

## Federal Automated Vehicles Policy: 6 Key Issues for the Automotive Supply Chain

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The U.S. Department of Transportation (“DOT”) and the National Highway Traffic Safety Administration (“NHTSA”) last week finally issued the long-awaited Federal Automated Vehicles Policy (the “HAV policy”).

The HAV policy, which addresses highly automated vehicles (“HAVs”) and HAV systems, raises several key issues not only for manufacturers using HAV systems in their vehicles, but also for automotive component suppliers, software and hardware tech companies, aftermarket upfitters, ride-sharing companies and fleet operators.

These key issues, which we will be addressing in more detail in subsequent e-alerts, are as follows:

1. Scope. The HAV policy pertains not only to motor vehicle manufacturers but also to any person or company manufacturing, designing, testing, selling, operating or deploying HAVs or offering services utilizing HAVs in the U.S. According to the HAV policy this will include equipment designers and suppliers; entities that outfit any vehicle with automation capabilities or HAV equipment for testing, for commercial sale, and/or for use on public roadways; transit companies; automated fleet operators; and “driverless” taxi companies. Importantly, the HAV policy’s coverage also goes beyond vehicles at the time of their manufacture, but it covers aftermarket changes and post-manufacture operations as well as software updates.
2. Pre-market approval: Currently, motor vehicle manufacturers “self-certify” the safety of their vehicles and their components. The HAV policy announces that the federal government intends to enact regulations and legislation to mandate that all HAV systems obtain governmental approval and certification prior to their use in vehicles on the public roads. Such a change will impact the entire supply chain. Not only will software and hardware tech companies need to work hand-in-hand with their customers in the approval process, but HAV operators and aftermarket upfitters outfitting vehicles with their own HAV systems will need to seek their own prior approval from NHTSA. The HAV policy also describes how the Federal Aviation Administration uses a pre-market approval process to manage safety risks in the aircraft industry, and that an FAA-like pre-approval process for HAVs is what NHTSA is seeking to introduce.
3. Safety Assessments. The policy announces NHTSA’s intention eventually to require manufacturers of HAV systems to submit a “Safety Assessment” for each HAV system, outlining how they are meeting NHTSA’s guidance in 15 areas. These areas include: data recording and sharing; privacy; system safety; cybersecurity; registration and certification; operations design domain; and event detection and response. The HAV policy’s guidance sets forth certain key areas to be addressed prior to testing or deploying HAVs on public roadways, and it applies to HAV original equipment as well as replacement equipment or updates, including software updates to automated systems.
4. Data Recording and Sharing. The HAV policy’s guidance also states that manufacturers *and other entities* should put in place a documented process for testing, validation and collection of event, incident and crash data, for the purposes of recording the occurrence of malfunctions, degradations or failures. Notably, the HAV policy goes on to assert that each entity should develop a plan for “sharing its event reconstruction and other relevant data with other entities.” Just how such data is to be shared with competitors is going to be a key issue for the supply chain and HAV operators.

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5. Registration. NHTSA will be requiring not only manufacturers but also other entities to submit identifying information and a description of the items they produce for use by or in coordination with HAV systems and features.

6. Supply Chain Contracting. An important implication of the new paradigm outlined in the HAV policy is answering the question how vehicle manufacturers and HAV operators are going to be able to fulfill their new obligations contemplated by the HAV policy. Most likely, HAV system suppliers, including software and hardware suppliers, will be required to be more involved with the manufacturers in the certification and assessment process. How the related liability and commercial risks will be contractually allocated between supplier and customer will also need to be addressed.

Richard A. Walawender  
+1.313.496.7628  
walawender@millercanfield.com

Brian S. Westenberg  
+1.248.267.3220  
westenberg@millercanfield.com

Robin W. Asher  
+1.313.496.8445  
rasher@millercanfield.com