

## What NHTSA's Autonomous Vehicle Proposal Means For Cos.

By **Sarah Wilson, Jack Mizerak and Micah Telegen** (February 11, 2025, 6:04 PM EST)

On Jan. 15, the National Highway Traffic Safety Administration issued a notice of proposed rulemaking that would establish a new framework for reviewing and overseeing vehicles equipped with automated driving systems, or ADS. This initiative is called the ADS-equipped Vehicle Safety, Transparency and Evaluation Program, or AV STEP.

The proposal is one of the most significant actions taken to date by the agency regarding autonomous vehicles. Interested parties are invited to submit comments until Monday, March 17.

AV STEP would be a voluntary program open to vehicle manufacturers, ADS developers, fleet operators and system integrators.[1] Applicants would be required to submit detailed information to NHTSA about the operation and deployment of their autonomous vehicles.

Additionally, each applicant would need to provide an affirmative safety case, demonstrating that its technology is safe for its intended use. And each applicant would need to consent to, and submit the results of, an independent assessment of its technology and its safety management system.

Under the proposal, if requested and approved by NHTSA, an applicant could receive an exemption from applicable Federal Motor Vehicle Safety Standards, or FMVSS, through a new, streamlined process.

Moreover, acceptance into the program would "reflect a determination by NHTSA that the Applicant has provided evidence showing it followed well-documented engineering processes and has the needed technical, operational, and management resources in place to mitigate safety concerns." [2]

However, NHTSA would not make affirmative statements regarding the safety of the AV, and participants would remain subject to NHTSA's existing defect and investigation authorities.

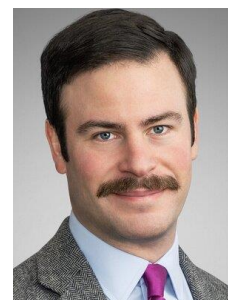
Through AV STEP, NHTSA would receive information from participants enhancing its "oversight, rulemaking, research, and transparency efforts" concerning autonomous vehicles.[3] The information



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gathered could also lay the foundation for future binding AV performance standards and related regulatory requirements.

The proposal comes amid growing interest in federal regulation of autonomous vehicles. During his confirmation hearing, Secretary of Transportation Sean Duffy emphasized the need for clear rules, rather than a confusing state-by-state patchwork that could hinder the industry's advancement in the global development of autonomous vehicles and related technologies.[4]

NHTSA is seeking comments on several aspects of the AV STEP rule, including:

- The overall benefits of the program for participants compared to costs, including the "balance of encouraging participation with the need to ensure that participation requirements are meaningful";[5]
- Whether nonpublic information gathered under AV STEP should be published;
- Whether there should be a cap on the number of vehicles a participant can introduce under the program;
- Whether vehicles approved by AV STEP should be open to the public for individual and commercial use;
- The circumstances under which remote driving should be permitted;
- Feedback on NHTSA's proposed data management plan; and
- Methods to validate that participants have taken proper precautions to mitigate and evaluate cyber risks.

Interested parties should consider whether their vehicles and equipment, including platforms and systems, might be eligible for the program. If they are, they should take advantage of the opportunity to shape this voluntary program, further establishing the foundation for AV regulatory oversight.

### **Legal Background**

Under the National Traffic and Motor Vehicle Safety Act, the manufacturer of an AV must either certify that its vehicle complies with all applicable FMVSS, or obtain an exemption before selling the vehicle. Many FMVSS are decades old, and were developed under the assumption that a human driver would operate the vehicle using a steering wheel and pedals.

NHTSA revised some FMVSS in 2022 to account for driverless vehicles.[6] But AVs still need exemptions from FMVSS to operate on public roads, especially if their designs diverge from traditional vehicles.

The National Traffic and Motor Vehicle Safety Act and related regulations include an exemption process, but it is not specific to AVs. It may also be overly restrictive and time-consuming, which could hinder further development.[7] General purpose exemptions are limited to 2,500 vehicles, under Title 49 of the U.S. Code, Section 30113(d).

Additionally, the special purpose FMVSS exemption and the "make inoperative" exemption are available

only under narrow circumstances that do not readily support commercialization. To date, only one company, Nuro Inc., has received a general exemption, and companies like General Motors Co. have faced lengthy exemption processes.

NHTSA's special exemptions have been primarily granted to companies seeking smaller-scale importation exemptions, or exemptions for early prototypes.[8]

### **Eligibility Criteria**

The program would be available only for vehicles equipped with a defined level of self-driving capabilities. Driver support features — referred to as advanced driver assistance systems, or ADAS — would not be eligible for the program.

