



Trump Administration Partners with US DOT in Releasing New Autonomous Vehicle Guidance

On January 8, 2020, the Trump administration, in collaboration with the U.S. Department of Transportation (US DOT), issued [Automated Vehicles 4.0: Ensuring American Leadership in Automated Vehicle Technologies](#). This is the federal government's fourth iteration of its voluntary guidance on autonomous vehicles (AVs). So far, the US DOT's hands-off approach to AV regulation has fostered technological innovation while allowing industry participants and states to explore different avenues for testing AV technologies on public roads. AV 4.0 does not disturb this approach, and instead focuses on explaining the research and development happening across the federal government and the opportunities for stakeholders to become involved.

Background

In September 2016, the National Highway Traffic Safety Administration (NHTSA) issued its first guidance on AVs called the [Federal Automated Vehicles Policy](#). The Policy provided a model state policy framework, explained NHTSA's current regulatory tools to address AVs, and described potential new tools and authorities that NHTSA could use in addressing AVs. NHTSA also provided vehicle performance guidance to AV manufacturers and developers for designing, testing, and deploying AVs.

NHTSA replaced this guidance in September 2017 with [Automated Driving Systems 2.0](#) (ADS 2.0). ADS 2.0 established a "Voluntary Safety Self-Assessment", recommending that entities engaged in the testing and deployment of AV technologies voluntarily submit an assessment of how they address safety to establish public trust and confidence in the technology. AV 2.0 outlined 12 safety elements (including system safety, operational design domain, crashworthiness and others). By the end of 2019, only a small fraction (under 25 percent) of AV testers published such assessments. ADS 2.0 also provided guidance to state legislatures on potential legislation and best practices for regulatory bodies charged with ensuring roadway safety.

US DOT released [Automated Vehicles 3.0](#) (AV 3.0) in October 2018, which established six principles that US DOT and its operating administrations would use in establishing federal AV policy and regulations across all modes of transportation. AV 3.0 expanded on previous versions and included best practices for state, local, and tribal governments allowing testing within their jurisdictions. Together, ADS 2.0 and AV 3.0 provided a strong framework for companies designing and testing AVs in assessing system safety and provided states with an idea on how to approach regulating AVs in their states.

What is Automated Vehicles 4.0 (AV 4.0)?

AV 4.0 builds on ADS 2.0 and AV 3.0, but takes a different approach. AV 4.0 is not focused on US DOT alone, but instead compiles research, development, and efforts to support AVs across the federal government. AV 4.0 imposes no new legal or regulatory burdens for AV developers and testers, nor otherwise changes the current

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federal regulatory framework, but instead it supports stakeholders with voluntary guidance and issues a repository of programs that stakeholders can become involved in with the federal government.

AV 4.0 establishes 10 core principles that the federal government will follow in setting AV policy that will ensure safety, promote innovation, and lead to a consistent regulatory approach. Those principles build on the principles established in AV 3.0, and include:

1. Prioritizing Safety
2. Emphasizing Security and Cybersecurity
3. Ensuring Privacy and Data Security
4. Enhancing Mobility and Accessibility
5. Remaining Technology Neutral
6. Protecting American Innovation and Creativity
7. Modernizing Regulations
8. Promoting Consistent Standards and Policies
9. Ensuring a Consistent Federal Approach
10. Improving Transportation System-Level Effects

AV 4.0 signals a continuation of a federal policy designed to leave industry at the wheel of AV development. As such, the AV industry is left to continue to navigate and help shape state laws and regulations related to AV testing and development. State and local governments are similarly left to implement the principles and best practices established in prior US DOT guidance documents. Meanwhile, AVs continue to operate on public roads as interest in the technology increases, both from entities seeking to test and deploy AVs and from the public.

What's Next?

Current federal regulations, when applicable to AVs at all, are antiquated and result in unintended barriers to AV deployment. For example, NHTSA's Federal Motor Vehicle Safety Standards, promulgated pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, include references to human drivers, foot pedals, steering wheels, or concepts that are unnecessary or inapplicable to AV technology. While NHTSA has issued several Requests for Information and Advance Notices of Proposed Rulemaking, the Agency has yet to propose any concrete changes that stakeholders can debate. Additionally, NHTSA has not yet responded to two requests for exemption from the Federal Motor Vehicle Safety Standards from companies requesting permission to deploy driverless-AVs on public roads.

Federal legislation remains stalled in Congress, resulting in a patchwork of state regulation. As a result, companies must juggle different requirements in each jurisdiction. Because companies cannot operate in all states, choosing a state can be tantamount to selecting winners and losers among them. A company's operating decisions are necessarily based on each state's laws and regulations, risking pitting states against each other in a race to the bottom where safety is the ultimate loser. Federal action is needed to promote nationwide deployment of AVs across state borders and in all modes of transportation. Currently, House and Senate committees are drafting legislation and have been periodically seeking input from stakeholders. But, a highly polarized Congress sitting in an election year may lack time to consider legislation on issues both parties agree merit their attention, including AV policy.

Babst Calland will be releasing a White Paper that comprehensively reviews current federal efforts and the patchwork of state approaches to AV regulation. To request a copy, contact info@babstcalland.com.

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