

FEDERAL AGENCIES SEEK INPUT ON REGULATION OF AUTOMATED VEHICLES: ADD YOUR VOICE

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Along with temperatures in Washington, D.C., federal regulatory activity on automated vehicles ("AVs") is heating up this summer. Both the Federal Motor Carrier Safety Administration ("FMCSA") and National Highway Traffic Safety Administration ("NHTSA") are seeking stakeholder feedback on a range of AV policy issues. These solicitations offer an important opportunity to inform the emerging regulatory frameworks around AV technology, particularly in the commercial motor vehicle ("CMV") context. Analyzing responses to the agencies can also yield valuable information about industry and other stakeholder priorities, as well as the factors regulators are evaluating in their policy decisions.

Comments to both agencies are due on July 29, 2019. It's not too late to consider whether your company or organization's interests will be adequately represented in the proceedings and to develop a compelling submission if not. It's also an appropriate time to consider a broader strategy for monitoring and engaging in the federal policy discourse on AV technology as it moves forward. The K&L Gates CarTech team can help clients understand and analyze the issues at stake in the regulatory process and develop a plan for strategic engagement.

FMCSA SEEKS INPUT ON SAFE INTEGRATION OF AUTOMATED COMMERCIAL VEHICLES

The [advance notice of proposed rulemaking](#) issued by FMCSA addresses the operation of automated CMVs under the current Federal Motor Carrier Safety Regulations ("FMCSRs"), as well as the need for any new or updated FMCSRs. The notice highlights the distinction between FMCSA's jurisdiction over CMV operations and NHTSA's oversight of motor vehicle safety and equipment. This means that the FMCSRs reflect an emphasis on the role and responsibilities of CMV drivers, which are expected to change as automated driving systems assume more of the driving task. Indeed, FMCSA announced in the latest iteration of the U.S. Department of Transportation's [AV policy guidance](#) that "FMCSA regulations will no longer assume that the CMV driver is always a human or that a human is necessarily present onboard a commercial vehicle during its operation."

The notice describes FMCSA's preliminary observations about the continuing role for humans in CMV operations under a variety of potential operational scenarios, raising questions about the application of the FMCSRs in new contexts. For relatively less-automated vehicles (Levels 3 and below in the SAE International taxonomy), FMCSA states that its driver-related rules would continue to apply because a licensed CMV operator must be present at

the controls of the vehicle at all times. However, this conclusion could be different with respect to highly automated vehicles. For example, how should the FMCSA's regulation of driver hours of service ("HOS") apply in instances where a human driver is only in control of a vehicle during a relatively limited portion of a longer journey, such as navigating from a highway to a terminal or distribution facility?

The HOS issue is one of several that FMCSA has invited comments on as the agency considers a potential rulemaking on automated CMVs. As explained in the ANPRM, "FMCSA is considering amendments to its rules to account for significant differences between human operators and [automated driving systems ("ADS")]. The notice indicates the agency's "preliminary approach is to avoid development of an entirely separate set of rules for ADS-equipped CMVs and their operation."

The full list of issues on which the agency is seeking comment appears below. FMCSA has posed specific questions regarding several of these areas of interest, which can be viewed in the notice. And, of course, commenters can raise other issues they believe FMCSA should consider as it develops its AV policy.

FMCSA ANPRM Areas of Interest

- *The question of whether the FMCSRs require a human driver;*
- *Commercial Driver's License ("CDL") endorsements for operators of AVs;*
- *The application of drivers' HOS rules in the AV context;*
- *Medical qualifications for human operators of AVs;*
- *Distracted driving and monitoring issues pertaining to automated CMVs;*
- *Safe driving and drug and alcohol testing for operators of automated CMVs;*
- *Inspection, repair, and maintenance for automated CMVs;*
- *Roadside inspections for automated CMVs;*
- *Cybersecurity issues pertaining to automated CMVs;*
- *Confidentiality of shared information pertaining to automated CMV operations;*
- *CMV types, configurations, or cargoes for which fully automated operations should be restricted or prohibited;*
- *The development and potential adoption by FMCSA of voluntary industry consensus standards for automated CMV operations; and*
- *State policy, including efforts to promote consistency through the Motor Carrier Safety Assistance Program.*

NHTSA SEEKS FEEDBACK ON PROPOSALS TO TEST AND VERIFY REGULATORY COMPLIANCE

The NHTSA [advance notice of proposed rulemaking](#) has a narrower scope and represents the latest evolution of the agency's efforts to address regulatory barriers for vehicles with automated driving systems under the current

Federal Motor Vehicle Safety Standards ("FMVSS"). To date, these efforts have included the solicitation of stakeholder perspectives on potential barriers as well as an analysis by the [Volpe National Transportation Systems Center](#). The agency intends to use this and other research and analysis to update its regulations systematically, starting with the "100-series" FMVSS governing crash avoidance.

The notice addresses what NHTSA terms Automated Driving Systems-Dedicated Vehicles ("ADS-DVs") lacking traditional manual controls. Unlike ADS-equipped conventional vehicles that can generally satisfy FMVSS requirements, NHTSA's view is that ADS-DVs face three kinds of challenges in meeting the agency's crash avoidance standards: (1) certain standards may require manual controls; (2) the standard specifies how the agency will use manual controls in the regulatory description of how it will test compliance; or (3) the definition or use of particular terms (such as "driver") is so unclear as to require clarification before certification and compliance verification testing is possible.

The notice explains that simply rewriting the FMVSS to remove references to traditional manual controls addresses only part of the challenge in updating the standards to accommodate ADS-DVs, because "NHTSA itself must still be able to test these vehicles to ensure their compliance." The purpose of the ANPRM is to seek stakeholder feedback on several potential test procedures for ADS-DVs. NHTSA's evaluation and potential adoption of these procedures could be highly impactful for manufacturers of automated vehicles and AV equipment, as well as other industry participants. As with the FMCSA rulemaking, NHTSA has posed a series of detailed questions for stakeholder consideration that can be viewed in the notice.

SHAPING THE FUTURE OF FEDERAL AV POLICY

The FMCSA and NHTSA rulemakings are evidence of the federal government's continuing interest in AV integration. Updates to current regulations to accommodate AVs are a key step in that process and provide a crucial opportunity to shape the emerging regulatory frameworks around these technologies. The K&L Gates CarTech team can assist clients in developing strategies to intersect with, and capitalize on, this opportunity to advance priorities and address risks.

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