



## NATIONAL CONFERENCE of STATE LEGISLATURES

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*Executive Director*

November 21, 2016

Mark R. Rosekind  
Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590

RE: Public Comments on Federal Automated Vehicles Policy

Dear Administrator Rosekind:

The National Conference of State Legislatures (NCSL), the bi-partisan organization representing the legislatures of our nation's states, territories, and commonwealths, appreciates the opportunity to comment on the National Highway Traffic Safety Administration's (NHTSA) Federal Automated Vehicles Policy (AVP). Highly Autonomous Vehicles (HAVs) will be a significant part of the future of the automotive industry. While HAVs present many, perhaps incalculable, potential benefits for society, their implementation will also undoubtedly pose many challenges. Ensuring that such a new technology, with lifesaving possibilities, is safely and effectively made available to the general public, will take many years and the cooperation of federal, state and local officials.

### **The Role of State Legislatures**

States play a significant role in the use and operation of motor vehicles on public roads. From licensing, vehicle registration, insurance, inspections, education and training, states work tirelessly to ensure the safety of those who operate and make use of motor vehicles. As a result of the increasing popularity of HAVs, a growing number of states have taken legislative action to address the testing, and eventual deployment of these vehicles. To date, eight states have enacted legislation regarding HAVs; a ninth has addressed it through executive action. Moreover, 34 states and the District of Columbia have considered legislation related to autonomous vehicles since 2012 with the number of states considering HAV related legislation increasing every year, with six states in 2012, nine states in 2013, 12 states in 2014 and 16 states in 2015.

NHTSA, both within the AVP, as well as your public comments and those of the Secretary of the U.S. Department of Transportation, Anthony Fox, have expressed a desire to avoid a patchwork of "inconsistent laws and regulations." As such, it is regrettable that the opportunity for NCSL to provide input on the federal government's initial iteration of its AVP comes after its publication.

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The state legislative perspective was not formally requested either prior to the release of this document as a whole, or even with regard to the second section, “Model State Policy (MSP).” While state departments of motor vehicles are the lead actors in implementing many of the core state responsibilities for vehicle operation, it is from the state legislature that they receive their authority and their funding. Additionally, state legislatures perform the vital function of oversight of state agencies to ensure that their actions do not go beyond power granted by the legislature. Additionally, state legislators directly represent constituents and thus are an important conduit to communicate with the public about HAVs. It is through the partnership of the legislative and executive branch that public policy can be effectively carried out. NHTSA’s decision to only engage the executive branch of state government, at the national level, led to an incomplete first draft. And while NCSL was encouraged to read that NHTSA “is prepared to assist with challenges states face with regard to HAV’s” and partner with states to address driver education and training, we would hope that NHTSA sees this partnership as one that should be carried out at multiple branches of state government.

### **Model State Policy**

NHTSA chose to title section II of the AVP as “Model State Policy (MSP),” even though it lacks any mention of state legislatures throughout the entire seven page model policy and instead begins directly with the executive branch. This mistake is compounded further within part 1 of the MSP on page 40, when NHTSA highlights how each state should create a committee within the lead state agency that includes members from numerous aspects of state government, including the “State department of transportation, the State law enforcement agency, the State Highway Safety Office, office of information technology, the State insurance regulator, the State office(s) representing the aging and disabled communities, toll authorities, and transit authorities,” but no representatives from the state legislature. This lack of state legislative involvement and coordination between the executive and legislative branches is continued throughout NHTSA’s discussion of how states should setup HAV testing and deployment.

Apart from the exclusion of state legislatures from the MSP, NCSL is also concerned with part 2(d), which pertains to an application that states should require for the testing of HAVs on public roadways. NHTSA states that “each vehicle used for testing by manufacturers or other entities follows the Performance Guidance set forth by NHTSA...” However, this safety assessment checklist (SAC), which is outlined in part I “Vehicle Performance Guidance for Automated Vehicles” of the AVP is specifically identified by NHTSA on page 11 as “...not mandatory.”

