

**Motor & Equipment Manufacturers Association**

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January 18, 2017

*Via Regulations.gov*

Office of Management and Budget  
Attention: NHTSA Desk Officer  
725 17th Street NW  
Washington, DC 20503

**RE: Proposed Information Collection Submitted to the Office of Management and Budget; Request for Comments; New Information Collection Title: "Vehicle Performance Guidance" [Docket No. NHTSA-2016-0091]**

To Whom It May Concern:

The Motor & Equipment Manufacturers Association (MEMA) submits these comments in response to the National Highway Traffic Safety Administration's (NHTSA) Proposed Information Collection Submitted to the Office of Management and Budget (OMB), 81 Fed. Reg. 91999 (Dec. 19, 2016). MEMA is the leading international trade association representing over 1,000 vehicle suppliers that manufacture original equipment and aftermarket components and systems for use in passenger cars and commercial vehicles.<sup>1</sup>

While MEMA is committed to policies that ensure the safe development and deployment of automated technologies, it remains concerned about NHTSA's proposed documentation, recordkeeping, and disclosure recommendations for manufacturers of SAE Level 2 and highly automated vehicle (HAV) systems. Recently, MEMA submitted comments in response to NHTSA's request for comments on both the "Federal Automated Vehicle Policy" (AV Policy)<sup>2</sup> and on a related notice regarding a proposed new information collection for "Vehicle Performance Guidance."<sup>3</sup> In our comments to the AV Policy, MEMA expressed its commendations to NHTSA for their efforts in presenting those guidelines for vehicle manufacturers, suppliers, and other entities. The guidance approach sets pathways for all stakeholders to navigate the complexities of automated vehicle technologies and vehicle supply chains. MEMA wants to ensure, however, that these pathways avoid unintended impediments to product design, enhancements, and innovative advancements in automated technologies. The development of these technologies is evolutionary; thus, the endeavor to tackle public policies while also balancing innovation is massive and requires the collaboration and cooperation among all public and private stakeholders.

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<sup>1</sup> MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).

<sup>2</sup> See MEMA Comment, Docket No. NHTSA-2016-0090-0167 (Nov. 22, 2016)

<sup>3</sup> See MEMA Comment, Docket No. NHTSA-2016-0091-0006 (Nov. 22, 2016), attached hereto.



However, there are some critical elements of the AV Policy that need to be made more explicit before the Policy itself, including any corresponding recordkeeping and disclosure recommendations, can be finalized. Accordingly, MEMA urged NHTSA to issue a clarifications document based on the questions received from MEMA and other industry stakeholders. These clarifications are necessary to have a common understanding about the agency's recommendations on items such as: treatment of test vehicles/systems versus production vehicles/systems; reporting responsibilities; confidential business information and IP protections; and, other aspects of the guidance that make it difficult to assess its overall impact not just on suppliers, but on all entities included in the scope of the AV Policy. But NHTSA has yet to offer clear guidance on these issues, which is necessary to ensure regulatory certainty and continued innovation in the automotive industry.

Likewise, MEMA has additional concerns regarding the proposed collection of information notice. MEMA presented these concerns in its initial comments to NHTSA's proposed collection of information associated with the "Federal Automated Vehicles Policy," 81 Fed. Reg. 65709 (Sept. 23, 2016), which are attached hereto and expressly incorporated by reference herein.<sup>4</sup> Among other things, MEMA's initial comments emphasized that NHTSA's information collection proposal is unduly burdensome in light of the reporting recommendations, which exceed NHTSA's current authority, as well as the lack of performance standards to help guide manufacturers in identifying the proper data to collect and maintain for these advanced technologies.<sup>5</sup> MEMA also indicated the inherent difficulty in responding to NHTSA's estimated burdens given that it has failed to provide the final structure and content of the Safety Assessment Letter (SAL) template.<sup>6</sup> Given the foregoing, MEMA disagrees with NHTSA's statement in its December 19 notice that "none of the commenters offered substantive information regarding the specific details of the Agency's underestimation of the burden," and its conclusion that since the AV Policy "is not suggesting new documentation procedures, we have not made any adjustments to the burden hours."<sup>7</sup>

In addition to its prior comments, MEMA asks OMB to consider the following before making a decision on NHTSA's proposed collection of information:

*Is the proposed collection of information necessary for the proper performance of the functions of the agency, including whether the information will have practical utility?*

No. As noted in MEMA's previous comments, NHTSA cannot use the proposed data collection guidelines as a means to place new, affirmative reporting obligations on manufacturers. Manufacturers of original equipment components

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<sup>4</sup> *Id.*

<sup>5</sup> *See id.* at 2-3.

<sup>6</sup> *See id.* at 3.

