



Letter for the Record

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House Energy and Commerce Committee
Subcommittee on Digital Commerce and Consumer Protection
Hearing: Self-Driving Vehicle Legislation

Dear Chairman Latta, Ranking Member Schakowsky, and members of the subcommittee:

Thank you for the opportunity to supplement the record of your hearing with our views on vehicle automation technology legislation. The 14 discussion drafts before the subcommittee raise some important issues and propose some welcome policy changes. In light of the continued safety hazards associated with conventional driving, there is an emerging consensus on the need to provide regulatory clarity and relief to developers of vehicle automation systems in order that they can more rapidly deploy these life-saving technologies.

As a practical matter, a comprehensive update of Federal Motor Vehicle Safety Standards (FMVSS) to reflect emerging automation technology will require a significant effort on the part of the National Highway Traffic Safety Administration (NHTSA). To its credit, NHTSA and the Department of Transportation's Intelligent Transportation Systems Joint Program Office completed an initial audit of its FMVSS in March 2016, which was conducted by the John A. Volpe National Transportation Systems Center.¹

Yet, short of a comprehensive update of FMVSS, there is much that can be done to provide short-term clarity and relief. Here there is a strong role for congressional leadership. The 14 discussion drafts recognize this opportunity for congressional action, covering matters such as FMVSS exemption caps, preemption and federalism, and premarket approval authority.

With respect to FMVSS exemption caps, we strongly support the aims of the PAVE, ROAD, and EXEMPT Acts. FMVSS exemptions will be critical to the efforts of developers to quickly

¹ Anita Kim, Dan Bogard, David Perlman, and Ryan Harrington, "Review of Federal Motor Vehicle Safety Standards (FMVSS) for Automated Vehicles," *Preliminary Report*, John A. Volpe National Transportation Systems Center, U.S. Department of Transportation, March 2016, https://ntl.bts.gov/lib/57000/57000/57076/Review_FMVSS_AV_Scan.pdf.

deploy early generation vehicle automation systems, which are likely to be centrally managed fleet vehicles operated in urban areas.

With respect to preemption and federalism, the LEAD'R and INFORM Acts provide a great framework for clarifying the respective roles of federal and state authorities while also ensuring that federal and state authorities remain informed partners in the forthcoming deployment of vehicle automation systems.

With respect to premarket approval authority, the HAV Prompt Act would provide needed assurances that NHTSA will not be permitted to upend the long-established and successful FMVSS self-certification regime with either wholesale premarket approval or some hybrid as the agency had contemplated in its September 2016 Federal Automated Vehicles Policy guidance document.²

These proposals are all welcome and will serve as the basis for a productive debate on vehicle automation system policies. However, we do have concerns with the DECAL Act's proposed changes to Monroney label requirements. To be sure, in the future the Monroney label can be reasonably anticipated to reflect the presence and attributes of vehicle automation systems. But the Act is flawed in several respects.

First, the Act proposes to codify in statute the automation levels contained in SAE J3016. These standards are subject to great debate and will likely be frequently updated in the coming years. At least until automation level standardization at SAE stabilizes, it is unwise to codify them in either the statutory or administrative codes.

Second, while the Act presumes SAE J3016 will be updated, providing for future standards to supersede SAE J3016, this constitutes a transfer of lawmaking power to a private third-party entity. This is because SAE International's subsequent automation level updates will materially impact manufacturer obligations under the Act and these obligations are entirely subject to the whims of a private entity.

Third, any future Monroney label updates to reflect the presence of vehicle automation systems should be conducted by the Secretary of Transportation under 49 C.F.R. Part 575. Congress may wish to direct the Secretary to make these future changes, but any SAE standard referenced in Part 575 should be fixed in time, much in the same way NHTSA currently references SAE standards in FMVSS, in order to provide manufacturers with reasonable regulatory certainty.

² National Highway Traffic Safety Administration, "Federal Automated Vehicles Policy," U.S. Department of Transportation, September 20, 2016, <https://www.nhtsa.gov/av>.

Again, thank you for this opportunity to supplement the record on this important topic. My Competitive Enterprise Institute colleagues and I are happy to discuss this topic and these measures further with committee members and their staff.

Sincerely,

Marc Scribner