Participants must have vehicles equipped with ADS, defined as "hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether the system is limited to a specific operational design domain," and without any expectation of an attentive human driver.[9]

While the proposed rule does not subscribe to SAE International's current levels of driving automation, NHTSA indicates that certain vehicles operating at SAE Levels 3, 4 or 5 would likely be eligible for the AV STEP program.[10]

The AV STEP program would further divide participants' applications into two categories, or steps, based on whether a vehicle relies on what it calls "fallback personnel." [11] Vehicles eligible for Step 1 would "operate only with continuous supervision from fallback personnel during all participating operations on public roads." [12] Step 2 would apply to vehicles that can function without fallback personnel.

Given the greater responsibility assumed by the ADS in Step 2 vehicles, the proposal says that "the level of system maturity is expected to be higher than at Step 1," and applications will likely be scrutinized more closely.[13]

Applicants would not be required to select the same step for all platforms or systems, and the proposal suggests that "Step 1 participants could apply to participate at Step 2 as their systems and operations mature." [14]

### **Program Highlights**

Several proposed features are particularly noteworthy: (1) the creation of ADS-specific exemption pathways; (2) the issuance of a final determination letter, outlining the terms and conditions governing program participation for each participant; (3) the requirement of an application assessment by an independent third party; and (4) increased reporting and information sharing with both NHTSA and the general public.

#### ***ADS-Specific Exemption Pathways***

NHTSA proposes to grant new exemptions in a more streamlined manner, by way of a new framework designed expressly for ADS-equipped vehicles. According to the proposal, this initiative aims to "fill the need for an FMVSS exemption suited for the current interim stage of ADS technology development," and to "process and oversee complex ADS exemptions more efficiently." [15]

AV STEP offers two pathways to exemptions: (1) the AV STEP FMVSS exemption, and (2) the AV STEP make inoperative exemption. While the proposed rule states that these exemption pathways will provide a more transparent method for collecting data for commercial use cases, it lacks specific details on how these new exemptions will operate.

For example, the proposed rule does not specify the duration of an exemption granted under the program. While NHTSA states in the preamble that "[i]n general, each vehicle manufactured under a Section 30113 exemption retains the exemption in perpetuity," Section 30113(b)(1) makes clear that such exemption must only be granted on a temporary basis.

In the proposal, NHTSA has "specifically request[ed] comment on how the proposed AV STEP exemptions would likely be utilized in comparison to NHTSA's other exemption programs, as well as on how to best design AV STEP to complement those other exemptions." [16]

Therefore, industry professionals involved in ADS development should strongly consider submitting comments to express their views.

### ***Final Determination Letters***

NHTSA proposes to review AV STEP applications through a three-stage process that includes: (1) initial review, (2) followup review and (3) preliminary determination. The preliminary determination would provide proposed terms and conditions for participation in the program, tailored to each applicant.

After 10 business days, NHTSA would aim to finalize these terms through a final determination letter. According to the proposal, the letter would contain "the full set of terms and conditions governing participation, including any metrics or reporting thresholds associated with customized terms," and include whether the applicant received any AV STEP exemptions. [17]

NHTSA states that acceptance into the program would not be an "assurance of safety" or "a validation of the ADS technology." Instead, it would "reflect a determination by NHTSA that the Applicant has provided evidence it followed well-documented engineering processes and has the needed technical, operational, and management resources in place to mitigate safety concerns." [18]

Participants would still be subject to NHTSA's existing defect and investigation authorities.

### ***Independent Assessments***

Particularly notable is AV STEP's proposed requirement that applications include a "safety case" assessment by "an independent entity with specialized experience and expertise." [19]

Per the proposal, a safety case is an affirmative, substantiated argument "consisting of claims supported by a body of evidence, that provides a complete, comprehensible, and valid case that a system is acceptably safe for a given use in a specified environment." [20] NHTSA proposes that each safety case should include a detailed analysis of nine topics:

1. Safety risk assessment;
2. Safety risk management;
3. System evolution;

4. Safety performance indicators;
5. Conformance with traffic safety law;
6. Vehicle fallback and assistance;
7. Human factors;
8. Crash avoidance; and
9. Tool qualification.

NHTSA believes that by requiring a comprehensive analysis on each of the nine aspects, it would be able to "probe the robustness of the analytical framework used to develop and oversee the ADS." [21]

The assessment would go beyond a technical review to also look at safety management systems. The proposed rule requires the assessor to consider eight elements, including but not limited to leadership and safety culture, plans for handling emergencies, and whether policies exist for encouraging reporting and timely investigations of safety issues.

Lastly, the independent assessor's report must evaluate the vehicle's conformance with industry best practices, as well as review community engagement and personnel training policies and data capture capabilities, if these topics are not already addressed in the safety case.

