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California Revises Draft Regulations for Autonomous Vehicles

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On September 30, 2016, the California Department of Motor Vehicles ("DMV") issued a revised draft of regulations that could open the doors to the widespread deployment of driverless vehicles—with no steering wheel, accelerator, or brake pedal—on public roads. The new draft regulations update a draft released in December 2015, and take into account both extensive public comment and the National Highway Traffic Safety Administration's ("NHTSA") recently issued federal guidance on automated vehicles. The new draft also comes on the heels of a new law, signed by Governor Brown on September 29, 2016, that allows the testing of a fully autonomous, driverless vehicle by the Contra Costa Transportation Authority. The new DMV draft regulations can be found [here](#).

The DMV has stressed that the draft regulations are not a "formal rulemaking" but rather "the next step in an iterative process" to collect feedback that "will be used to inform a future rulemaking by the DMV." Interested parties can provide written comments to the DMV at LADRegulations@dmv.ca.gov, and can attend a public workshop currently scheduled for October 19, 2016, in Sacramento.

The new draft regulations are generally more permissive than those in the previous draft. California is a focal point for the development and testing of autonomous vehicle technologies and one of the largest potential markets for autonomous vehicles. As such, developers of autonomous vehicle technologies have urged state officials to permit the testing and, eventually, post-testing deployment of fully autonomous vehicles—vehicles that do not require a driver present to monitor the vehicle's operation. Taking these comments into account, the DMV's new draft regulations dispense with some of the more restrictive aspects of the previous draft:

- First, the regulations no longer require a driver behind the wheel of every autonomous vehicle, allowing for the testing and deployment of vehicles that are not equipped with steering wheels, manual brakes, or other devices that would allow a human driver to take control.
- Second, the DMV no longer contemplates developing its own vehicle performance or testing standards, instead incorporating NHTSA's Automated Vehicle Performance Guidance.
- Third, the revised draft regulations would not create a special driver's license certificate for anyone operating an autonomous vehicle.

The overall structure of the draft regulations remains the same as the prior draft. Manufacturers will be required to apply for and obtain special permits from the DMV before testing or deploying autonomous vehicles on public roadways. The proposed permitting regime envisions a slightly different process depending on whether the manufacturer is seeking (a) to test an autonomous vehicle with a test driver present; (b) to test a fully driverless vehicle; (c) post-test deployment of autonomous vehicles that have a driver present; or (d) post-testing deployment of fully driverless vehicles. But generally speaking, the manufacturer must do the following (among other requirements) to obtain an autonomous vehicle permit:

- Provide proof of financial ability to satisfy any liability arising from the operation of their autonomous vehicles;
- Certify that the vehicle's operation will be in accordance with NHTSA's federal Vehicle Performance Guidance and provide a copy of the Safety Assessment Letter contemplated in the NHTSA Guidance;
- Show cooperation with "local authorities" for the testing of fully driverless vehicles;
- Develop a "law enforcement interaction plan" to educate law enforcement and first responders on how to interact with the driverless vehicle;
- Develop a "consumer education plan" (for non-testing deployment) to instruct end-users on the operation of the vehicles;
- Certify that it will report any accidents to the DMV within 10 days; and
- Maintain data on "disengagements" of the autonomous technology and provide annual reports to the DMV.

For post-testing deployment of autonomous vehicles, the DMV's draft regulations also envision a continuing role for manufacturers after their products have been sold, requiring regular software updates to deployed autonomous vehicles.

And the draft regulations seek to clarify whether the driver or manufacturer should be responsible for a vehicle's safe operation and compliance with traffic laws. In situations where the driver is required to take control of an autonomous vehicle or operates the vehicle outside of its intended domain, the driver is responsible. When the autonomous system is in control (such as a vehicle that is fully driverless), the manufacturer is responsible.

The new draft regulations would also seek to regulate whether a vehicle can be advertised as "autonomous" or "self-driving" under the DMV's authority to enforce truth-in-advertising provisions in the California Vehicle Code. The draft regulations define "autonomous vehicle" to include only vehicles at Levels 3, 4, and 5 of the SAE International spectrum of automated driving systems—vehicles that can perform some or all driving tasks without active monitoring or control by the driver. Under the draft regulations, vehicles that do not meet this definition—such as vehicles that are equipped only with limited driver assistance or advanced safety features—could not be advertised with the terms "auto-pilot," "self-driving," "automated," or similar terms.

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