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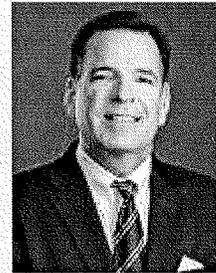
## NHTSA Shows Its Hand—Another Step Forward in the Regulation of Autonomous Vehicles

This week, the National Highway Traffic Safety Administration (NHTSA) released its much anticipated "**Federal Automated Vehicles Policy**." According to NHTSA, the Policy will "set the framework for the next 50 years with guidance for the safe and rapid development of advanced automated vehicle safety technologies."

While the Policy does not have the force of law and was issued "as agency guidance rather than rulemaking," **it is an important step because it further outlines NHTSA's current position on the development of highly autonomous vehicles (HAVs), and sets the stage for future regulatory action that could fundamentally change motor vehicle law in this country.** Implementing the Policy will be an evolving process, including comment from the public, states, insurance companies, component suppliers, and manufacturers.

The Policy clearly anticipates that manufacturers cannot consider automated vehicle technologies as "black-box" technologies where they delegate design, testing and validation to a supplier. NHTSA has put manufacturers on notice that they must take ownership of the entire lifespan of vehicles equipped with HAV technologies.

In the Policy, NHTSA adopted the SAE Levels of Automation – any vehicle with at least the ability to conduct some parts of the driving task and monitor the driving environment is an HAV under the Policy. Such ownership would require evidence of and potential pre-sale certification of a robust design, efforts to educate the public and dealers on the abilities and constraints of the HAV technologies, and an ongoing relationship with



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NHTSA, the public and even other manufacturers to share information about HAV performance. This ongoing relationship also includes an obligation to collect data on HAV performance and to provide secure and validated upgrades to the HAV systems.

NHTSA has again reminded the industry that even where no applicable FMVSS exists, it claims the authority to identify safety defects and issue recalls of vehicles or equipment that pose an unreasonable risk to safety.

The Policy is divided into four main parts and is summarized below, with special attention to some of the more significant new developments:

**1. Vehicle Performance Guidance for Automated Vehicles** – This section of the Policy outlines NHTSA's "best practices" for the safe design, development, and testing of HAVs prior to their commercial sale or operation on public roads. This includes NHTSA's 15 point "Safety Assessment" where it calls upon manufacturers and other entities developing HAV technology to voluntarily report how areas such as data sharing, privacy, cybersecurity, crashworthiness, and the consequences of an HAV's actions on others are being addressed. Notably, the Policy contemplates future mandatory disclosure of a Safety Assessment to NHTSA's Office of the Chief Counsel for each HAV system. Disclosure and data sharing concerning HAV-related accidents is also considered. In short, this section should be closely reviewed by manufacturers and other entities currently involved in the development of HAV technology because as NHTSA plainly acknowledges, certain elements may become mandatory through future regulatory action.

**2. Model State Policy** – In this section, a framework for the relationship between state and federal agencies that are impacted by HAV technology is addressed, including regulatory responsibilities for each branch of government. A Model State Policy, which builds upon previous policy declarations and recommendations that NHTSA has made to states engaged in autonomous vehicle regulation and rulemaking, is also outlined. This is a stark reminder of the enormity of the undertaking that states face in regulating HAVs. NHTSA has made it clear that states will need to address everything from registration and titling, to how liability will be allocated among HAV owners, operators, passengers, and manufacturers if a crash occurs.



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Notably, NHTSA stated that "states may determine that in some circumstances liability for a crash involving a human driver of an HAV should be assigned to the manufacturer of the HAV." This is yet another reminder that NHTSA is looking to manufacturers as ultimately responsible for how HAVs perform on public roads.

**3. Current Regulatory Tools** – NHTSA outlines the four primary "tools" it has at its disposal to address the introduction of new vehicle technologies, including: (1) letters of interpretation, (2) exemptions from existing standards, (3) rulemakings to amend existing standards or create new standards, and (4) enforcement authority to address defects that pose an unreasonable risk to safety. NHTSA also contemplates working with manufacturers and other entities to issue HAV-related interpretations and rulings on exemptions in a timely manner.

**4. Modern Regulatory Tools** – This section outlines NHTSA's current position on the introduction and application of new tools and regulatory authority to facilitate the safe and expeditious development of HAVs. This is one of the more significant and bold developments to come out of this Policy announcement, and it lays the groundwork for regulatory oversight that could transform the steps manufacturers must take in bringing new products to market. Currently, NHTSA permits manufacturers to self-certify compliance with FMVSS standards. The Policy hypothesizes pre-market approval in lieu of self-certification for HAVs, and examines various models for this certification process, including a process similar to the FAA's approval of commercial airliners.

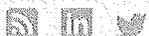
The **Bowman and Brooke Motor Vehicles Group** is committed to helping our clients successfully navigate this new legal and rapidly developing regulatory environment. As part of this effort, we will provide a series of short updates on many of the changes outlined in the Policy.

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