

# Client Alert

Automotive and Transportation Practice Group

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## **DOT Releases Autonomous Vehicles Guidelines** *New AV Policy Sets a Course for Safety and Oversight*

The highly anticipated Federal Automated Vehicles Policy (AV Policy), released yesterday, provides manufacturers direction on developing safer autonomous cars. In addition, NHTSA has presented a model guide for states on their role in the regulation of autonomous technologies and discusses the current regulatory tools that it may utilize in the autonomous vehicle framework as well as new tools the agency might seek to adopt in the future.

Unlike in prior autonomous policy documents, the current AV Policy utilizes the most recent SAE levels of autonomy. It distinguishes between highly automated vehicles (vehicles meeting levels 3-5 of SAE's definitions for levels of automation, referred to as HAVs) and less automated vehicles (SAE levels 0-2).

The agency explained that the AV Policy was issued as guidance rather than a rulemaking because it wanted "to speed the delivery of an initial regulatory framework and best practices to guide manufacturers and other entities." In that spirit, most portions of the AV Policy are effective immediately.

The AV Policy consists of four key sections:

### *1. Fifteen Point Safety Assessment – Vehicle Performance Guidance*

One of the centerpieces of the AV Policy is a 15-point Safety Assessment for highly automated vehicles. Under the Safety Assessment, NHTSA requests that manufacturers voluntarily provide a report indicating whether its test and production vehicles meet the agency's guidance in 15 different categories. These areas include subjects such as data recording and sharing, system safety, and vehicle crashworthiness, as well as ethical considerations (for example, how a vehicle might weigh avoiding a crash with an oncoming car and complying with the law). For each category, NHTSA has requested manufacturers provide one of three ratings: (1) meets guidance, (2) does not meet guidance, (3) guidance not applicable.

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Although the submission of the Safety Assessment is voluntary and will become effective after NHTSA completes the Paperwork Reduction Act clearance process, NHTSA indicated that it intends to eventually require compliance with this provision through a formal rulemaking.

## 2. *Model State Policy*

The question of who should regulate autonomous vehicles – the federal government or the states – has been a matter of considerable discussion. Under the model state policy, DOT proclaims its dominance, and “encourages States to allow DOT alone to regulate the performance of [highly autonomous vehicle] technology and vehicles.” Under the model policy, NHTSA would retain sole responsibility for setting and enforcing safety standards applicable to highly automated vehicles, while states would continue to be responsible for aspects such as vehicle registration, applications for testing of autonomous vehicle on the public roads and enforcing traffic laws.

## 3. *Current Regulatory Tools*

The AV Policy re-affirmed NHTSA’s use of four longstanding “tools” to address these new technologies: (1) letters of interpretation, (2) exemptions from existing standards, (3) rulemakings, and (4) enforcement authority to address safety-related defects.

NHTSA promised to issue a response to “simple” interpretation requests for highly automated vehicles—i.e., those requests that do not deal with particularly novel and complex questions or issues—within 60 days, and more complex interpretation requests within 90 days.

The agency also acknowledged that currently allowed exemptions may be of limited use given their short time duration and application to a relatively small number of vehicles.

NHTSA also reaffirmed its broad enforcement authority to investigate and address safety-related defects. Earlier this year, NHTSA published an Enforcement Guidance Bulletin in which the agency stated its view that vulnerabilities in emerging vehicle technologies, such as autonomous vehicles, which result in an unreasonable risk to safety would constitute a safety-related defect.

## 4. *Future Regulatory Tools*

Finally, the AV Policy described different approaches to regulation that the agency might take in the future. Of these sections, its discussion of pre-market approval authority, a system whereby NHTSA would test vehicle prototypes to determine if standards are met, appears to be the most groundbreaking. In NHTSA’s view, pre-market approval could either replace the existing self-certification and compliance testing process, or supplement it.

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