

## Updates

January 23, 2018

### USDOT Seeks Comment on Removing Regulatory Barriers to Autonomous Vehicles



Last week, three U.S. Department of Transportation agencies issued requests for comment on ways to update federal regulations and policies to allow for the safe testing and deployment of autonomous vehicles (AVs):

- The [National Highway Traffic Safety Administration](#) invited comment on removing regulatory barriers to AVs, especially AVs that lack manual controls necessary for operation by a human driver. The notice identified a range of issues that NHTSA is considering as it decides how to modify the Federal Motor Vehicle Safety Standards (FMVSS) to accommodate AVs. Comments are due by March 5, 2018. See 83 Fed. Reg. 2607 (Jan. 18, 2018).
- The [Federal Transit Administration](#) invited comment on removing regulatory barriers to automated transit buses. Comments are by due March 2, 2018. See 83 Fed. Reg. 2323 (Jan. 16, 2018).
- The [Federal Highway Administration](#) invited comment on the infrastructure requirements and operating practices necessary to accommodate AVs on the road system. Comments are due by March 5, 2018. See 83 Fed. Reg. 2719 (Jan. 18, 2018).

Commenters are encouraged to include data and analysis to support any policy recommendations. Additional information on pending USDOT regulatory actions is [here](#).

#### NHTSA Request for Comment on Revising Safety Standards to Allow for Fully Autonomous Vehicles

Under current law, NHTSA and the states share responsibility for the regulation of motor vehicles, with the states primarily regulating vehicle operation, including driver licensing and vehicle registration, while NHTSA sets minimum safety standards for the vehicles themselves, known as the FMVSS (Safety Standards). The emergence of AVs is causing a rethinking of the federal and state regulatory roles, as autonomous capabilities blur the distinction between the "vehicle" and the "driver."

Vehicles with AV capabilities can largely satisfy the existing Safety Standards as long as the vehicles retain the capability for operation by a human driver. But manufacturers are moving rapidly to develop AVs that not only have full autonomous driving capabilities (known as "Level 5") but that also lack manual controls required for human operation of the vehicle. Such vehicles also may have a non-traditional interior configuration (e.g., front seats that slide or rotate). Without manual driving controls and a traditional interior configuration, fully autonomous vehicles will find it difficult or impossible to meet the current Safety Standards. As NHTSA explains:

[I]t is not the inclusion of an ADS [automated driving system] in a new vehicle that complicates testing and certifying the compliance of the vehicle to the existing FMVSS. Testing and certifying compliance potentially becomes complicated only if a manufacturer wishes to go a step further and design a vehicle with ADS but without a steering wheel, brake pedal and accelerator pedal or with novel configurations or orientations for certain vehicle systems. ... [T]his problem arises because the FMVSS, as currently written, are premised on the presence of means of manual control and on conventional seating configurations and orientations.

Manufacturers can seek exemptions from the Safety Standards to allow for production of a limited number of AVs that lack manual driving controls and traditional interior configurations. For example, [General Motors](#) filed such a petition on January 11, 2018. But only through a rulemaking can NHTSA update the Safety Standards themselves to allow for fully autonomous vehicles that cannot be operated by a human driver.

As it develops proposed changes to the Safety Standards, NHTSA seeks comment on 22 questions in five broad issue areas:

- **Previously Identified Regulatory Barriers.** In 2015, NHTSA commissioned a [report](#) to identify potential barriers to AVs in the Safety Standards, such as standards that refer explicitly or implicitly to a human "driver." NHTSA seeks input on whether, and to what extent, these barriers will actually interfere with the rollout of AVs. NHTSA also seeks comment on how these obstacles might affect small business efforts to develop AV technology.
- **Additional Regulatory Barriers.** NHTSA notes that the public might be aware of other barriers to AVs that NHTSA has not considered. NHTSA seeks comment on what these barriers might be.
- **Potential Changes to the Safety Standards.** NHTSA also asks for input on whether and how it should change existing Safety Standards to make them compatible with AVs. For example, NHTSA asks whether it should develop new safety tests for use in certifying AVs' compliance with the Safety Standards. It also asks whether testing and design standards that refer to a human "driver," such as rearview mirror placement, should be changed.
- **Research Needs.** NHTSA next seeks input on the research that needs to be done to address these regulatory barriers. For example, NHTSA asks what research is needed to develop successful test procedures for AVs. It also asks what research is needed to determine whether passengers in an AV would need access to non-driving controls like windshield wipers and to cameras and mirrors. The agency also seeks input on what research is *not* necessary before making regulatory changes.
- **Priorities for Research and Rulemaking.** NHTSA seeks comment on how it should prioritize its efforts, including research and follow-on rulemaking proceedings. NHTSA asks the public to identify what areas need legislation and rulemaking and how existing regulations should be changed. The agency seeks comment on how industry and other nongovernmental groups can play a role in this process. In particular, it asks whether there are any industry standards that could be incorporated by reference and whether there are research areas in which nongovernment stakeholders should take the lead.

FTA seeks comment regarding regulatory and policy barriers to the development and deployment of automated transit buses, including:

- Barriers in existing FTA statutes, regulations or policies (e.g., FTA procurement requirements as applied to transit buses).
- Barriers in other federal agencies' statutes, regulations or policies (e.g., NHTSA's Safety Standards as applied to transit buses).
- Barriers that particularly affect the participation of small businesses in AV technologies.
- Additional barriers that may impede the development and deployment of automated transit buses.

The notice defines "bus" broadly to include a range of transit vehicle sizes, configurations and passenger capacities, as well as both traditional and novel vehicle designs. FTA notes that it is not seeking comment regarding automation technology used in rail transit applications.

### FHWA Request for Comment on Infrastructure Requirements for AVs

FHWA seeks comment on issues concerning the road infrastructure requirements and standards that may be necessary for the safe and efficient operations of AVs, including:

- What roadway characteristics are important for the safety, efficiency and performance of AVs? For example, are there certain physical elements (e.g., lane markings) that are necessary for AVs?
- What challenges do non-uniform traffic control devices present for AVs?
- How does the state of good repair of roadway infrastructure (e.g., pavement and road markings) affect AVs?
- How should FHWA engage with the AV industry to understand potential infrastructure requirements for AVs?

In addition to the specific issues listed in the notice, FHWA seeks comment from all stakeholders regarding planning, development, maintenance and operations of the roadway infrastructure necessary for supporting AVs, including any information regarding implementation costs.

### What's Next in Federal Regulation of AVs?

These recent USDOT actions are just the latest in a series of federal actions to promote the deployment of AVs, including:

- In September 2017, USDOT issued its revised AV policy, "Automated Driving Systems 2.0: A Vision for Safety," discussed [here](#). This policy provides non-binding guidance on AV testing and deployment and encourages manufacturers to submit a "Voluntary Safety Self-Assessment" to NHTSA when testing AVs.
- In July 2017, the U.S. House of Representatives passed the SELF DRIVE Act, discussed [here](#). This bill would, among other things, direct NHTSA to initiate a rulemaking to update the existing Safety Standards to address AVs, make the voluntary self-assessments mandatory, and allow for increased testing and deployment of AVs. Similar legislation, known as the [AV START Act](#) (S. 1668), is pending in the Senate.

As technologies are developed that support autonomous operation of other types of vehicles, federal agencies will continue to reexamine existing laws to accommodate these new technologies within a more comprehensive regulatory framework. 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 AVs.

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