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Key Contacts

PDF



Melody
Drummond
Hansen
Silicon Valley

D: +1-650-473-2636



Jason A. Orr
Los Angeles

D: +1-213-430-6136



DOT Publishes Automated Vehicle Guidance Version “3.0”

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On October 5, 2018, the US Department of Transportation (DOT) published updated guidance on the testing and deployment of automated vehicles in the United States. The new guidance document, called “**Automated Vehicles 3.0: Preparing for the Future of Transportation**” (AV 3.0) is intended to supplement rather than replace its version “2.0” guidance published in 2017.

The DOT’s overall approach to automated vehicle (AV) developers remains largely the same: the agency continues to rely on and encourage industry self-regulation in the areas of safety testing, cybersecurity, and data privacy, where developers are encouraged to follow developing best practices and standards.

The DOT lays out a technology-neutral approach that focuses on “removing unnecessary barriers and issuing voluntary guidelines, rather than regulations that could stifle innovation.” At the same time, DOT emphasizes that it has authority to take enforcement action if an automated system inhibits safe operation of a vehicle.

AV 3.0 provides much more guidance than the DOT provided in its 2.0 version regarding developing standards for AV. For example, AV 3.0 points to progress made by standards developing organizations such as SAE International, the Institute of Electrical and Electronics Engineers, and the National Institute of Standards and Technology (NIST), among others, regarding automated systems design, on-road testing, and cybersecurity. AV 3.0 also encourages the industry to work with such standards developing organizations to develop voluntary data exchanges for

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information that could mutually benefit public and private actors, such as infrastructure conditions.

AV 3.0 touts the benefits of the Voluntary Safety Self-Assessments described in its 2.0 guidance. DOT views these assessments as “an important tool for companies to showcase their approach to safety.” The DOT encourages AV developers to make these assessments public “without needing to reveal proprietary intellectual property” and provides a website that gathers the public assessments of which the agency is aware.

Several key takeaways from AV 3.0 are:

- **Upcoming Agency Action:** AV 3.0 signals future DOT agency action on AVs, including (i) a request for public comment by the National Highway Traffic Safety Administration on existing motor vehicle regulatory barriers, (ii) an Advance Notice of Proposed Rulemaking by the Federal Motor Carrier Safety Administration (FMCSA) to identify regulatory gaps related to automated driving systems (ADS), and (iii) research by the Federal Transit Agency (FTA) and Federal Highway Administration (FHWA) related to vehicle automation.
- **Data Security and Sharing:** AV 3.0 encourages AV developers to adopt best practices developed by NIST, SAE International, the Alliance of Automobile Manufacturers, and others, for managing cybersecurity risks in the design, testing, and deployment of AVs. Developers are specifically encouraged to report to the Automotive Information Sharing & Analysis Center all discovered cybersecurity risks, exploits, threats, and vulnerabilities.
- **Privacy:** AV 3.0 includes a statement in support of consumer privacy, and indicates that DOT “works closely with the Federal Trade Commission (FTC)—the primary Federal agency charged with protecting consumers’ privacy and personal information—to support the protection of consumer information and provide resources relating to consumer privacy.”
- **AV Test Drivers:** DOT encourages states to help create AV test driver standards, training, and licensure requirements, including “minimum requirements for test drivers who operate test vehicles at different automation levels.”
- **Beyond the AV:** DOT recognizes that the promise and enablement of automated vehicles reach far beyond the vehicle. DOT mentions an alphabet soup of federal agencies and sub-agencies working in areas related to AVs. For instance, AV 3.0 includes policy statements and guidance for the FMCSA, the FHWA, the Federal Railroad Administration, FTA, and other agencies within the DOT related to each agency’s role in promoting AV development. It also provides guidance for state infrastructure, environmental, law enforcement, and transit agencies, among others, to develop strategies on how to accommodate automated vehicles.

AV 3.0 also addresses two important areas that it did not address in 2.0 or where it has changed position: on-road testing and automation in

commercial vehicles.

- **On-Road Testing:** DOT strongly supports the continued testing of AVs on public roads, recognizing that “[o]n-road testing and early deployments are important to improving automated vehicle performance and allowing them to reach their full performance potential.” Consistent with this reality, DOT “no longer recognizes the designations of ten ‘Automated Vehicle Proving Grounds’ as announced on January 19, 2017.” Instead, the agency will direct federal funds for research, pilot, or demonstration projects regardless of location. AV 3.0 also proposes a voluntary framework that AV developers can adopt for safety risk mitigation during on-road testing.
- **Automation in Commercial Vehicles:** While AV 2.0 mentioned commercial vehicles only briefly, AV 3.0 provides substantial guidance on automation of commercial vehicles such as heavy trucks or buses. In AV 3.0, DOT and FMCSA—the federal agency that regulates the interstate trucking industry—endorse automation in commercial vehicles: “The best way to accomplish FMCSA’s core mission of reducing fatalities and crashes involving large trucks and buses is to avoid unnecessary barriers to the development of ADS in commercial vehicles.” To that end, “going forward FMCSA regulations will no longer assume that the [vehicle’s] driver is always a human or that a human is necessarily present onboard a commercial vehicle during its operation.”

O’Melveny’s Automated and Connected Vehicles industry group continues to analyze AV 3.0 on behalf of the firm’s clients. If you have any specific questions, please reach out to Melody Drummond Hansen.

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Melody Drummond Hansen, an O’Melveny partner licensed to practice law in California, the District of Columbia, and Illinois, and Jason Orr, an O’Melveny associate licensed to practice law in California, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.

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