



December 3, 2018

Mr. Finch Fulton  
Deputy Assistant Secretary for Transportation Policy  
Office of the Secretary  
United States Department of Transportation  
1200 New Jersey Avenue SE  
Washington, DC 20590

Re: Request for comment regarding *Automated Vehicles 3.0: Preparing for the Future of Transportation*. Docket # DOT-OST-2018-0149

Dear Mr. Fulton:

Thank you for the opportunity to provide comments on the U.S. Department of Transportation's recent proposed publication: *Preparing for the Future of Transportation: Automated Vehicles 3.0 (AV 3.0)*. The future of Autonomous Vehicles is a technological breakthrough of enormous potential for driver safety, personal convenience, and economic productivity and development. Pennsylvania fully supports the development of this technology and is optimistic that the great strides made in the advancement of this technology will continue in the future. In addition, Pennsylvania is appreciative of your leadership role in this regard while at the same time partnering with states, industry, and stakeholders to ensure continued progress and safety.

The Pennsylvania Insurance Department shares the common goal of many other regulators in shaping the regulatory and legal environment so as to remove unnecessary obstacles to the development of Autonomous Vehicles while at the same time tailoring solutions to ensure public safety and sound industry practices. To this end, the Department writes to address an often-overlooked potential impediment to the development and deployment of Autonomous Vehicles. The issue of liability with regard to the testing, manufacturing, and operation of Autonomous Vehicles has largely remained a silent topic in the conversation about promoting Autonomous Vehicles. The Department is greatly encouraged to see that the issue of liability addressed in AV 3.0., but offers these comments to help elaborate on the issue and spark conversation about the difficulty that the liability issues may pose in the future.

As you have correctly noted in AV 3.0, while Federal safety standards operate with preemptive effect, this does not automatically exempt operators, testers, and manufacturers of autonomous vehicles from state liability, including tort liability. However, AV 3.0 goes on to state that "[u]nder Federal law, no State or local government may enforce a law on the safety performance of a motor vehicle or motor vehicle equipment that differs in any way from the Federal standard". While the Department understands the intent of that statement, we believe that it obscures several nuances under the case law interpreting the National Traffic and Motor Vehicle Sate Act (NTMVS). The United States Supreme Court has noted that Federal safety standards do not necessarily operate as maximum standards and the NTMVS does not, in every instance, prevent a state from adopting a more stringent requirement. *Williamson v. Mazda Motor of America, Inc.*, 562 U.S. 323, 335-6 (2011); *O'Hara v. General Motors Corp.*, 509 F.3d 753, 759 (5<sup>th</sup> Cir. 2007) ("The savings clause removes tort actions from the scope of the express preemption clause and preserves those actions that seek to establish greater safety than the minimum safety achieved by a federal regulation intended to provide a floor"). Further, Courts have noted that

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where a particular new technology has not been contemplated by a federal safety standard, a state law imposing a standard on new technology may be applicable. *Chrysler Corp. v. Tofany*, 419 F.2d 499 (2<sup>nd</sup> Cir. 1969). Given this, the question of whether a state safety standard is preempted turns on normal preemption principles that a state standard is only preempted to the extent that the standard conflicts with or frustrates the purpose of the Federal safety standard. *Harris v. Great Dane Trailers, Inc.*, 234 F.3d 398 (8<sup>th</sup> Cir. 2000). Thus, as can be seen, the case law in this regard is far more nuanced than the statement in AV 3.0 indicates.

Taking into consideration the fact that state safety standards as produced through tort liability may apply to Autonomous Vehicles, the next question which naturally arises is how will a state court deal with issues of liability in the event of a tort action. To the Department's knowledge, no state court has been faced with this question. Not only have courts not decided who is liable, but no court has addressed the manner in which liability is to be determined. By way of example, it is unclear whether products liability or some other negligence theory would be applied in such a case. Indeed, courts have yet to establish a standard of care in regard to testing, manufacturing and operation of Autonomous Vehicles. Compounding this problem, as testing of Autonomous Vehicles begins to be conducted in an ever-increasing amount of states, the possibility of inconsistent rulings in multiple jurisdictions threatens to muddy the already opaque legal landscape.

The threat that this inconsistency poses to industry and the continued development and progress of Autonomous Vehicles is not insubstantial. As different courts in different jurisdictions apply different legal theories and tests, it may become impossible for industry and regulators to know exactly what the rules of the road are. Having numerous standards in different states makes it nearly impossible for a tester, operator or manufacturer of Autonomous Vehicles to understand their exposure to potentially costly tort claims. This could raise the costs of insurance covering Autonomous Vehicle activity, reduce the innovation in the design of Autonomous Vehicles, and prevent the deployment of new technologies designed to improve the capabilities of Autonomous Vehicles. In short, the questions of liability are a barrier which, while not yet seen, may pose a significant impediment to the advancement of this technology and the eventual deployment and adoption of Autonomous Vehicles.

The Department understands that there is no perfect solution to this problem nor is there quick fix that can be implemented to solve the possible barriers posed by questions of liability. However, the Department does not believe this to be an insurmountable task. Industry, regulators, and stakeholders all share a common goal in understanding the problem and crafting a solution. To this end, the Department salutes USDOT for raising the issue of possible liability associated with Autonomous Vehicles. However, the Department feels that it is time for the liability issue to take prominence in the discussion on how to best encourage, develop, and advance this new technology.

Sincerely,



Jessica K. Altman  
Commissioner