

Biz Turns To Feds For Certainty On Automated Truck Rules

By **Linda Chiem**

Law360, New York (October 27, 2017, 7:40 PM EDT) -- The commercial trucking industry is urging the federal government to draft performance and technical specifications for automated and connected trucks in order to preclude potentially conflicting rules from states, a preemptive move meant to lock in legal certainty surrounding the fast-evolving technology, experts say.

The American Trucking Associations endorsed its first-ever policy on automated trucks on Oct. 24, laying out a broad outline of targets for fostering innovation and enabling the deployment of automated and connected technologies within the trucking industry.

It's an early attempt by the commercial trucking group to get in front of ongoing discussions on Capitol Hill concerning how to regulate the emergence of self-driving or automated cars, and to ensure that commercial trucks and trailers outfitted with similar highly automated functions don't fall into any legal landmines, experts say.

The trucking industry is committed to having a seat at the table in connection with legislative and regulatory discussions related to the development and deployment of automated technology, according to Marc S. Blubaugh, partner and co-chair of Benesch Friedlander Coplan & Aronoff LLP's transportation and logistics group.

"The ATA in particular is sending a message to its members and others that it is not simply going to be a passive conduit for distributing information, but rather, that it intends to be proactively involved and engaged in charting the path forward on autonomous trucks," Blubaugh said. "The trucking industry recognizes that steps being taken now with respect to passenger vehicles will inevitably have implications for commercial motor vehicles."

The ATA's automated trucks policy broadly targets priority areas such as safety, the flow of interstate commerce, federal preemption and states' rights, infrastructure and connectivity, public education, and others.

The group wants the federal government to be solely responsible for regulating performance and technical specifications of automated and connected truck technology. It says states should maintain their existing responsibilities that do not interfere with the flow of interstate commerce — emphasizing that any conflicting or duplicative requirements among federal and state agencies would create roadblocks to deploying the technology and delay the safety benefits, fuel savings, emissions reductions and potential efficiency improvements to the U.S. transportation system.

"When conflicts arise between federal and state regulations, the federal government must take a clear leadership role and, if necessary, exercise federal preemption," the ATA policy says.

"It's much more important that the federal government mandate this stuff and put in provisions regarding preemption at the front end so they don't have to litigate them," Thomas C. Regan, LeClairRyan's automotive industry team leader, told Law360. "The [commercial trucking industry] doesn't want there to be a situation where you can drive in these 38 states with automation, but not once you pass over to these other 12 states."

Attorneys say that the policy is intended to gain greater acceptance for including trucks in automated vehicle legislation.

"Much of the policy is highly generalized and futuristic; the phrase that comes to mind is 'mom's apple pie in the sky,'" Strasburger & Price LLP transportation and logistics partner Mark J. Andrews said. "The rhetoric supporting preemption, and urging the government not to pick technological winners and losers, is what I would hope to hear from a major voice for this industry. The section about 'infrastructure and connectivity' does offer useful suggestions about specific technology that are missing elsewhere in the policy."

However, the ATA's policy uses a rather light touch to address big challenges such as educating consumers and motorists to where they'd feel comfortable enough having automated trucks alongside them on U.S. roads and reconciling the technology, according to Andrews.

"First, I believe the section on 'public education' underestimates the heavy lift that will be needed to gain wide acceptance from motorists for the idea of sharing the road with driverless trucks," he said. "Second, the policy totally ignores a widening gap between the increasingly sophisticated IT being used by logistics providers and vehicle manufacturers on one hand, and on the other hand, the federal regulators' increasingly cumbersome and user-hostile IT."

The ATA's automated trucks policy comes just as Congress is considering federal legislation that for the first time attempts to regulate the rollout of automated driving systems. However, the bills currently on deck do not contain any provisions specifically addressing automated trucks.

The U.S. House of Representatives in September **swiftly passed** the Safely Ensuring Lives Future Deployment and Research in Vehicle Evolution, or SELF DRIVE, Act aiming to ease the process for deploying self-driving cars on U.S. roads by updating federal rules for safety, vehicle testing and other measures, while also more **clearly defining the roles** federal and state governments will have in regulating highly automated vehicles and those who operate them.

On the Senate side, the Senate Committee on Commerce, Science and Transportation in early October passed by voice vote the American Vision for Safer Transportation through Advancement of Revolutionary Technologies, or AV START, Act, which advances efforts to improve roadway safety through the deployment of self-driving vehicles. That bill similarly does not cover automated or driverless trucks.

"Over the past year, ATA has been active in this debate, advocating for recognition of the importance of the trucking industry when it comes to the development of automated vehicles," ATA President and CEO Chris Spear said in a statement. "The adoption of this policy gives a clear direction about what our industry will expect and require as policymakers establish a comprehensive framework for automated vehicles."

Benesch's Blubaugh said that the trucking industry cannot afford to be late to the party.

"I agree that the industry is very shrewd to be out in front on these issues — many of which have significant legal wrinkles involving cybersecurity, data privacy, updating traffic laws, new insurance markets, eventual federal preemption, etc.," he said.

Further clarity on the U.S.' regulatory framework will be crucial, experts say, especially given the momentum in the self-driving truck space. Automakers like Daimler and Volvo, as well as technology companies like Alphabet Inc.'s Waymo LLC and Uber Technologies Inc.-owned Otto, are already actively developing and testing self-driving trucks.

"The trucking industry has clearly been active in developing this type of technology through resources, through investment of time and expertise. So while they're trying to develop the technology, this is just the next step in that and [will] not get handcuffed by whatever administration happens to be in place when these regulations [are finalized]," LeClairRyan's Regan said.

Meanwhile, the Trump administration just recently updated a federal policy aiming to accelerate the development of self-driving or autonomous cars, but also leaves it up to Congress and federal agencies to **come up with rules for enforcement**.

The U.S. Department of Transportation's National Highway Traffic Safety Administration in September issued broad federal guidance on how auto manufacturers, technology giants, artificial intelligence developers and other companies should go about testing their automated car technologies to get them ready for mainstream America.

The guidance signals that federal officials are eager to offer additional regulatory clarity to companies while also steering clear of tripping up the industry with potential rules that won't keep up with fast-evolving automated car technology, experts have told Law360.

The NHTSA's **Automated Driving Systems: A Vision for Safety 2.0** is more succinct and significantly pared down from the Obama administration's September 2016 federal automated vehicles policy that it now replaces, squaring with the Trump administration's promise to take a lighter touch to self-driving car regulation so as not to impede business.

--Editing by Philip Shea and Kelly Duncan.