

Prioritizing Safety: The New U.S. Federal Guidelines For Automated Driving Systems

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The U.S. Department of Transportation and the National Highway Traffic Safety Administration have released new guidelines for automated driving systems.

In a move to provide streamlined and flexible guidance, the U.S. Department of Transportation ("DOT") and the National Highway Traffic Safety Administration ("NHTSA") have released new guidelines for automated driving systems ("ADS"). A *Vision for Safety 2.0*¹ provides automakers voluntary guidance and best practices for the development and deployment of autonomous vehicles. These guidelines arrive on the heels of a vote in the U.S. House of Representatives on a bill that permits the deployment of up to 25,000 autonomous vehicles exempted from safety standards in its first year, and 100,000 annually after that. While ensuring that safety remains the top priority, A *Vision for Safety 2.0* supports further development of autonomous vehicle technologies which will change the way we travel, deliver goods, and provide services.

In *Section 1: Voluntary Guidance for Automated Driving Systems (Voluntary Guidance)*, the NHTSA highlights 12 priority safety design elements for consideration, including vehicle cybersecurity, human machine interface, crashworthiness, consumer education and training, and post-crash ADS behaviour. This section also,

- discusses the differences between SAE International Levels of Automation 3-5 (Conditional, High, and Full Automation);
- encourages automakers to define and document the Operational Design Domain ("ODD") of each ADS available on their vehicle;
- addresses the process for transitioning to a minimal risk condition when a problem is encountered or the ADS cannot operate safely;
- clarifies that tests should demonstrate the behavioural competencies an ADS would be expected to perform during normal operation, the ADS's performance during crash avoidance situations, and the performance of fallback strategies relevant to the ADS's ODD;
- promotes data collection from crashes and testing;
- encourages but does not require automakers to submit a Voluntary Safety Self-Assessment; and
- aligns Federal Guidance with the International Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles (J3016:Sept 2016).

In *Section 2: Technical Assistance to States, Best Practices for Legislatures Regarding Automated Driving Systems (Best Practices)*, the NHTSA clarifies and delineates Federal and State roles in the regulation of ADSs. Under the proposed regime, the NHTSA remains responsible for regulating the safety design and performance aspects of motor vehicles and motor vehicle equipment; whereas states continue to be responsible for regulating the human driver and vehicle operations. Under *Best Practices*, the NHTSA suggests that states will also want to consider:

- new administrative oversight activities that relate to ADSs;
- an application for entities to test ADSs on public roadways;
- a process for granting permission to entities to test ADSs on public roadways;
- specific considerations for ADS test drivers and operations;
- considerations for registrations and titling;
- general considerations for working with public safety officials; and
- initial considerations for state relegation of liability during an incident and insurance of the driver, entity, and/or ADS.²

Commentary

A Vision for Safety 2.0 replaces the DOT and NHTSA's prior guidance document released in September of 2016 — the *Federal Automated Vehicles Policy*.³ *A Vision for Safety 2.0* is intended to be clearer, more streamlined and less burdensome, which will allow companies to "innovate first".⁴

The NHTSA has recognized that its prior guidelines addressed areas outside of its authority — privacy, registration and certification, and ethical considerations — which are not addressed in *A Vision for Safety 2.0*. Since releasing the updated guidance, the NHTSA has noted that the Federal Trade Commission ("FTC") is the appropriate federal agency charged with protecting consumer privacy and personal information, although it will work with the FTC where motor vehicle safety matters have the potential to overlap with consumer privacy.⁵ This cooperation is already in progress — as recently as June of 2017, the FTC and the NHTSA held a joint workshop to examine consumer privacy and security issues raised by automated and connected vehicles.⁶

Highlighting the NHTSA's move away from addressing registration and certification, *A Vision for Safety 2.0* no longer includes the NHTSA's request that manufacturers register prior to deploying autonomous vehicles or voluntarily report on compliance with NHTSA's recommended guidelines.⁷ The NHTSA now clarifies that although companies are encouraged to consider the best practices found within *A Vision for Safety 2.0*, doing so is voluntary and elective in nature.⁸

Finally, whereas the 2016 policy had identified the distinction between Federal and State responsibilities for the regulation of autonomous vehicles, *A Vision for Safety 2.0* clarifies and delineates Federal and State roles. Although recognizing that its guidelines are voluntary and do not require compliance, the DOT has stated that it "strongly encourages States to allow the NHTSA alone to regulate the safety and performance aspects of automated driving technologies."⁹

In Canada, the intended path for autonomous vehicles is less clear. Although the 2017 federal budget promises to provide Transport Canada with \$76.7 million over five years to help the government update transportation regulations, certifications and standards,

¹⁰ Transport Canada, has identified that it is studying the issue but has not "set a firm timeline for regulations."¹¹ In the meantime, regulation is left to provincial governments. Ontario is the first province to introduce autonomous vehicle regulations (Regulation 306/15),¹² although the regulations are focused on the higher levels of autonomous vehicles and are for testing purposes only.

¹ U.S. Department of Transportation, NHTSA, "[Automated Driving Systems \(ADS\): A Vision for Safety 2.0](#)," September 12, 2017, (accessed September 18, 2017) [*A Vision for Safety 2.0*].

² *A Vision for Safety 2.0*, *supra* note 1.

³ U.S. Department of Transportation, NHTSA, "[Federal Automated Vehicles Policy: Accelerating the Next Revolution in Roadway Safety](#)," September, 2016, (accessed September 18, 2017) [*Federal Automated Vehicles Policy*].

⁴ U.S. Department of Transportation, NHTSA, "[Automated Vehicles for Manufacturers](#)," September 2017, (accessed September 18, 2017) [*Automated Vehicles for Manufacturers*].

⁵ *Ibid*.

⁶ Federal Trade Commission, "[Connected Cars: Privacy, Security Issues Related to Connected, Automated Vehicles](#)," June 28, 2017, (accessed September 18, 2017).

⁷ *Federal Automated Vehicles Policy*, *supra*.

⁸ *Automated Vehicles for Manufacturers*, *supra*.

⁹ *Ibid*.

¹⁰ Canada, Minister of Finance, Federal Budget 2017 (Ottawa: March 22, 2017) at 140.

¹¹ The Canadian Bar Association, "Rules of the Road: How Are We Going to Regulate Autonomous Cars?," April 7, 2017, (accessed September 18, 2017).

¹² [Ontario Regulation 306/15](#), accessed December 27, 2015).

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