

**Statement of the American Property Casualty Insurance Association to the
House Committee on Energy and Commerce Subcommittee on Consumer Protection and Commerce
Hearing on “Autonomous Vehicles: Promises and Challenges of Evolving Automotive Technologies”
February 11, 2020**

Automated driver assistance system (ADAS) and automated driving system (ADS) technology is rapidly increasing automation of the driving function. As these innovations fundamentally change the nature of driving, property casualty insurers will have a key role to play in encouraging the safe and efficient introduction of advanced vehicle technology. In order to do so, insurers must have access to information and data to innovate and develop services, products and pricing to support the new automotive technologies.

The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions-protecting families, communities, and businesses in the U.S. and across the globe. Together, APCIA members write 53 percent of the automobile insurance in the United States.

Today, the automobile insurance industry faces disruption on several fronts. The recent increase in the number of accidents, injuries and deaths on our roads comes at a time when vehicles are safer than ever due to better construction and crash avoidance technology. However, those same improvements that make vehicles safer also significantly increase the cost of repairs. The cost of medical care for auto accident victims is also increasing much faster than the rate of inflation.

While navigating these issues, insurers will be challenged to make fundamental changes in how they assess risk as the focus moves from the human driver towards the technology that operates the vehicle. While vehicle characteristics have always played a role in pricing auto insurance, assessing accident risk has primarily focused on drivers. Going forward, insurers will need to identify vehicles equipped with autonomous technology and have that identification reflected in motor vehicle records and crash reporting to assess the risk of different automated or autonomous driving systems, just as they are able to differentiate between drivers today.

Similarly, when determining liability in an auto accident claims situation, the primary approach today is to interview the drivers. With autonomous vehicles, insurers will need access to recorded vehicle data to provide evidence of how an accident happened. APCIA believes that our current state-based system of determining liability for accidents and compensating victims should be able to adapt to the changing nature of the driving risk if vehicle data is accessible and in a form that allows for prompt accident investigation and resolution of claims.

Access to and sharing of automated or autonomous vehicle data is a critical issue, not only for insurers, but for automotive technology developers, manufacturers, vehicle owners and numerous other stakeholders. At a minimum, vehicle owners or lessees should have the ability to authorize access to vehicle data to third parties with whom they wish to share data for any reason and APCIA urges the committee to address this issue in legislation. This can be accomplished while protecting an individual’s privacy and protecting developers’ intellectual property. Also, establishing a single set of rules for data access and sharing as well

as a standardized set of data elements that balances those interests, is critical.

A number of draft proposals have been circulated by the Committee's staff that do not directly address insurer data access issues, but they do address other issues that are important to APCIA members, such as updating the current event data recorder (EDR) law to apply to automated vehicles and the preservation of the current division of federal and state regulatory responsibilities for motor vehicles. These proposals have also included language that continues to defer to the states' primacy on issues relating to motor vehicle "rules of the road," liability issues, and insurance requirements and regulation.

Therefore, we offer the following comments with regard to the draft proposals to assist members of the House Committee on Energy and Commerce Subcommittee on Consumer Protection and Commerce in the development of autonomous vehicle legislation and continue to urge that legislation directly address data access.

Development of a Single Data Access Standard and Data Set

As the driving function becomes increasingly automated, it will be necessary for insurers to determine what automated driving technology was engaged and how the vehicle was being operated at the time of an accident. The draft would require the Secretary of Transportation (SOT) to update the data elements of the current event data recorder (EDR) law for highly automated vehicles (HAV) and automated driving systems (ADS). APCIA strongly supports creating a single standard for automated vehicle data access that follows the precedent of the Driver Privacy Act of 2015 which allows the vehicle owner to authorize access without the involvement of a third party (such as the manufacturer), provides access via court order or subpoena and provides access for federal, state and local government for safety research or for emergency response.

We are pleased that the discussion drafts include language directing the SOT to update the required data elements and we propose adding language to also direct the SOT to work with state motor vehicle regulators, and insurance regulators to develop a standard set of data elements for the update.

However, the current EDR law does not require that every vehicle have an EDR. While the technology would seem to dictate that such a device will be a necessary component, we believe that the law should be clear that all automated vehicles are required to have such a device.

Updating Federal Motor Vehicle Safety Standards for Automated Vehicles

Another proposal requires the SOT to develop and submit a "safety priority plan" to address specified elements related to the application of the Federal Motor Vehicle Safety Standards (FMVSS) to Highly Automated Vehicles (HAVs). APCIA believes that safety standards applicable to automated vehicles must set clear expectations for the public and provide clear direction for technology developers and manufacturers for compliance. However, the elements in this section use terminology such as "avoiding reasonable risks," "likely to maintain safety" and "function as intended," that would seem to be difficult to measure objectively and do not provide enough clarity.

This proposal also would require that the SOT issue a final rule requiring that each manufacturer introducing an HAV or ADS into interstate commerce submit a "safety self-assessment certification." The SOT cannot prevent deployment of HAV's or ADS's based on those assessments, however. Therefore, it is not clear if the SOT's recall authority applies to these systems, as it does for conventional vehicles and serves as the primary enforcement mechanism for the FMVSS. APCIA strongly believes that the Department of Transportation (DOT) should have this authority, as they do for conventional vehicles.

