Long-awaited federal driverless car policy

By Patice Gore

The Department of Transportation's National Highway Traffic Safety Administration (NHTSA) released its long-awaited Federal Automated Vehicles Policy this week. Although the policy is not "law," it is the first step toward autonomous vehicle regulation on the federal level. NHTSA intends to continually update the policy and invites public comment and feedback to develop the policy and eventually federal law.

The policy is comprised of Vehicle Performance Guidance, a Model State Policy and a summary of regulatory tools.

Vehicle Performance Guidance

The Vehicle Performance Guidance "outlines best practices for the safe pre-deployment design, development, and testing of [highly autonomous vehicles or HAVs] prior to commercial sale or operation on public roads." Although there are no federal laws which specifically address autonomous vehicles, generally, manufacturers must self-certify their vehicles comply with all applicable Federal Motor Vehicle Safety Standards. The Vehicle Performance Guidance (VPG) is not mandatory, but the Department of Transportation expects manufacturers to use the VPG as well as industry standards "to ensure that their systems will be reasonably safe under real-world conditions." NHTSA also expects the VPG to be considered by all individuals and entities "manufacturing, designing, testing and/or planning to sell automated vehicle systems in the United States", both for test-level and production-level vehicles.

Data recording and sharing: Under the VPG, manufacturers and other entities are to develop a process for the testing, validation and collection of event, incident and crash data to determine the cause of malfunctions, failures or degradations. The recorded data must be collected, recorded, shared, stored, audited and deconstructed in accordance with the manufacturer's own consumer privacy and security agreements and notices. With respect to crash reconstruction,

the data collected by the manufacturer should be readily available for retrieval by the manufacturer or by NHTSA. The VPG only provides general statements regarding the type of data that should be collected, i.e., at least relevant information needed to reconstruct the adverse event. In addition to failures, the VPG instructs manufacturers to collect, store and analyze data regarding positive autonomous technology outcomes — instances where the autonomous technology worked to save human life or avoid collision.

The VPG encourages the sharing of data collected by manufacturers. Manufacturers should have both the technical and legal capability to share relevant recorded data and should develop plans to share their event reconstruction and other relevant data with other manufac-

turers. In terms of protecting the rights of individuals and limiting the dissemination of the data recorded, the VPG states that the data intended to be shared through a third party should not contain any personally identifiable information.

There are many unaddressed issues regarding data ownership and the policy notes that further research and discussion is needed to fully develop this issue and law.

Cybersecurity: The VPG only generally addresses issues relating to cybersecurity. Manufacturers are asked to develop a process to minimize safety risks, including cybersecurity threats and vulnerabilities. The process should include a systematic and ongoing assessment of the safety risk of the autonomous system to respond and address threats and to learn from cybersecurity breaches. The VPG encourages manufacturers to utilize and incorporate best practices already developed by the industry, particularly those from the SAE International Alliance, Association of Global Automakers, and Automotive Information Sharing and Analysis Center (Auto-ISAC). And finally,

manufacturers are also encouraged to share data regarding cybersecurity events in order to foster "group learning" amongst manufacturers. In fact, the VPG recommends manufacturers immediately report cybersecurity events to Auto-ISAC.

Privacy: Although the VPG clearly encourages manufacturers to share data recorded by autonomous vehicles, it falls short in terms of handling the privacy issues which will arise from the use of the data. The VPG states that manufacturers of highly automated vehicles should "take steps to protect consumer privacy", but using the data only in a manner consistent with the purpose of collecting the data, retaining data only as long as needed to achieve a legitimate business purpose, and clearly explaining to consumers how the data

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is collected, used and shared. The VPG does not give specific instructions on handling the data to protect privacy, it simply points to guidelines published by federal agencies and industry associations as recommended resources for manufacturers to follow.

Model State Policy

NHTSA strongly encourages states to allow the Department of Transportation alone to regulate the performance of autonomous vehicles and technology. The Model State Policy is a "model regulatory framework for States that wish to regulate procedures and conditions for testing, deployment, and operation of [autonomous vehicles]." The goal of the Model State Policy is to provide consistency in state laws to avoid a patchwork of inconsistent state laws that could impede innovation of autonomous technology — echoing concerns previously expressed by automobile manufacturers.

Under the Model State Policy, each state should identify a lead agency to take steps to implement a framework and regulations regarding autonomous

vehicle testing, including an examination of the state's current laws and the establishment of necessary authority to enact and amend necessary regulations. In particular, NHTSA recommends the state agency identify legal issues that need to be addressed before autonomous vehicles are deployed. For example, NHTSA suggests agencies review and update laws referencing a human driver and deem the autonomous vehicle as the "driver" for the purposes of those laws.
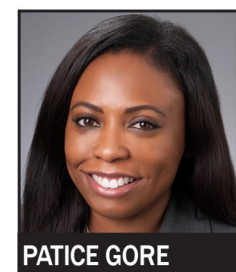
In terms of liability and insurance, NHTSA recognizes that states will determine these rules with respect to autonomous vehicles and recommends state legislators begin to consider how to allocate liability and address insurance issues for autonomous vehicles.

NHTSA and Modern Regulatory Tools

The policy concludes with a summary and discussion of regulatory tools which can be used to help manufacturers develop with autonomous vehicle testing and to develop regulations pertaining to autonomous vehicles in the future. Again, the policy is a work in progress and the regulatory tools are discussed in order to allow manufacturers and the public to help formulate federal law as to autonomous vehicles.

There is still a long road ahead for autonomous vehicle laws, but the federal government is finally beginning its journey.

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