

**Before the  
OFFICE OF THE SECRETARY OF TRANSPORTATION  
Washington, D.C. 20590**

In the Matter of	)	
	)	
Request for Comments on Preparing for	)	Docket No. DOT-OST-2018-0149
the Future of Transportation: Automated	)	
Vehicles 3.0 (AV 3.0)	)	83 Fed. Reg. 50,746
	)	
	)	

**COMMENTS OF  
THE COMPETITIVE ENTERPRISE INSTITUTE**

December 3, 2018

**Prepared by:**

Marc Scribner

Senior Fellow

Competitive Enterprise Institute

1310 L Street N.W., 7<sup>th</sup> Floor

Washington, D.C. 20005

(202) 331-1010

marc.scribner@cei.org

## Introduction

On behalf of the Competitive Enterprise Institute (“CEI”), I respectfully submit these comments in response to the Office of the Secretary of Transportation’s (“OST”) Request for Comments on the guidance document, *Preparing for the Future of Transportation: Automated Vehicles 3.0 (AV 3.0)*.<sup>1</sup>

CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective.<sup>2</sup> This comment letter is divided into two sections: (1) a critique of elements contained in the current guidance, and (2) a discussion of elements that could be included in future guidance, which corresponds to the AV 3.0 section titled “The Road Ahead.”

### I. A Critique of AV 3.0

In our comments in response to the AV 2.0 guidance of 2017, we urged the Department to include language in subsequent guidance discouraging states from limiting the eligible test driver pool for the on-road testing of automated driving system (“ADS”) to only residents of those states.<sup>3</sup> Specifically, we requested that “NHTSA should add a sentence explicitly encouraging states to accept a test operator’s driver license, regardless of the issuing state or country.”<sup>4</sup>

In 2016, we had made a similar request in response to the Federal Automated Vehicles Policy, noting that a lack of state-to-state driver license reciprocity for ADS test drivers “poses additional problems for developers wishing to test their vehicle automation systems in metropolitan areas that span across state lines, such as Washington, D.C., New York City, and St. Louis.”<sup>5</sup>

In AV 3.0, the language regarding ADS test drivers has improved, reading:

- 
1. *Preparing for the Future of Transportation: Automated Vehicles 3.0 (AV 3.0)*, *Request for Comments*, DOT-OST-2018-0149, 83 Fed. Reg. 50,746 (Oct. 9, 2018).
  2. *See* About CEI, <https://cei.org/about-cei> (last visited Nov. 30, 2018).
  3. Comments of the Competitive Enterprise Institute and R Street Institute in response to the Request for Comments on the Automated Driving Systems: A Vision for Safety, *Notice*, NHTSA-2017-0082, 82 Fed. Reg. 43,321 (Sep. 15, 2017), *available at* <https://www.regulations.gov/document?D=NHTSA-2017-0082-2810>.
  4. *Id.* at 6.
  5. Comments of the Competitive Enterprise Institute, R Street Institute, & TechFreedom in response to the Request for Comments on the Federal Automated Vehicles Policy, *Notice*, NHTSA-2016-0090, 81 Fed. Reg. 65,703 (Sep. 23, 2016), at 12, *available at* <https://www.regulations.gov/document?D=NHTSA-2016-0090-1000>.

States may consider minimum requirements for test drivers who operate test vehicles at different automation levels. States may want to coordinate and collaborate with a broad and diverse set of stakeholders when developing and defining jurisdictional guidelines for safe testing and deployment of automated vehicles.<sup>6</sup>

However, the lack of a clear statement on driver license reciprocity remains a problem. A proposed rule from the District of Columbia Department of Motor Vehicles requiring a D.C.-specific driver license endorsement for eligible ADS test driver was withdrawn after criticism following its publication in 2014.<sup>7</sup> While recognizing the inherent authority of states to set their own driver licensing requirements, a clear single-sentence statement from OST in future guidance in support of reciprocity in driver licenses for test drivers would reduce the likelihood of similar well-intended but misguided rules from being proposed in the first place.

Finally, we urge OST to eliminate references to “Complete Streets” from future guidance documents.<sup>8</sup> Complete Streets refers to what could best be described as a fad in urban planning, proposing that urban surface streets should be redesigned to promote equal safe access among motorists, pedestrians, cyclists, and transit users. Yet despite the popularity among some politicians, planners, and advocates, “there are no rigorous assessments of the value of Complete Streets policies.”<sup>9</sup> As such, Complete Streets policies to date have been primarily justified on blind faith in their efficacy.

Recent research on Complete Streets policies has not found empirical support that these policies create amenities valued by residents. Economists from The College of New Jersey published their findings earlier this year, concluding, “The results indicate that Complete Streets policy adoption has no effect on house prices and therefore we are unable to find a positive amenity value from a municipality-level commitment to Complete Streets.”<sup>10</sup>

Regardless of their efficacy, Complete Streets policies are inherently local in their significance. As a result, the federal government should remain silent on these local policies in general, given the lack of any connection between Complete Streets policies

- 
6. U.S. Department of Transportation, *Preparing for the Future of Transportation: Automated Vehicles 3.0 (AV 3.0)* (Oct. 4, 2018), at 20, available at <https://www.transportation.gov/sites/dot.gov/files/docs/policy-initiatives/automated-vehicles/320711/preparing-future-transportation-automated-vehicle-30.pdf> [hereinafter AV 3.0].
  7. 61 DCR 3587-88 (Apr. 4, 2014), available at <https://www.dcregs.dc.gov/Common/DCMR/SectionList.aspx?SectionId=45216>.
  8. AV 3.0, *supra* note 6, at 23.
  9. Donald Vandegrift and Nicholas Zanoni, *An economic analysis of complete streets policies*, 171 LANDSCAPE & URB. PLAN. 88 (2018).
  10. *Id.* at 96.

and national significance. The apparent promotion of them in AV 3.0 is wholly inappropriate and should be eliminated from future guidance.

## II. The Road Ahead

We agree with and applaud all five of AV 3.0's automation implementation strategies and the sequence in which they are presented.<sup>11</sup> For instance, calls for detailed ADS regulations are premature, as the technical standards on which they would be based have not yet been published by standards developing organizations. AV 3.0's implicit recognition of the National Technology Transfer and Advancement Act's provision on the use of voluntary consensus technical standards in federal regulations is a great improvement.<sup>12</sup>

However, we are disappointed with AV 3.0's limited discussion of rail automation. As we noted in comments to the Federal Railroad Administration ("FRA") earlier this year, a pending rulemaking would mandate two-person train crew minimums, effectively eliminating the economic case for highly and fully automated trains.<sup>13</sup>

While we appreciate the FRA's decision to categorize the train crew staffing proposed rule to long-term actions, CEI believes it should be formally withdrawn and the FRA should begin a research project on enabling highly and fully automated trains in the future.

## Conclusion

We appreciate the opportunity to submit comments to OST on this matter and look forward to further participation.

Respectfully submitted,

Marc Scribner  
Senior Fellow  
Competitive Enterprise Institute

---

11. ADS 3.0, *supra* note 6, at 35.

12. National Technology Transfer and Advancement Act of 1995, Pub. L. No. 104-113, § 12(d), 110 Stat. 783 (1996) (codified at 15 U.S.C. § 272 note).

13. Comments of the Competitive Enterprise Institute in response to the Request for Information on Automation in the Railroad Industry, *Notice*, FRA-2018-0027, 83 Fed. Reg. 13,583 (Mar. 29, 2018), *available at* <https://www.regulations.gov/document?D=FRA-2018-0027-3297>.