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USDOT Issues Updated Policy on Automated Vehicles, Signaling Rulemakings to Come

The United States Department of Transportation recently released its latest policy statement on automated vehicle technologies, [Automated Driving Systems 3.0: Preparing for the Future of Transportation](#). This new policy supplements USDOT's September 2017 policy, [Automated Driving Systems 2.0: A Vision for Safety](#), which we addressed in a [previous update](#).

The USDOT's new policy is an important step forward in defining the regulatory framework for automated driving systems and further demonstrates the federal government's commitment to advancing these new technologies.

In this update, we summarize three key aspects of the updated policy: USDOT's overall principles for regulating automated vehicles; its plans for updating key regulations; and its vision for balancing federal and state regulatory roles. We also discuss the National Highway Traffic Safety Administration's recent request for comments on an [Automated Driving Systems \(ADS\) Pilot Program](#) under which NHTSA could grant limited exemptions from motor vehicle safety standards to facilitate the development of automated vehicle technologies.

The USDOT is accepting comments on its new policy through [December 3, 2018](#), while comments on NHTSA's proposed pilot program are due by [November 26, 2018](#).

Key Principles in New USDOT Policy

The vision outlined in the new policy is based on six core principles:

1. Taking advantage of the safety improvements offered by automated vehicles while also managing the "new safety risks" presented by vehicle automation.
2. Remaining "technology neutral" among the various emerging approaches to vehicle automation.
3. Modernizing federal regulations where necessary to recognize the emergence of highly automated vehicles. Most notably, the USDOT commits to adapting the definitions of "driver" and "operator" to "recognize that such terms do not refer exclusively to a human, but may in fact include an automated system."
4. Promoting regulatory consistency among states and local governments so that automated vehicles can be operated seamlessly across the country.
5. Providing guidance, best practices, pilot programs and other assistance, without assuming or requiring that any specific technology will be universally adopted.
6. Preserving consumer choice, including the freedom to drive one's own vehicle, while also embracing the role that automated vehicle technologies may have in increasing mobility for persons with disabilities.

Plans for Updating USDOT Regulations

As in its previous policies, the USDOT continues to emphasize a non-regulatory approach to the federal government's role in guiding the development of automated vehicle technologies. But the new policy also acknowledges the need for updates to USDOT regulations that in their current form could impede the development of automated vehicles, including the following:

- **NHTSA - Federal Motor Vehicle Safety Standards.** The National Highway Traffic Safety Administration is responsible for setting and enforcing the Federal Motor Vehicle Safety Standards, which apply to all motor vehicles sold in the United States. Some of the existing FMVSS assume, implicitly or

explicitly, that the vehicle will be designed to accommodate a human driver. To remove impediments to automated vehicle technologies, the new policy calls for NHTSA to update the definitions of "driver" or "operator" to include automated driving systems in addition to a human driver. It also calls for NHTSA to seek comment on ways to streamline the procedure for granting exemptions to the FMVSS for automated vehicle technologies.

- **FMCSA - Commercial Motor Vehicle Regulations.** The Federal Motor Carrier Safety Administration is responsible for regulating the operation of commercial motor carriers operating in interstate commerce. FMCSA will make targeted rule changes and interpretations to address the use of automated technologies in commercial trucks and buses and will supplement existing rules to account for differences between human and computer operators. FMCSA will also work with the U.S. Department of Labor to assess the impact of automated driving systems on the workforce.
- **FHWA - Standards for Road Signage, Signals and Markings.** The Federal Highway Administration is responsible for setting standards for road signage, signals and markings, as reflected in FHWA's Manual on Uniform Traffic Control Devices. FHWA last updated the manual in 2009, before the widespread emergence of automated vehicle technologies. FHWA will update the manual to account for emerging automated vehicle technologies. The manual is adopted and updated through notice-and-comment rulemaking, and compliance with the manual is required by FHWA regulations.

Guidance on State and Local Roles

As in prior policies, the USDOT's new policy strongly discourages state and local laws that may impede the testing and deployment of automated vehicles. But the new policy also recognizes the important roles that states and localities can play in the deployment of automated vehicle technologies, and encourages state and local involvement in several areas, including the following:

- **Test driver licensing.** The policy contemplates that state governments will continue to have authority over the operation of non-commercial vehicles, including with respect to licensing, registration and inspection powers as applied to the testing and deployment of automated vehicle technologies.
- **Local pilot programs.** The policy endorses the local pilot programs that have been proliferating over the past few years as a means of testing highly automated vehicles. It also recognizes that pilot programs are important to ascertain vehicle capabilities and for transportation planning, infrastructure design and traffic operations management.
- **Data.** The new policy recognizes that there will need to be an exchange of data between state and local agencies and the industry to address operational challenges, such as work zones, rail crossings, managed lanes, etc. The policy also recognizes the cybersecurity and privacy issues that will become more prominent as highly automated vehicles make up more of the private and commercial fleets and indicates that the USDOT is addressing those topics together with the U.S. Department of Homeland Security and the Federal Trade Commission.

The new policy mentions two areas in which federal law will preempt state and local regulation regarding automated vehicles:

- **Vehicle safety and performance standards.** The policy reiterates that state and local governments are preempted from setting vehicle safety standards that differ from the FMVSS. At the same time, it recognizes that the preemptive effect of the FMVSS does not extend to state and local laws governing the operation of motor vehicles, such as speed limits, nor does compliance with the FMVSS necessarily exempt any person from tort liability under state common law.
- **Operation of commercial motor vehicles.** The new policy states that FMCSA's regulations will preempt any state and local requirements that interfere with the application of federal motor carrier safety regulations. It also states that the USDOT will carefully consider the appropriate lines of preemption in the

context of commercial motor vehicles equipped with automated driving systems.

NHTSA's Proposal for Automated Driving Systems Pilot Program

In accordance with the new USDOT policy, NHTSA published a notice on October 10, 2018, requesting comments on a potential national pilot program to encourage the testing and deployment of automated vehicle technologies. The program would allow NHTSA to grant exemptions from the FMVSS for "vehicles with high and full driving automation that do not have traditional designs" and thus may not meet the existing FMVSS. The agency seeks comments on the design of such a program, including:

1. Factors to consider in designing the pilot program overall;
2. Use of existing statutory provisions and regulations to allow for implementation of the pilot program;
3. Any additional elements of regulatory relief (e.g., exceptions, exemptions or other potential measures) that might be necessary to facilitate efforts to participate in the pilot program;
4. The nature of the safety and any other analyses that NHTSA should perform when assessing individual exemption petitions; and
5. The types of terms and conditions NHTSA should attach to these exemptions to protect public safety and facilitate the agency's goals for the program, while also preserving the freedom to innovate.

The deadline to submit comments to NHTSA is November 26, 2018.

What's Next?

As noted above, USDOT agencies will be initiating several rulemakings as directed by the new policy, and each rulemaking will include a public comment period. In addition, it is possible that Congress will enact legislation addressing NHTSA's regulatory authority and more clearly defining the overall legal framework for federal and state roles in regulating automated vehicles.

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