

November 22, 2016

Docket Management Facility, M-30
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: Request for Public Comments on Federal Automated Vehicles Policy, Docket No. NHTSA-2016-0090

The Center for Auto Safety (CAS) appreciates the opportunity to comment on the Federal Automated Vehicles Policy (FAVP). The Center is in the process of preparing, for submission to this docket and for general publication, a comprehensive white paper to address the many safety-related issues raised not just by the FAVP, but also by the rapidly-changing universe of technological and marketplace information involving motor vehicle automation.

The ongoing rush to achieve public acceptance and marketability of automated vehicles must not be permitted to minimize the critical importance of such issues, particularly as they address the potentially hazardous consequences of interactions between human operators, conventional vehicles using the highway system, and vehicles embodying various levels of automation. This will be true especially during the decades-long transition between today's driver-dependent fleet and the future potential for a fully-autonomous vehicle fleet. There are serious safety and ethical issues involved in AV which must be resolved by the government with input from the public. A voluntary approach that places automakers in direct control of the deployment of AV technology will not properly protect the driving public during this time of transition.

NHTSA's Regulatory Abstinence

The Center strongly believes that NHTSA should employ its regulatory powers, including proposing and setting of Federal Motor Vehicle Safety Standards, to ensure that AVs are adequately safe from the moment they are deployed onto the nation's roads. NHTSA's decision to issue the FAVP as a guidance document, while at the same time forcefully requesting that states forgo regulation of AVs, leaves a void in oversight that must be addressed.

NHTSA Administrator Mark Rosekind was recently quoted as saying that, “One of [NHTSA’s] biggest fears, frankly, is that auto makers might take advantage of the guidelines’ voluntary nature. “It’s not required at this point, it’s a policy,” he told the Wall Street Journal.¹ We share that fear, which has been reinforced by the statement of a former administrator, David Strickland, currently the director of a group promoting AV marketability. Mr. Strickland states, “Firms can make the decision to not comply and be within their rights to do so.”²

Under the FAVP, NHTSA eschews regulatory action outside of its defect enforcement programs and self-certification requirements. According to the FAVP:

Under current law, manufacturers bear the responsibility to self-certify that all of the vehicles they manufacture for use on public roadways comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS). Therefore, if a vehicle is compliant within the existing FMVSS regulatory framework and maintains a conventional vehicle design, there is currently no specific federal legal barrier to an HAV being offered for sale. However, manufacturers and other entities designing new automated vehicle systems are subject to NHTSA’s defects, recall and enforcement authority. DOT *anticipates* that manufacturers and other entities planning to test and deploy HAVs will use this Guidance, industry standards and best practices to ensure that their systems will be reasonably safe under real-world conditions.³

Additionally, the FAVP Model State Policy directs the following language at states:

DOT strongly encourages States to allow DOT alone to regulate the performance of HAV technology and vehicles. If a State does pursue HAV performance-related regulations, that State should consult with NHTSA and base its efforts on the Vehicle Performance Guidance provided in this Policy.⁴

These two quotes underpin our primary objection to the FAVP. In the absence of new federal standards and free from interference by states, automakers would only need to certify their vehicles to existing FMVSS standards, and avoid the purview of NHTSA’s defect and enforcement authority. Automaker self-certification to existing FMVSS standards in no way insures the safety of advanced automated technology, which existing standards do not begin to contemplate. And NHTSA’s enforcement authority, as evidenced by the agency’s failures to address GM Ignition and Takata defects in a timely manner, is wholly insufficient to evaluate new technologies at the rate they are produced.

¹ See http://www.wsj.com/articles/autonomous-car-proliferation-decades-away-u-s-regulator-says-1479233888?mod=itp&mod=djemITP_h

² <https://techcrunch.com/2016/10/04/what-the-new-nhtsa-guidelines-mean-for-self-driving-cars/>

³ See Federal Automated Vehicles Policy at p. 11 (emphasis added)

⁴ See FAVP p. 37

NHTSA's Office of Defect Investigation (ODI) is critically understaffed and has minimal experience in software and other technical matters of utmost importance in evaluating HAV safety. The Early Warning Reporting system has been plagued with implementation and reporting issues. The DOT Inspector General's 2015 report has bears out this point and more⁵, as does the fact that NHTSA, incapable of assessing the possible contribution of software defects to the Toyota sudden acceleration hazard, was forced to farm out the investigation to NASA.

The new enforcement tools proposed by the FAVP have yet to be employed, and the guidance provides no timetable by which the NHTSA plans to do so. NHTSA remains ill-equipped to conduct conventional defect and noncompliance enforcement in general, and cannot be expected to police the AV solely through the exercise of the agency's enforcement arm.

Petitions for Rulemaking

We strongly object to the additional conditions that the FAVP places on submissions that NHTSA will be willing to accept as a petition for rulemaking. The FAVP's guidance on this issue is troubling, and suggests that the agency will only consider petitions from the most technically inclined members of the public.

The great majority of Americans have no ability to conduct a proper cost/benefit analysis on a NHTSA rulemaking, although they certainly have the insight to recognize conditions that are detrimental to their safety when operating a vehicle. Not only do they have no access to confidential pricing information held closely by automakers, they are also in no position to conduct the type of research necessary to satisfy many of the conditions specified in the FAVP.

Other Questions

There will be a transition phase – one that may last a long time – during which both automated and conventional vehicles will share the roads. This raises immediate questions of whether automated vehicles can operate safely on all types of roads, how they will interact with more conventional vehicles (including motorcycles and older vehicles), and whether the public will be used as guinea pigs in fleet testing of automation features.

As HAVs age, will they become a safety hazard? Will stringent vehicle-in-use inspection and repair standards be necessary? During the transition period toward more automation, will drivers be confused concerning the appropriate operation of partially automated vehicles? Is it appropriate to have automating features that can be turned off or disabled?

⁵ <https://www.oig.dot.gov/sites/default/files/NHTSA%20Safety-Related%20Vehicle%20Defects%20-%20Final%20Report%5E6-18-15.pdf>

There are thousands more questions that NHTSA will be required to address both now and in the future. NHTSA must attempt to address these questions, and do so with complete transparency, allowing and responding to the concerns from the public at large.

Americans look to the National Highway Traffic Safety Administration to protect the public from all failures in vehicle safety, particularly in times of uncertain technological change. Voluntary standards and guidance are an ineffective means of achieving this goal, and place the ultimate determination of vehicle safety in the hands of automakers that have failed the public's trust at a staggering rate in recent years.

Sincerely,

A handwritten signature in black ink, appearing to read 'm/b', written in a cursive style.

Michael Brooks
Acting Director