face when sharing the road with larger vehicles especially. And researchers have noted additional testing is needed for pedestrians with darker skin tones.

II. DOT Must Include People with Disabilities; Black, Indigenous, and People of Color (BIPOC); and Cyclists in PAEB and other ADAS Test Procedures

The agency proposes to make several changes to the 2019 PAEB test procedure for use in NCAP. These changes should address the safety of people with disabilities, BIPOC, and cyclists or other mobility users. Likewise, testing for blind spot warning and intervention systems, lane keeping support systems, and other advanced driver-assistance systems should account for pedestrians with disabilities, BIPOC with darker skin tones, and cyclists as part of a testing approach that prioritizes safety for all and accounts for real world conditions.

Question 34. Are there other safety areas that NHTSA should consider as part of this or a future upgrade for pedestrian protection?

The US DOT recently released the first ever National Roadway Safety Strategy (NRSS), and included the NCAP update as one of the first concrete steps of addressing the increase in fatalities on America's roadways through a safe system approach. The NRSS states that "under the Safe System Approach, efforts to make our roads safer should affirmatively improve equity outcomes." However, NHTSA's plan for both the update of the NCAP, and its 10-year plan, fail to address the safety of BIPOC, people with disabilities, or vulnerable road users other than people walking. While we appreciate that NHTSA will be including PAEB, that action does not go far enough to truly consider the safety of vulnerable road users.

III. PAEB and other ADAS Must include People with Disabilities to Meet the Non-Discrimination Requirements of Section 504 of the Rehabilitation Act

Under Section 504 of the Rehabilitation Act, NHTSA has an affirmative obligation to ensure that people with disabilities have equal access and an equal opportunity to participate in and benefit from its services, programs, and activities.¹ NHTSA may not "utilize criteria or methods of administration ... [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability [or] [t]hat have the purpose or effect of defeating or substantially reducing the likelihood that persons with a disability can benefit by the objectives of the recipient's program or activity[.]".² Despite these obligations, NHTSA proposes to include PAEB and other ADAS test procedures without requiring testing that includes disabled pedestrians. It is critical that the NCAP include all measures to ensure the safety of disabled travelers.

IV. ADAS Must Include Vulnerable Road Users to Meet the Intent of the BIL

The BIL defines vulnerable road users as pedestrians, bicyclists, other cyclists or persons using a personal conveyance as defined by the American National Standards / Manual on Classification of Motor Vehicle Traffic Crashes (ANSI D.16-2017). This definition includes people using personal conveyances, motorized and non motorized, such as wheelchairs and scooters used by people with disabilities, and multiple micromobility devices. Pedestrians with disabilities may also use assistive devices such as a walker, cane, crutches or service animal.

Attention is needed to address the safety of people with disabilities, BIPOC, and cyclists on our nation's roads. A recent *Stateline* article detailed the hazards wheelchair users routinely face as pedestrians due to poor infrastructure such as inaccessible or nonexistent sidewalks or curb ramps, and larger vehicles in which drivers may not see them.³ The article cited a Georgetown University study which found that pedestrian wheelchair users were more than a third more likely to be killed in crashes than non-wheelchair users. In more than three-quarters of fatalities, the driver used no "crash avoidance maneuver," such as braking or steering.

In addition, a 2019 Study by the Georgia Institute of Technology found that AVs do not "see" darker skin as well as lighter skin.⁴ The study conclusion says in part that more data and research is necessary. And DOT's own data within this request for comment reflects a continued rise in the number of cyclists killed on U.S. roads.

People with disabilities have intersectional identities and interests and are also BIPOC and cyclists. To meet the intent of the law, and to truly improve equity outcomes, NHTSA should be testing PAEB and other ADAS for people with disabilities using mobility or assistive devices and cyclists. And because we know that communities of color experience higher fatalities, NHTSA must test PAEB and other ADAS for all races and ethnicities.

V. ADAS Must be Inclusive to Ensure Equity and Safety for Autonomous Vehicles

The ADAS NHTSA is now testing are the building blocks for more automated vehicles (AVs). AVs have the potential to dramatically improve mobility, vehicle and road safety for people with disabilities, including people with sensory, cognitive and physical disabilities. However, the promise and safety of AVs will only be realized if the vehicles and the surrounding infrastructure are fully accessible, and the safety elements of the vehicles consider the needs of all disabled people.

AVs learn by experience, so an AV learns to identify people of all races and ethnicities, different genders, and people using wheelchairs or assistive devices only if tested with them. As NHTSA moves forward with testing of ADAS, it should include tests of different races and ethnicities and gender, as well as people using wheelchairs, assistive devices, and other common mobility devices. Otherwise it risks increasing the safety inequities in our transportation system.

VI. Immediate Inclusion of Cyclists in NCAP Timeframe

Question 36. the agency seeks comment on the appropriate timeframe for adding a cyclist component to NCAP.

We recommend adding a cyclist component to the NCAP immediately. NHTSA's 10-year plan does not include testing for cyclists until the 2025-2031 timeframe, showing the US will likely be a decade behind other countries. There is no benefit derived from waiting.

VII. Include Direct Visibility from the Driver's Seat

Ensuring ADAS protects the safety of people with disabilities, BIPOC, and cyclists is vitally important. Nevertheless, we also ask NHTSA to continue to consider the non-automated safety systems that will continue to protect vulnerable road users. Evaluating direct visibility from the driver's seat (or direct vision) in the NCAP rating system would reduce the size of blind spots, including during turns, and create redundancy with PAEB and other ADAS to reduce collisions involving pedestrians and other vulnerable road users.

VIII. Conclusion

Thank you again for the opportunity to comment on NHTSA's plan for updating the New Car Assessment Program. The CCD Transportation Task Force looks forward to working with NHTSA to improve safety for everyone using our transportation system. Please contact Carol Tyson at ctyson@dredf.org with any questions.

Sincerely,

American Foundation for the Blind

American Council of the Blind

Disability Rights Education & Defense Fund

National Disability Rights Network

Paralyzed Veterans of America

United Spinal Association

¹ 49 C.F.R. § 27.7(b).

² 49 C.F.R. § 27.7(b)(4)(i), (ii).

³ Bergal, Jenni (June 2022). Wheelchair users say states should spend new road money on safety. Stateline. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/06/01/wheelchair-users-say-states-should-spend-new-road-money-on-safety>

⁴ <https://arxiv.org/pdf/1902.11097.pdf>