NHTSA acknowledges in the proposed rule that the safety case requirement is new, potentially expensive, and "the extent to which companies would voluntarily conduct [such] assessments in the future is ... uncertain." [22]

### ***Reporting Requirements and Information Sharing***

Also noteworthy is the scope of additional reporting requirements proposed by NHTSA, and the agency's intent to publish much of the data it receives from participants.

While the safety case itself would not be published, NHTSA "proposes to publish much of the application and reporting information" that it would receive under the program, and applicants would be required to accept such publication as a condition for participation in the program. [23]

Specifically, NHTSA proposes to publish the identities of applicants, requested exemptions, information from the critical operation characteristics of the application, and locations of operation.

Once approved, participants would also be required to publish certain reporting information, including the number of vehicles on roads, where they are operating and vehicle recovery events. [24] According to NHTSA, by making this information public, it hopes to "improve public transparency" and "foster ... public confidence" in ADS-equipped vehicles. [25]

In addition to data collection through the application process, the AV STEP program includes periodic reporting requirements, event-triggered reporting requirements and reporting requirements regarding changes to AV operation. Participants would need to submit certain data for each quarterly reporting period, including the extent of operations, the operational performance of the vehicle, and specific step-based requirements.

Participants must also report events such as crashes that occur involving a subject vehicle, and citable offenses like traffic safety violations. Step 2 participants must also report when a fallback person is used in ADS operations, so that NHTSA may ensure that these participants are meeting the expectations for

Step 2 participants and not functionally operating as Step 1 participants.[26]

Finally, participants must report any prospective change to its operation "that exceeds existing thresholds for customized terms." [27]

## **Conclusion**

While federal regulation of autonomous vehicles is still in its early stages, the proposed AV STEP program represents an important opportunity for industry participants to advocate for exemptions from mandatory standards that are not suitable for rapidly evolving technology-equipped vehicles.

It remains to be seen how the proposed rule will progress following the comment period and under the new administration. However, the proposal reflects NHTSA's interest in a more flexible and streamlined approach to certain types of autonomous vehicles, with an aim toward commercialization.

Therefore, interested parties should consider whether their vehicles and equipment, including platforms and systems, might be eligible for the program, and if so, consider submitting comments.

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[1] 90 Fed. Reg. 4130, 4138 (Jan. 15, 2024) (to be codified at 49 C.F.R. Parts 595 and 597).

[2] *Id.* at 4131.

[3] *Id.*

[4] Hearing on the Nomination of Sean Duffy of Wisconsin, to be Secretary of the Department of Transportation Before the S. Comm. on Commerce, Science, and Transportation, 119th Cong. (2025).

[5] 90 Fed. Reg. at 4138.

[6] Occupant Protection for Vehicles with Automated Driving, 87 Fed. Reg. 18560 (Mar. 30, 2022), <https://www.federalregister.gov/documents/2022/03/30/2022-05426/occupant-protection-for-vehicles-with-automated-driving-systems> (last visited Jan. 28, 2025).

[7] Exemptions from FMVSS are currently authorized under 49 U.S.C. § 30113, and implemented through 49 C.F.R. part 555 (general exemptions) and 49 U.S.C. § 30114(a) (special exemptions). These

authorities are administered through a number of programs, including the ADS-equipped Vehicle Exemption Program. Separately, make inoperative exemptions are authorized under 49 U.S.C. § 30122(c).

[8] 90 Fed. Reg. at 4136.

[9] *Id.* at 4131.

[10] *Id.* at 4138. The SAE International Levels of Driving Automation "provides a taxonomy with detailed definitions for six levels of driving automation, ranging from no driving automation (Level 0) to full driving automation (Level 5)." Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles J3016\_202104, SAE International (April 30, 2021), [https://www.sae.org/standards/content/j3016\\_202104/](https://www.sae.org/standards/content/j3016_202104/) (last visited Jan. 28, 2025).

[11] Fallback personnel are "specifically trained individuals that continuously supervise the performance of prototype ADS-operated vehicles and intervene whenever necessary to prevent a hazardous event by exercising any means of vehicle control." 90 Fed. Reg. at 4131 n.4.

[12] *Id.* at 4180.

[13] *Id.* at 4140.

[14] *Id.*

[15] *Id.* at 4136.

[16] *Id.*

[17] *Id.* at 4186.

[18] *Id.* at 4131.

[19] *Id.* at 4132.

[20] *Id.* at 4180.

[21] *Id.* at 4149.

[22] *Id.* at 4166.

[23] *Id.* at 4131, 4189.

[24] NHTSA proposes defining a vehicle recovery event as "any instance in which a vehicle needs to be recovered during roadway operations by personnel other than those already on board the subject vehicle, including, but not limited to, recovery after a minimal risk condition has been achieved." *Id.* at 4154.

[25] *Id.* at 4131.

[26] Id. at 4157.

[27] Id. at 4188.