Standardization of Terminology for Automated Driving Systems (ADS) and Automated Driver Assistance (ADAS)

As has been the case with most legislative proposals related to automated vehicles, the recent drafts define terms related to automated vehicles and their systems based on the Society of Automotive Engineers (SAE) taxonomy. As the SAE “levels of autonomy” are widely known and accepted, APCIA agrees that this use is appropriate.

APCIA strongly believes that there should be standardization of terminology used to describe both ADAS and ADS used for highly automated or “self-driving” vehicles, which would be appropriate to add in this section. Common terminology would also enable the public to have a clearer understanding of the technology and allow insurers to identify and differentiate systems by performance for insurance product development and pricing.

Testing and Evaluation

Recent discussion drafts have also provided for amending and expanding the current provisions for exemptions to the Federal Motor Vehicle Safety Standards (FMVSS) for vehicles used in “testing, evaluation or demonstration.” We are pleased that the draft includes a provision requiring the manufacturer or testing entity to identify and submit information regarding the test vehicles, including confirmation on compliance with applicable state insurance requirements and service of process of the testing entity. It is not clear if this information will be available to insurers should they need to identify such a vehicle involved in a crash with another vehicle and we urge the committee to include provisions for insurer access to this information via a secure method.

Exemptions to FMVSS for Highly Automated Vehicles

APCIA believes that all vehicles, including highly automated vehicles, should meet federal and state safety requirements, that exemptions should be rare, and that these vehicles must be capable of complying with all state and federal motor vehicle laws. The recent discussion draft addresses exemptions to the FMVSS for highly automated vehicles by requiring that vehicles “meet the intent of the standard” or operate at an “overall safety level at least equal” to nonexempt vehicles and to establish that vehicles will protect occupants in an equivalent manner to nonexempt vehicles for exemptions to crashworthiness standards. The draft also applies these criteria to renewals of previously granted exemptions. The draft requires applications to include the development and testing data that is used to prove that the vehicle meets the criteria established for exemptions. Finally, the draft also requires that applications be published in the federal register for public comment.

APCIA supports these provisions that provide clear standards for exemptions and believes that increased transparency in the exemption process will improve the understanding of technology by insurers, allowing the industry to better support innovation, as well as improve public understanding and acceptance of highly automated vehicles. However, we are concerned that the significant increase in the number of vehicles to which an exemption can apply, with additional increases in subsequent years, will challenge the DOT’s ability to properly monitor the safety of the exempted vehicles. Adequate resources must be provided to DOT to monitor the safety of exempted vehicles.

Exemption Data Base and Reporting Requirements

The draft legislation also provides for a publicly available database, searchable by exemption label, make and model, that includes all vehicles to which an exemption to FMVSS or the bumper standard applies. The draft also includes requirements that HAV manufacturers report information on software updates, safety, performance and crash data to allow the DOT to properly monitor the safety of the exempted vehicles. APCIA supports these provisions and urges the committee to include information on performance and software updates in the database which would both aid the insurance industry to better support innovation, as well as improve public understanding and acceptance of highly automated vehicles.

Relationship of Federal Law to Other Laws

APCIA supports preservation of the current division of federal and state regulatory responsibilities for motor vehicles, with the federal government setting and enforcing safety standards for motor vehicles, including large vehicles, and recalls. The states should continue to have primacy on motor vehicle “rules of the road,” liability issues, insurance requirements and regulation, as they do today. APCIA believes that our state based legal liability system has proven to be very adaptable to new technology and, as such, APCIA opposes blanket immunity for manufacturers as well as strict liability imposed on vehicle owners for accidents involving automated vehicles.

The recent legislative drafts include language that would preempt states from enacting or enforcing laws regulating “design, construction, or performance” of HAVs, ADS or their components, unless state law is identical to the federal law or regulation. The draft specifically preserves the state’s ability to regulate compliance with traffic laws, laws related to the operation of the vehicle, or laws regulating the sale, distribution or repair of HAV, ADS’s, or components.

Preservation of the current division of regulatory primacy between the states and the federal government appears to be the intent of the draft. However, for clarity we suggest that these provisions specify that states have primacy on liability issues, insurance requirements and regulation, as they do today.

We also note that the draft contains a place holder for pre-dispute arbitration language. APCIA supports alternative dispute resolution as a pro consumer, cost effective alternative to litigation and we would oppose any restrictions that could impact insurance contract language provisions that are already regulated by states through form filing and requirements.

Highly Automated Vehicle Advisory Council

The insurance industry has an essential role to play in encouraging the safe and efficient introduction of advanced vehicle technology and the industry should be represented on any advisory committee related to automated vehicle safety, data access or liability issues. We urge that any legislation creating such an advisory board or council to specify inclusion of a representative from the property casualty insurance industry on the council.

Conclusion

Automated driving technology holds great promise for the future and implementing clear standards for safety, maintaining the current federal and state roles in regulating automated vehicle technology and ensuring that insurers have access to vehicle data on reasonable terms to efficiently handle claims, develop products and underwriting methods are an essential first step toward that future. APCIA and its members

stand ready to assist members of Congress and look forward to working together to establish a regulatory framework for automated driving.