Additionally, on page 38, NHTSA lays out what it believes are the appropriate roles and responsibilities of the federal government and states. It notes that “as motor vehicle equipment increasingly performs ‘driving’ tasks, DOT’s exercise of its authority and responsibility to regulate the safety of such equipment will increasingly encompass tasks similar to ‘licensing’ of the non-human ‘driver’ (e.g., hardware and software performing part or all of the driving task).” However, on the following page, NHTSA writes “States may wish to deem an HAV system that conducts the driving task and monitors the driving environment (generally SAE Levels 3-5) to be the ‘driver’ of the vehicle.” This statement appears to indicate that it is actually states, not the federal government, that would choose how to regulate the “driver” of an HAV.

Finally, on page 44 in part 5(c), NHTSA notes that a number of additional areas remain for states to regulate as vehicles begin the transition from human operation to a fully autonomous mode:

- Law enforcement/emergency response
- Occupant safety
- Motor vehicle insurance
- Crash investigations/crash reporting
- Liability (tort, criminal, etc.)
- Motor vehicle safety inspections
- Education and training
- Vehicle modifications and maintenance
- Environmental impacts

However, there is little discussion of these issues within the MSP. One future consideration that NHTSA does provide some additional context to regards the registration and titling of HAVs, in which it states that regulations governing “labeling and identification for HAVs should be issued by NHTSA.” Again, NHTSA provides no guidance on when such regulations may be coming.

### **The Unaddressed Timeline for Federal Regulatory Action**

NHTSA makes clear that it, as the federal regulator, is responsible for setting Federal Motor Vehicle Safety Standards (FMVSS) and that the Vehicle Safety Act (VSA) expressly preempts states from issuing any standard that regulates performance if that standard is not identical to an existing FMVSS regulating that same aspect of performance. Additionally, if NHTSA issued an FMVSS setting performance requirements for HAVs, then a state could not have its own performance standards on the same aspects of HAV performance unless they were identical to NHTSA’s standards.

In section I of the AVP, NHTSA lays out a SAC as part of its Vehicle Performance Guidance in order help NHTSA and the public evaluate the safety of an HAV. However, NHTSA begins this section by noting that, “This Guidance is not mandatory. NHTSA may consider, in the future, proposing to make some elements of this Guidance mandatory and binding through future regulatory actions.” As NHTSA itself notes, the existing FMVSS framework is tied to a conventional vehicle design. NHTSA acknowledges, not less than 14 times in the endnotes section, that “To the extent that this provision implicates information collection subject to the Paperwork Reduction Act, its requirements will not take effect until after NHTSA completes the PRA process for its data collection and reporting requirements. Once that process is complete and any resulting adjustments have been made, this provision of the Guidance will be effective.”

A number of private sector companies have begun to test Level 3 HAVs on public roads. From Uber’s ongoing tests in Pittsburgh, to a recently completed delivery by an Otto automated, self-driving truck, many other additional vehicles are expected to be released in near-term. Unfortunately, NHTSA provides no indication of when they may develop FMVSS that apply to HAVs or when it plans to begin the process to make some or all of the aspects of the SAC binding.

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Likewise there is no indication as to how long either of these processes would take to complete. This is troubling, especially as NHTSA highlights its own current need for both additional research and a “team of experts” in section IV. Without any indication on forthcoming federal regulations regarding the safe operation of HAVs, states may be forced to fill the gap in order to ensure the safety of public roadways.

We sincerely appreciate your agency’s work on this issue and look forward to continuing our positive relationship. If you or your staff have any further questions or concerns, please contact NCSL staff Ben Husch ([ben.husch@ncsl.org](mailto:ben.husch@ncsl.org)) or Anne Teigen ([anne.teigen@ncsl.org](mailto:anne.teigen@ncsl.org)).

Sincerely,

A handwritten signature in black ink that reads "William T. Pound". The signature is written in a cursive style with a large, looped initial "W".

William T. Pound  
Executive Director  
National Conference of State Legislatures