

# ALERT TRANSPORTATION SAFETY



## Amidst Coronavirus Pandemic NHTSA Issues First Proposed Rule Modifying the Federal Motor Vehicle Safety Standards to Remove Barriers to Automated Vehicles

Amidst the coronavirus pandemic, the National Highway Traffic Safety Administration (NHTSA or the Agency) is moving forward with Automated Driving Systems (ADS) rulemakings. On March 30, 2020, NHTSA issued the first of several anticipated regulatory actions proposing to amend the Federal Motor Vehicle Safety Standards (FMVSSs) to remove barriers to ADS-equipped vehicles, including those without traditional manual controls. As with prior guidance from NHTSA, the Agency seeks to prioritize safety while promoting technology innovation.

On March 30, 2020, NHTSA issued a [Notice of Proposed Rulemaking](#) (NPRM) proposing to amend several of the crashworthiness FMVSSs (200 Series) for vehicles equipped with ADS that do not have manual controls and vehicles that are designed to transport only property (Occupant-less Vehicles). NHTSA proposes several new or changed definitions, textual clarifications, and applicability changes to preserve the same level of occupant protection provided in current standards, while clarifying the application of the standards to ADS-equipped vehicles. Specifically, NHTSA addresses configurations where, due to the lack of manual controls, the “driver seat” should rather be considered a front “passenger seat.” NHTSA also proposes to modify the applicability of the 200 Series to Occupant-less Vehicles.

NHTSA issued this NPRM in response to comments received from the Agency’s January 18, 2018 [Request for Comments](#) that sought input on regulatory barriers in existing FMVSSs for ADS-equipped vehicles with non-traditional interior designs. Many commenters thought that most of the regulatory barriers in the 200 Series did not require extensive research as only minor textual changes—principally driver-related references—would be needed. Commenters agreed that the current crash protection provided to vehicle occupants should be maintained for ADS-equipped vehicles.

### What is NHTSA proposing?

- **Definitions.** NHTSA proposes new definitions for “driver air bag,” “driver dummy,” “driver’s designated seating position,” “passenger seating position,” “steering control system,” and “manually-operated driving controls,” and a revised definition for “outboard designated seating positions.” Notably,

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### CONTACT

**ASHLEIGH H. KRICK**  
*akerick@babstcalland.com*  
202.853.3466

**BOYD A. STEPHENSON**  
*bstephenson@babstcalland.com*  
202.853.3452

**JUSTINE M. KASZNICA**  
*jkasznic@babstcalland.com*  
412.394.6466

**Washington, DC**  
Suite 700  
505 9th Street NW  
Washington, DC 20004  
202.853.3455

**Pittsburgh, PA**  
Two Gateway Center  
603 Stanwix Street  
6th Floor  
Pittsburgh, PA 15222  
412.394.5400

**BABSTCALLAND.COM**

NHTSA did not propose to revise the regulatory definition of “driver” at this time, but instead made other definitional or textual changes to differentiate when the Agency is referring to a human driver or an ADS. NHTSA stated, however, that it may modify the definition of driver in a future rulemaking.

- **ADS-Equipped Vehicles with No “Driver Seat.”** NHTSA proposes textual modifications to account for ADS-equipped vehicles with no “driver’s seat,” but instead multiple front “passenger seats.” Under the terms of the Agency’s proposal, if there are manually-operated driving controls placed in front of any seating position, that seating position is considered the “driver’s designated seating position.” Seats that do not meet the definition of “driver’s designated seating position” will be treated as passenger seats. For ADS-equipped vehicles with no “driver’s designated seating position,” NHTSA proposes to apply the existing crash test performance requirements for a vehicle’s right front passenger seat to the left front passenger seat. NHTSA also proposes several textual modifications throughout the 200 Series to adjust spatial references to the traditional driver or “driver’s designated seating position.”
- **Advanced Airbags Requirements.** In ADS-equipped vehicles without manual controls, NHTSA proposes to apply the same tests for air bag suppression and deployment for out-of-position occupants currently applicable to the right front passenger seat to the left front passenger seat. NHTSA additionally seeks comment on whether the Agency should apply the child and adult advanced air bag requirements to both front seats in an ADS-equipped vehicle without manual controls. And, NHTSA asks for comment on whether the Agency should require that ADS-equipped vehicles be unable to move if a child is detected in the conventional “driver’s seat.” NHTSA also proposes to amend the advanced airbag suppression telltale activation requirements and references to the “passenger air bag system,” replacing them with requirements for unique telltales for each front passenger seat. NHTSA clarified that it is not addressing other telltales in this NPRM.
- **Vehicles with No Steering Wheel or Steering Column.** Recognizing that current occupant protection requirements assume a steering wheel and steering column, NHTSA proposes to amend the 200 Series to account for ADS-equipped vehicles without such features.
- **“Occupant-less Vehicles.”** NHTSA concluded that vehicles designed to exclusively carry property should not be required to meet FMVSSs designed to protect occupants. NHTSA noted that it is unclear how certain performance tests in the 200 Series would apply to Occupant-less Vehicles, which have no seats. As such, NHTSA exempts Occupant-less Vehicles from several of the crashworthiness standards. NHTSA notes that these vehicles may require different safety standards, but a discussion of such standards is outside the scope of this NPRM.
- **Parking Break and Transmission Positions.** NHTSA explains in the NPRM that the crash tests in the 200 Series do not require manually operated driving controls to conduct the tests. However, some tests require the parking brakes to be applied or the vehicle transmission in a certain position. NHTSA explained that it would be the manufacturer’s responsibility to provide the necessary means for the Agency to achieve the correct brake or transmission status to complete the compliance tests. This suggests that NHTSA may increasingly look to manufacturers to develop appropriate testing methodologies and technical solutions in order to certify FMVSS compliance.

### **What does NHTSA not propose in this NPRM?**

NHTSA does not propose any changes that would allow for ADS-equipped vehicles with unconventional designs and uses, such as vehicles with unconventional seating configurations (e.g., campfire or carriage-style seating), novel occupant seating positions (e.g., laying flat), and “dual-mode” vehicles: those designed to be operated by either human drivers or an ADS. NHTSA explained that the Agency must conduct more research before considering standards for ADS-equipped vehicles with unconventional seating arrangements or “dual-mode” vehicles.

## What's Next?

Comments are due on May 29, 2020. Given the coronavirus pandemic, state and local organizations have requested that the federal government pause comment periods on active rulemakings. While the White House has not yet responded, this comment deadline may be extended.

Stakeholders can expect further regulatory actions from NHTSA that propose amendments to the FMVSS. In the NPRM, the Agency stated that this was “one of a series of regulatory actions” that NHTSA would be taking to address regulatory barriers to ADS-equipped vehicles. NHTSA hinted throughout the NPRM that telltales and warnings may be the next topic the Agency addresses.

For more information on NHTSA’s amendments to the FMVSSs and other actions to remove regulatory barriers to ADS-equipped vehicles, contact Ashleigh H. Krick at [akrick@babstcalland.com](mailto:akrick@babstcalland.com) or 202.853.3466, Boyd A. Stephenson at [bstephenson@babstcalland.com](mailto:bstephenson@babstcalland.com) or 202.853.3452, or Justine M. Kasznica at [jkasznica@babstcalland.com](mailto:jkasznica@babstcalland.com) or 412.394.6466.

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