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July 20, 2017

House Panel Approves Groundbreaking Federal Autonomous Vehicle Legislation Draft

The House Subcommittee on Digital Commerce and Consumer Protection reached bipartisan agreement on July 19, 2017, regarding major aspects of legislation to address the testing and deployment of autonomous vehicles. The subcommittee plans to continue working on this draft over the next week to resolve outstanding issues and move it to the full U.S. House Committee on Energy and Commerce for consideration. This represents the first significant step in advancing legislation on autonomous vehicles.

While the subcommittee intends for [the draft legislation](#) to clarify the federal and state roles for regulating "highly automated vehicles" (HAVs), the members of the subcommittee have not yet reached agreement on this issue. Key aspects of the bill on which the members were able to reach agreement include:

Reliance on SAE Definitions. The bill defines HAVs by relying on SAE's classification system and includes only those automated vehicles of SAE level 3 and higher, excluding commercial motor vehicles subject to regulation by the Federal Motor Carrier Safety Administration. As a result, the bill is focused on highly autonomous vehicles not currently in use today. Furthermore, the bill would empower the Secretary of Transportation to modify those SAE definitions and reject any changes to the definitions made by SAE.

Safety Assessment Certifications. It requires the National Highway Safety Administration (NHTSA) to issue a rule requiring submission of safety assessment certifications by manufacturers. The rule is to describe the test results, data and other contents of the certification to demonstrate that the manufacturer's vehicles are likely to function as intended and contain fail-safe features. Until that rule is issued, manufacturers are to submit the safety assessment letters contemplated by NHTSA's September 2016 Federal Automated Vehicles Policy.

Rulemaking Plan. It directs the U.S. Department of Transportation to release within one year of enactment a rulemaking and safety priority plan to accommodate the development and deployment of HAVs and to ensure their safety and security. The plan is to identify needed updates to existing motor vehicle safety standards and identification of new safety standards that will be needed for HAVs. It encourages NHTSA to consider using performance standards for these safety standards, including in areas regarding human machine interface and sensors, processors, actuators and software and cybersecurity.

Cybersecurity. It requires HAV manufacturers to develop cybersecurity plans to include (1) processes for identifying, assessing and mitigating vulnerabilities and for taking preventative and corrective action to mitigate against vulnerabilities of HAVs; (2) designation of a cybersecurity officer; (3) a process for controlling access to automated driving systems; and (4) training plans.

Exemptions. To encourage testing and deployment, the bill expands existing authority for NHTSA to evaluate and approve exemptions from federal motor vehicle safety standards where there is no reduction in safety. It also expands the number of vehicles that may be granted an exemption, and the duration of the exemptions, up to about 100,000 exemptions per manufacturer per year (compared to the current cap of 2,500 total exemptions).

Testing. The bill authorizes manufacturers and importers to test HAVs or automated driving system equipment if the entity submits information to NHTSA about the testing and agrees not to sell, lease or offer for sale the equipment being tested.

HAV Advisory Council. The bill creates a Federal Advisory Committee within NHTSA to examine a variety of issues associated with HAVs, including mobility access for disabled persons, senior citizens and underserved populations; cybersecurity; sharing of testing information; labor and employment issues affected by the

deployment of HAVs; and environmental and consumer privacy impacts.

Additional Rulemaking. The bill requires NHTSA to promulgate a rule requiring all new passenger motor vehicles weighing less than 10,000 pounds to be equipped with a system to alert the operator to check rear-designated seating positions after the vehicle motor is deactivated. It also requires NHTSA to evaluate a rulemaking regarding safety standards or performance requirements for motor vehicle headlamps.

The major issue still under discussion within the subcommittee (and in brackets in the bill) is the respective roles of the federal and state governments and whether federal standards will preempt state authority to regulate the safety and design of HAVs. The bracketed language would include such preemption by prohibiting states from imposing or enforcing requirements related to the design, construction, mechanical systems, hardware and software systems, or communication systems of HAVs, unless identical to NHTSA's standards. The bracketed language would retain the state's authority to regulate registration, licensing, liability, driving education and training, insurance, safety inspections and traffic laws for HAVs.

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