

CLIENT ALERT

DOT and NHTSA Release New “2.0” Guidance for Automated Vehicles

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On September 12, the U.S. Department of Transportation and National Highway Traffic Safety Administration released their much anticipated policy framework for Automated Driving Systems (ADS) -- *Automated Driving Systems: A Vision for Safety*. The purpose of this new guidance, according to DOT and NHTSA, is to “support the industry as it develops best practices in the design, development, testing, and deployment of automated vehicle technologies.” The new guidance updates and replaces the Federal Automated Vehicle Policy released in September 2016 under the Obama Administration, and, practically speaking, clears the way for industry to test ADS on the nation’s roadways without obtaining the permission of DOT or NHTSA. Interestingly, the release comes one week after the passage of legislation in the House of Representatives (SELF DRIVE Act) governing how autonomous vehicles are manufactured, tested, and deployed.

This new guidance is intended primarily for companies designing and innovating ADS for use on public roads as well as state policy makers, many of whom have gotten out in front of the Congress and federal regulators on autonomous vehicles. The overarching theme of the document is how best to encourage innovation in automated vehicles technology -- with as little government interference as possible -- while maintaining and ensuring the safety of roadways.

To that end, the guidance document contains two main sections with robust sets of working principles. Section 1, entitled *Voluntary Guidance for Automated Driving Systems*, sets forth twelve priority safety design elements touching on areas such as system safety, vehicle cybersecurity, human machine interface, crashworthiness, and consumer education and training. The guidance allows industry to consider and address each safety element deemed a priority by DOT and NHTSA with flexibility and without specific government mandates or regulation. Next, Section 2, entitled *Technical Assistance to States, Best Practices for Legislatures Regarding Automated Driving Systems*, focuses on the federal-state relationship in regulating safety design and performance aspects of ADS. It specifically addresses “best practices” for state legislatures and highway safety officials and delineates the responsibilities of the federal and state governments.

Some key aspects of the new “2.0” framework include:

- NHTSA reaffirms that its enforcement authority concerning safety-related defects in motor vehicles and their equipment extends and applies equally to current and emerging ADS;
- The guidance is *voluntary* meaning it is not intended to be a regulation; there is no compliance requirement or new enforcement mechanism created by the guidance. Firms developing automated systems are encouraged to consider the guidance in the context of existing industry standards, best practices, company policies, or other methods that provide for increased safety;

- The focus remains on the highest levels of automation as defined by SAE Automation: Conditional, High, and Full Automation;
- At a minimum, when it comes to ADS-human interface, ADS should be capable of informing the human operator or occupant that the ADS is functioning properly; currently engaged in ADS mode; currently unavailable for use; experiencing a malfunction; and/or requesting control transition from ADS to the operator;
- Companies are encouraged to design their ADS following established best practices for cyber vehicle physical systems and document it. While vehicle cybersecurity is one of the twelve design elements, the guidance does not include privacy as an element;
- While NHTSA encourages that companies perform and publish “Voluntary Safety Self-Assessments” prior to testing and deployment, they are not required to submit the assessments for federal review or approval; and
- NHTSA does not encourage the States to codify this guidance and seeks to delineate the traditional regulatory roles of NHTSA (*i.e.*, regulating motor vehicles and their equipment) and the States (*i.e.*, regulating the human driver and most aspects of motor vehicle operation).

Although this updated policy has streamlined and shortened the 2016 version, many of the Government’s initial core principles regarding the safety of automated driving remains in place. Some differences do exist. For example, the old policy provided for the voluntary submission of safety assessments of ADS to NHTSA for review. The new guidance, as noted above, encourages the publication of safety assessments, but clarifies that federal approval is not needed. Also notable is the lack of any mention in the new guidance of the potential “pre-market approval authority” of NHTSA. In last year’s guidance document, NHTSA identified a number of potential tools at its disposal to regulate the safety of autonomous vehicles, including pre-market approval, which raised concerns within industry.

NHTSA and DOT are already planning to update this guidance and release a “3.0” version based on new developments in the industry; in other words, the guidance is designed to be a “living document.” And, of course, Congress will undoubtedly continue to insert itself into the regulation of ADS, which may ultimately determine the regulatory framework for automated vehicles when it comes to areas such as safety and cybersecurity. In fact, a companion piece of legislation on autonomous vehicle related issues has been introduced in the Senate, which will soon be taken up by the Senate Commerce, Science, and Transportation Committee.

However, in the meantime, this new DOT and NHTSA guidance will surely influence the development of this cutting edge technology in the months to come. While companies may have more flexibility, and less regulation, to innovate for the time being, the legal issues associated with the advent of ADS, in such areas as safety, cybersecurity, privacy, intellectual property, insurance and others, will rapidly evolve.

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