

Billing Code: 4910-9X

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

**[Docket No. OST-2019-XXXX]**

### **Non-Traditional and Emerging Transportation Technology (NETT) Council**

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT)

**ACTION:** Request for Comment.

**SUMMARY:** In April 2019, the Department of Transportation (DOT) created the Non-Traditional and Emerging Transportation Technology (NETT) Council, an internal deliberative body at DOT, to identify and resolve jurisdictional and regulatory gaps associated with non-traditional and emerging transportation projects pending before DOT, including with respect to safety oversight, environmental review, and funding issues. The Office of the Secretary of Transportation invites comments on projects, issues, or topics that DOT should consider through the NETT Council, including regulatory models and other alternative approaches for non-traditional and emerging transportation technologies.

**DATES:** Comments are requested by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. See the SUPPLEMENTARY INFORMATION section on “Public Participation,” below, for more information about written comments.

**WRITTEN COMMENTS:** Comments should refer to the docket number above and be submitted by one of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the SUPPLEMENTARY INFORMATION section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an associations, business, labor union, etc.). You should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78) or at <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For policy issues, please email NETTCouncil@dot.gov or contact Philip Sung at 202-366-0442. For legal issues, please contact Sean Ford at 202-366-1841. Office hours are from 8 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

### **SUPPLEMENTARY INFORMATION**

Congress provides authority to the Department of Transportation (Department or DOT) to regulate the safety of transportation. This authority is implemented by the Department's operating administrations and extends to particular technologies and certain operational scenarios. Some new technologies and operational scenarios may not fit precisely into the Department's existing regulatory structure. The Non-Traditional and Emerging Transportation Technology Council (Council or NETT Council) was formed to provide project sponsors a single point of access to the Department to discuss innovative transportation plans and proposals, to coordinate oversight of such projects, and to develop and establish Department-wide processes, solutions, and best practices for managing new transportation technology subject to the Department's jurisdiction.

Since the Council's inception, innovators and stakeholders have approached the Department with concepts and ideas that vary in their stage of development. To ensure that the Council is responsive to the needs of the public and industry, the Department is interested in hearing from stakeholders and the public as to whether and to what extent the Department's existing regulatory construct supports or hinders innovation. The

Department is also seeking comment on how the NETT Council can better be in a position to support transportation innovation.

The questions below are meant to guide commenters; however, commenters are invited to provide their views on issues surrounding non-traditional and emerging transportation technologies and other general comments related to this topic. Further, although the questions focus on specific types of stakeholders, we would appreciate the views of all commenters on all questions. Finally, in this notice, the Department is not requesting comment on issues related to automated vehicles<sup>1</sup> or unmanned aerial systems (UAS), except to the limited extent of operations where these technologies (or technologies based on or derived from them) are being used in ways that do not fit within the Department's existing regulatory structures. To the extent possible, please provide technical information, regulatory citations, data, or other evidence to support your comments.

1. Are there existing Federal transportation laws or regulations that inhibit innovation by creating barriers to testing, certifying or verifying compliance, or operating non-traditional and emerging transportation technologies? Please provide specific examples, explain why the requirement imposes a barrier, and identify the specific law or regulation that you believe should be changed and describe how it should be changed. Please identify all associated regulations that should be changed, including specific citations to the Code of Federal Regulations and explain the need for the change.

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<sup>1</sup> For a description of the Department's activities on automated vehicles, please visit <https://www.transportation.gov/AV>.

2. Are there existing design or performance requirements that may contribute to a reduced safety purpose or impose more cost or restriction on the design of non-traditional and emerging transportation technologies than is warranted?
3. If you identified a barrier to innovation in response to Question 1 or 2, above, can this barrier be removed or mitigated without resorting to additional rulemaking? If rulemaking is necessary, please identify all associated regulations that should be changed, including specific citations to the Code of Federal Regulations and explain the need for the change and how safety will not adversely be impacted.
4. If you identified a barrier to innovation in response to Question 1 or 2, above, is legislation necessary to remove or mitigate that innovation barrier? Please identify the barrier with specificity, explain why it is a barrier, and identify the specific law that you believe should be changed. Please describe how it should be changed and why there will be no adverse impact to safety.
5. Do you believe that there are international bodies or organizations (at any level) that the Department should be working with to develop standards or best practices for potential application to non-traditional and emerging transportation technologies in the United States?
6. Does the current landscape of State/local/Tribal regulation for non-traditional and emerging transportation technologies hinder or support innovation? More specifically:
  - a. What laws or regulations do State, local, or Tribal governments rely upon, other than Federal transportation laws and regulations, to

regulate the safe design, construction, and operational safety of non-traditional or emerging transportation technologies (e.g., hyperloop and non-traditional tunneling)? In what ways do these laws or regulations hinder or support innovation? (Please be specific in your response.)

