

**Before the
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Washington, D.C. 20590**

In the Matter of)	
)	
Removing Regulatory Barriers for)	Docket No. NHTSA-2019-0036
Vehicles With Automated Driving)	
Systems)	84 Fed. Reg. 24,433
)	
)	

**COMMENTS OF
THE COMPETITIVE ENTERPRISE INSTITUTE**

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Introduction

On behalf of the Competitive Enterprise Institute (“CEI”), I respectfully submit these comments in response to the National Highway Traffic Safety Administration’s (“NHTSA”) Advance Notice of Proposed Rulemaking on Removing Regulatory Barriers for Vehicles With Automated Driving Systems (“ANPRM”).¹

CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective.² This comment letter addresses select numbered questions posed in the ANPRM.

Responses to Specific ANPRM Questions

Question 1.³ At this early stage in development of Automated Driving Systems-Dedicated Vehicles (ADS-DVs), we believe it is likely that a variety of alternative testing and verifying procedures will be needed that currently do not exist within the 100-series Federal Motor Vehicle Safety Standards (FMVSSs).

Generally speaking, we prefer Normal ADS-DV operation compliance verification whenever possible, for the reasons stated in the ANPRM. However, we recognize that these procedures may not satisfactorily meet the compliance goals of NHTSA, at least in the near-term. In particular, we believe the likelihood of early-generation production ADS-DVs being fleet vehicles—and thus precluding the possibility of NHTSA purchasing a vehicle from a dealership for testing—presents serious challenges to the agency. NHTSA’s engagement with manufacturers on this issue is critical, but the rest of our response will focus on the four other test procedure approaches in the ANPRM.

We oppose TMPE verification for the reasons provided by several commenters in the 2018 Request for Comments. Cybersecurity in particular remains an ongoing challenge in ADS-DV development and we worry NHTSA adopting TMPE test procedures could unnecessarily expand the attack surface to the detriment of safety.

We conditionally support TMEC verification provided it can be done in a manner in which the cybersecurity attack surface is not expanded.

We support compliance verification through simulation where possible.

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1. Removing Regulatory Barriers for Vehicles With Automated Driving Systems, *Advance Notice of Proposed Rulemaking*, NHTSA-2019-0036, 84 Fed. Reg. 24,433 (May 28, 2019) [hereinafter ANPRM].
 2. See About CEI, <https://cei.org/about-cei> (last visited Aug. 20, 2019).
 3. ANPRM, *supra* note 1, at 24,440.

We generally support Technical Documentation for System Design and/or Performance Approach, but recognize NHTSA's concerns over the efficacy of such compliance verifications.

We generally oppose the Use of Surrogate Vehicle with Human Controls approach, as we are concerned it could lead to suboptimal ADS-DV design changes made solely to support compliance verification, as opposed to providing safety or other benefits to vehicle users.

Fundamentally, we believe at least in the near-term, a combination of approaches may be necessary to adequately verify compliance without negatively impacting ADS-DV development. In addition to prioritizing Normal ADS-DV Operation whenever possible, NHTSA should make test-method flexibility a top priority as it moves forward with this rulemaking project.

Question 4.⁴ As we alluded to in our previous response, we are wary of NHTSA adopting inflexible test procedures for ADS-DVs. As NHTSA evaluates how to select test procedures, it must be careful not to unnecessarily impinge on future ADS-DV vehicle design. We are particularly concerned about these potential negative impacts with respect to promising ADS-DV designs with unconventional seating configurations or orientations.

Question 7.⁵ We believe NHTSA should consider establishing new definitions that apply only to ADS-DVs without traditional manual controls only if it believes it will be unable to modernize current general test procedures in a reasonable timeframe.

Conclusion

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

Respectfully submitted,

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4. *Id.* at 24,441.

5. *Id.*