



January 18, 2021

The Honorable James C. Owens  
Deputy Administrator  
National Highway and Traffic Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Robin Vos**  
Assembly Speaker  
Wisconsin  
President, NCSL

**Martha R. Wigton**  
Director  
House Budget & Research  
Office  
Georgia  
Staff Chair, NCSL

**Tim Storey**  
Executive Director

**RE: ANPRM - Part 571 – Request for Comments on NHTSA’s Framework for Automated Driving System Safety**

Dear Acting Administrator Owens:

On behalf of the National Conference of State Legislatures (NCSL), the bipartisan organization representing the legislatures of our nation’s states, territories and commonwealths, we appreciate the opportunity to comment on the Department of Transportation’s National Highway and Traffic Safety Administration’s (NHTSA) recently released Advanced Notice of Proposed Rulemaking (ANPRM) concerning the potential development of a framework of principles to govern the safe behavior of automated driving systems (ADS) in the future.

As your agency states in the ANPRM, NHTSA’s previous regulatory notices have focused more on the design of the vehicles that may be equipped with an ADS—not necessarily on the performance of the ADS itself. As such, our comments below focus not on the technical and engineering specifics offered in the proposed rule, but rather clarify our view of the federal and non-federal authorities concerning motor vehicle “performance.”

The regulation of motor vehicle safety, which includes the design, construction, and performance of a motor vehicle (in the traditional manner, as defined in 49 U.S.C. §30102 and 49 U.S.C. §30111) is, and should remain, a federal obligation. This position appears to be confirmed on page 6 of the ANPRM, where the document affirms the nexus of its authority to issue motor vehicle safety standards. However, state and local governments are the primary authority concerning operational safety—including regulating the operation of motor vehicles after such vehicles have been constructed—the operators of those motor vehicles, as well as establishing the rules of the road on how motor vehicles can be safely operated on public roadways. This federal authority related to the safety aspects of the design, construction, and performance of a motor vehicle does not include compliance with the traffic laws, rules of the road, or the operation of motor vehicles of a state or political subdivision of a state.

This well-established structure for state-local and federal authority was endorsed by the Senate Committee on Commerce, Science and Transportation in its written report No. 115-187 in response to passage of S. 1885, the American Vision for Safer Transportation through Advancement of Revolutionary Technologies Act or the “AV START Act.” In the committee’s report, it noted:

“The Committee understands that since it was first enacted in 1966, the National Traffic and Motor Vehicle Safety Act (Safety Act) has always contained a provision preempting States and political subdivisions of States from adopting or enforcing a standard ‘applicable to the same aspect of performance of a motor vehicle’ as a FMVSS. The term ‘performance’ in this section is intended to be consistent with NHTSA's authority under the Safety Act as it relates to vehicle or equipment performance and is not intended to be broadened beyond NHTSA's traditional interpretation, which excludes vehicle compliance with or the enforcement of State and local traffic laws.”

We were pleased to see NHTSA’s initial recognition of the leading role that state and local governments play in roadway safety with the agency’s launch and expansion of the Automated Vehicles Transparency and Engagement for Safe Testing (AV TEST) Initiative to facilitate further dialogue and transparency of ADS development. Under the proper and existing federal-state-local framework, states and local governments retain the authority not only to enforce, but also to originate and establish laws and regulations governing the operation, by a human driver or a vehicle decision-making system, of motor vehicles on a public road.

Under any final rule, it is appropriate for the federal government to require that a vehicle be able to properly identify and observe a stop sign, but the sole authority to establish laws requiring observation of such stop sign, and the enforcement thereof, has and must continue to reside with state and local authorities who are best suited to respond to local needs. The federal government must not encroach into this space as it could inadvertently create significant roadblocks for the deployment of autonomous vehicles and erode the agency’s spirit of cooperative federalism.

NCSL looks forward to continuing to work with you as you continue your work to update and modernize and existing federal motor vehicle safety standards to allow for the eventual deployment of autonomous vehicles.

If you have any questions, please do not hesitate to contact NCSL staff: Ben Husch (202-624-7779 or [ben.husch@ncsl.org](mailto:ben.husch@ncsl.org)) or Kristen Hildreth (202-624-3597 or [kristen.hildreth@ncsl.org](mailto:kristen.hildreth@ncsl.org)).

Sincerely,



Representative Stephen Handy  
NCSL Natural Resources and Infrastructure  
Committee Co-Chair  
Utah House of Representatives



Representative David Tarnas  
NCSL Natural Resources and Infrastructure  
Committee Co-Chair  
Hawaii House of Representatives