<sup>7</sup> 81 Fed. Reg. at 92000.

or systems are required under 49 C.F.R. § 573.3 to notify NHTSA of safety-related defects or non-compliances in their equipment when the equipment is installed in the vehicles of more than one vehicle manufacturer. But the information collection request imposes expanded *de facto* reporting requirements by recommending, among other things, the collection and potential disclosure of certain data involving personal injury and property damage.<sup>8</sup> These recommendations circumvent NHTSA's own authority and therefore are not necessary for the proper performance of the agency's functions.

*Is the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used accurate?;*

Not at this time. NHTSA has failed to provide sufficient information for stakeholders to meaningfully assess its burden estimates. MEMA posits that our members were challenged to adequately address the burden estimates presented by NHTSA and provide meaningful comments on those estimates primarily because of the need for more clarification on the AV Policy and proposed data collection. Because the elements of the proposed reporting obligations remain unclear to stakeholders – particularly on the SAL requirements for test vehicles/systems – it is nearly impossible to analyze whether NHTSA's estimates are accurate at this time.

*How to enhance the quality, utility, and clarity of the information to be collected;*

As MEMA noted in its comments to the AV Policy and above, NHTSA first needs to issue important clarifications to the current guidelines before industry and government alike can properly assess the ways in which the quality, utility, and clarity of the information collection may be enhanced. OMB should not approve NHTSA's proposal unless and until NHTSA provides such clarifications and allows stakeholders a sufficient opportunity to comment on them.

*How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.*

As currently drafted, the proposed information collection has the potential to be duplicated by multiple entities in the supply chain. For instance, NHTSA seeks SALs from "HAV and L2 manufacturers and other entities."<sup>9</sup> Thus, under the proposal, NHTSA may receive multiple SALs from vehicle manufacturers, suppliers, and other entities that contain redundant information covering the same technology, used in the same vehicle. NHTSA's approach therefore has the potential to expose respondents to unnecessary burden and expense in collecting, storing, and disclosing such duplicative information. And the proposal

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<sup>8</sup> See 81 Fed. Reg. at 65711.

<sup>9</sup> 81 Fed. Reg. at 65711

may impose unnecessary administrative costs and expenses on the agency itself, as NHTSA staff will have to spend time reviewing and analyzing multiple SALs from multiple entities covering the same technology.

Also, it remains unclear where NHTSA will house the collected information and what protections will be in place to safeguard manufacturer and supplier data, including, without limitation, confidential business information and intellectual property data. NHTSA must provide more specific details about how it intends to protect information that it receives from entities as well as answer questions such as: Where will the information be stored? Who will have access? NHTSA should provide answers to these key questions before OMB considers, much less approves, the proposed information collection.

In conclusion, even though the proposed information collection is purportedly voluntary, NHTSA made clear its long-term intent to make this a mandatory reporting requirement. As such, it is critically important for NHTSA to first clarify key aspects of its AV Policy and associated reporting recommendations. MEMA, along with many other stakeholders, made similar pleas in their comments to the AV Policy. Therefore, it is critically important to get the foundational policy as clear as possible in these early stages for all entities to prevent uncertainty from inadvertently delaying technology development and imparting unnecessary reporting burdens. Until such clarity is provided, implementation of NHTSA's AV Policy and its concomitant recordkeeping and disclosure recommendations are premature; therefore, OMB approval of NHTSA's proposed information collection request is unwarranted at this time.

Thank you for consideration of these comments. For more information, please do not hesitate to contact me or at [awilson@mema.org](mailto:awilson@mema.org) 202-312-9246 or Leigh Merino, senior director of regulatory affairs at [lmerino@mema.org](mailto:lmerino@mema.org), 202-312-9242.

Regards,



Ann Wilson  
Senior Vice President, Government Affairs

*Attachment*



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**Motor & Equipment Manufacturers Association**  
**Comments to**  
**U.S. Department of Transportation**  
**National Highway Traffic Safety Administration**  
**RE: Reports, Forms, and Record Keeping Requirements**  
**Request for Comments; Proposed Collection of Information**  
**Title: "Vehicle Performance Guidance"**  
**Docket No. NHTSA-2016-0091**  
**November 22, 2016**

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The Motor & Equipment Manufacturers Association (MEMA) submits the following comments in response to the National Highway Traffic Safety Administration's (NHTSA) Request for Public Comment on proposed collection of information associated with the "Federal Automated Vehicles Policy," 81 Fed. Reg. 65709 (Sept. 23, 2016). MEMA represents more than 1,000 companies that manufacture components and systems for passenger cars and commercial vehicles original equipment (OE) in new vehicles as well as aftermarket parts to service, maintain and repair over 256 million vehicles on the road today.<sup>1</sup>