- b. Are there State/local/Tribal occupational license regimes that govern the safe conduct of operators of non-traditional or emerging transportation technologies? Do they hinder or support innovation?
  - c. Are there State/local/Tribal laws that assist innovators in developing safe prototypes, road testing, deploying, or commercializing new transportation technologies? (Comments on regulatory gaps or feasibility studies and analyses are encouraged.)
7. Would intermodal or cross-sector regulations support or inhibit innovation and ensure safety of transportation infrastructure, as well as the safe movement of goods, services, capital and the traveling public? Please explain why or why not. Include specific examples, studies, or other data if available.
8. Would cross-sector or cross-modal transportation safety regulations support or inhibit investments in non-traditional and emerging transportation technologies? Please explain why or why not. Include specific examples, studies, or other data if available.
9. How can Federal policies, regulations, or legislation be used to foster mobility service providers, remove barriers to new non-traditional and emerging transport operations, or promote safe, efficient, environmentally sound and

user-friendly mobility systems? Please explain, using specific examples where feasible.

10. Technology Companies/Innovators: What standards or code of conduct are relevant to ensuring a balance between supporting innovation and ensuring the safety of transportation infrastructure and the traveling public?

11. Technology Companies/ Innovators: What actions can the NETT Council take to support your work, while maintaining its safety focus?

- a. At what point in the development of the technology or operation would it be ideal to interface with the NETT Council?
- b. Considering the resource constraints and the potential cross modal nature of non-traditional and emerging transportation technologies, would an on-going relationship with the NETT Council during the development and construction of your project be helpful to assess potential safety risks and unintended consequences be helpful? If so, how often should engagements occur?

12. Local, State, Tribal, and Other Public Entities: What support should the NETT Council consider providing when non-traditional/emerging transportation technology companies propose a non-traditional or emerging transportation technology or system in your jurisdiction?

- a. In what way could Federal action help maintain the overall safety of the design, construction, and operation system? What aspects do you believe are best addressed by State, local, and Tribal entities? Please provide specific examples to support your comment.

- b. In what way could Federal actions assist you in overseeing any risks (safety or other) and unintended consequences that are local in nature? In what way could they interfere with your oversight and enforcement authorities? Please provide specific examples to support your comment.
- c. In what way could Federal actions improve or clarify oversight roles? Please provide specific examples to support your comment.

13. Local, State, Tribal, and Other Public Entities: Has a company approached you about a non-traditional or emerging transportation technology? If so, are there any best practices you can share from working with companies that could shape how the NETT Council approaches non-traditional or emerging transportation proposals?

### **Public Participation**

#### *How do I prepare and submit comments?*

Your comments must be written in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under ADDRESSES. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical

Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

*How do I submit confidential business information?*

Any submissions containing Confidential Information must be delivered to OST in the following manner:

- Submitted in a sealed envelope marked “confidential treatment requested”;
- Document(s) or information that the submitter would like withheld should be marked “PROPIN”; Accompanied by an index listing the document(s) or information that the submitter would like the Departments to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and
- Submitted with a statement explaining the submitter's grounds for objecting to disclosure of the information to the public.

OST will treat such marked submissions as confidential under the FOIA, and will not include it in the public docket. OST also requests that submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. In the event that the submitter cannot provide a non-confidential version of its submission, OST requests that the submitter post a notice in the docket stating that it has provided OST with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the

submitter's organization or name (to the degree permitted by law) and the date of submission.

*Will the agency consider late comments?*

U.S. DOT will consider all comments received before the close of business on the comment closing date indicated above under DATES. To the extent possible, the Agency will also consider comments received after that date.

*How can I read the comments submitted by other people?*

You may read the comments received at the address given above under WRITTEN COMMENTS. The hours of the docket are indicated above in the same location. You may also see the comments on the Internet, identified by the docket number at the heading of this notice, at <http://www.regulations.gov>.

Issued in Washington, D.C. on **November \_\_, 2019**, under authority delegated at 49 CFR 1.25a.

Finch Fulton,

Deputy Assistant Secretary for Transportation Policy