

## NHTSA Lays Path For Eased Self-Driving Car Safety Rules

By **Linda Chiem**

*Law360 (March 17, 2020, 7:33 PM EDT)* -- The U.S. Department of Transportation on Tuesday proposed easing federal safety standards to allow autonomous vehicles to be built without controls or protective features meant for humans such as steering wheels or air bags, aiming to accelerate the broader development of self-driving cars starting with autonomous package-carrying vehicles.

The DOT's National Highway Traffic Safety Administration issued a notice of proposed rulemaking seeking to "modernize" the Federal Motor Vehicle Safety Standards, or FMVSS, and "clarify ambiguities" related to how passenger safety features such as seat belts and air bags should be designed in vehicles equipped with automated driving systems.

Revising existing vehicle design requirements and test procedures frees autonomous or self-driving car developers to roll out and test more vehicles and ensure they're safe enough for consumers, according to the highway safety regulator.

"With more than 90 percent of serious crashes caused by driver error, it's vital that we remove unnecessary barriers to technology that could help save lives," the NHTSA's acting administrator James Owens said in a statement Tuesday. "We do not want regulations enacted long before the development of automated technologies to present an unintended and unnecessary barrier against innovation and improved highway safety."

Specifically, the NHTSA's proposal calls for retooling 11 standards in the FMVSS related to occupant protection, side-impact protection, seating systems, door locks and door retention and other features related to shielding human occupants in the event of accidents.

Tuesday's proposal mainly applies to autonomous vehicles designed to carry property and goods, not people, so easing or eliminating some of those standards make sense, according to the NHTSA. The agency made clear that the proposal doesn't change existing occupant protection requirements for traditional passenger vehicles with manual controls.

Groups representing major automakers praised the NHTSA's proposal on Tuesday.

The Alliance for Automotive Innovation, which represents the manufacturers producing nearly 99% of cars and light trucks sold in the U.S., said automated vehicle technologies have the potential to yield many benefits to the traveling public and is a win for roadway safety.

"With this rulemaking proposal, the U.S. Department of Transportation is taking a necessary step toward reducing regulatory barriers for advanced safety technologies while preserving passenger protections," John Bozzella, the group's president and CEO, said in a statement.

Bozzella added that the U.S. regulatory framework must allow for the safe testing and deployment of automated vehicle technologies, and account for the fact that manual driver controls, such as the steering wheel and brake pedal, may no longer be needed in some automated vehicles.

Experts told Law360 on Tuesday that the industry has been hungry for additional clarity on federal design and engineering standards so the proposal is welcome news.

"I would say that overall, it would be very well-received by [the] industry, but whether each of the rules would be well-received could be a different story," said Aaron Jacoby, managing partner of Arent Fox LLP's Los Angeles office and head of the firm's automotive practice. "The idea is for a federal standard for this because, otherwise, it'd be left to the states, which, of course, differ in their approaches. But for the manufacturers and the people in engineering, what they want is certainty in what the standards are."

Erika Jones, co-leader of Mayer Brown LLP's connected and autonomous vehicle practice, said in a statement to Law360 on Tuesday that the notice of proposed rulemaking is "a welcome step" toward facilitating the certification of autonomous vehicles to the FMVSS.

"While a close review of the proposal will take some time, the initial review shows that the agency is striving to preserve the current level of occupant protection for seating positions that will potentially be occupied by human passengers while providing some sensible accommodations in the definitions and test procedures for vehicles that will not have traditional human drivers," she said. "At the same time, the agency also proposes that the crashworthiness standards will generally not apply to trucks without any seating positions, which is a common-sense solution to the certification challenges faced by manufacturers of those vehicles."

The notice of proposed rulemaking marks the Trump administration's latest effort to move the needle on building self-driving cars. In February, the NHTSA allowed California robotics company Nuro Inc. to deploy a self-driving vehicle, designed to deliver food and packages, without certain features typically required for human drivers. It was the first such exemption that the agency granted from the FMVSS. Technology and automotive stakeholders promptly hailed the move, saying it could open the door for further exemptions. But experts told Law360 then that passenger-carrying autonomous vehicles would face sharper scrutiny before they can be developed without typical safety standards.

And in January, the administration updated its federal policy governing self-driving cars with AV 4.0, which reinforced safety guidelines and unified federal agencies' efforts in developing and testing automated car technologies. The policy enumerated the federal government's wish list for tackling safety, security, privacy, mobility and other concerns related to automated vehicle technologies, but it doesn't contain hard-line regulations.

The previous version of the federal policy, AV 3.0, was released in October 2018. The one before that came out in September 2017. The first-ever federal policy on autonomous vehicles was rolled out by the Obama administration in September 2016.

The DOT and NHTSA have previously made clear that the federal government will regulate the safety design and performance standards for all motor vehicles, including self-driving cars. Meanwhile, state, local and tribal governments will be responsible for licensing human drivers, registering motor vehicles, enacting and enforcing traffic laws, conducting safety inspections and regulating motor vehicle insurance and liability.

--Editing by Jay Jackson Jr.