NHTSA asserts: "Consistent with its statutory purpose to reduce traffic accidents and deaths and injuries resulting from traffic accidents, NHTSA seeks to collect from, and recommend the recordkeeping and disclosure of information by vehicle manufacturers and other entities as described in Federal Automated Vehicles Policy." 81 Fed. Reg. at 65710. While MEMA shares NHTSA's interest in ensuring the safe development, testing, and deployment of automated technologies, it writes to express concern over NHTSA's proposed documentation, recordkeeping and disclosure recommendations for manufacturers of SAE Level 2 and highly automated vehicle (HAV) systems.<sup>2</sup>

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<sup>1</sup> MEMA represents its members through four divisions: Automotive Aftermarket Suppliers Association (AASA); Heavy Duty Manufacturers Association (HDMA); Motor & Equipment Remanufacturers Association (MERA); and, Original Equipment Suppliers Association (OESA).

<sup>2</sup> See "Levels of Automation" Federal Automated Vehicles Policy at pages 9-10, Sept. 2016  
<http://www.nhtsa.gov/nhtsa/av/index.html>

MEMA salutes the significant efforts of NHTSA to impart proactive guidance at this critical juncture. As this is an iterative, open and transparent process, MEMA supports the guidance approach as presented in the Federal Automated Vehicle Policy (AV Policy). A guidance approach – in the context of a national framework with a clear role for the states – sets pathways for all stakeholders to navigate the complexities of automated vehicle technologies and vehicle supply chains. MEMA wants to ensure that these pathways avoid unintended impediments to product design, enhancements and innovative advancements in automated technologies. The development of these technologies is evolutionary; thus, the endeavor to tackle public policies while also balancing innovation is massive and requires the collaboration and cooperation among all public and private stakeholders.

However, MEMA has sufficient concerns regarding the proposed collection of information notice that we believed it was incumbent upon the Association to comment separately on that topic. First, the data collection guidelines provide broad recommendations that, if required to be reported, would exceed NHTSA's current authority. Currently, manufacturers of original equipment components or systems are required under 49 CFR § 573.3 to notify NHTSA of safety-related defects or non-compliances in their equipment when the equipment is installed in the vehicles of more than one vehicle manufacturer.

Any attempt by NHTSA to use its proposed policy as a means to place new, affirmative reporting obligations on manufacturers is improper. The AV Policy, however, arguably expands the scope of manufacturers' reporting requirements, as NHTSA recommends "that manufacturers and other entities collect data associated with events involving: (1) Fatalities and personal injuries; or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power in the customary manner, without further, damage or hazard to itself, other traffic elements, or the roadway, and therefore requires a towing." And, while NHTSA disclaims that it is pursuing an affirmative duty to report this information, its proposal appears to contemplate a mandatory data collection in the future, as NHTSA "recommend[s] that the data be stored, maintained and readily available for retrieval by the entity itself, and, if requested, by NHTSA". 81 Fed. Reg. at 6571. Though these recommendations pursue commendable safety goals, NHTSA cannot use the AV Policy or the proposed information collection request to circumvent its own regulations by imposing new, expanded reporting requirements on manufacturers.

Moreover, MEMA continues to believe that vehicle manufacturers have the best understanding of the vehicle's mapping and therefore are in the best position to identify, collect, and potentially report any events that might be of concern to the agency. Thus, the burden of collecting this data should remain with the vehicle manufacturer, with input and assistance from original suppliers of the technology as necessary.

Second, the recommendations fail to recognize the lack of current Federal Motor Vehicle Safety Standards associated with automated vehicles. Given the rapid development of automated technologies, there are currently no applicable performance standards that govern many of them. MEMA believes that in the absence of current performance standards, manufacturers will simply be unable to identify the proper data to collect, maintain, and potentially disclose to NHTSA to assist it in ensuring the safe implementation of these evolving technologies.

It may take some time before any detailed guidance can be clearly and reasonably articulated. As NHTSA is aware, the collection of this data could have significant consequences for manufacturers. For that reason, Federal law tempers these requirements with the balance of known standards associated with any given event. Therefore, the collection of data, particularly in the testing phase of development, is contrary to current practice and may stifle innovation.

Lastly, it is difficult to make a fully informed response corresponding to the agency's estimated paperwork burdens without knowing the final structure and content of the Safety Assessment Letter template.

In conclusion, the members of MEMA are committed to vehicle safety and are at the forefront of developing additional life-saving technologies. We welcome the opportunity to address the wide range of issues raised in the agency's AV Policy. If you have any questions, please contact Ann Wilson, senior vice president of government affairs ([awilson@mema.org](mailto:awilson@mema.org), 202-312-9246) or Leigh Merino, senior director of regulatory affairs with any questions ([lmerino@mema.org](mailto:lmerino@mema.org), 202-312-9242).

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