



October 25, 2017

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RE: Notice of Modification of Proposed Regulations, Testing and Deployment of Autonomous Vehicles

The Center for Auto Safety appreciates the opportunity to comment on the Department of Motor Vehicles' (DMV) Notice of Modification of Proposed Regulations affecting Title 13, Articles 3.7 and 3.8, pertaining to the testing and deployment of autonomous vehicles in California. The Center, founded in 1970, is a non-profit consumer advocacy organization dedicated to improving vehicle safety, quality, and fuel economy. On behalf of our members, particularly our California members, the Center is pleased to offer the following response regarding the DMV's proposal.

The Center believes that autonomous vehicle (AV) technology has great potential to reduce the now-rising vehicle fatality and injury rates we see on America's, and California's, roads. However, the current voluntary federal regulatory guidance provides consumers with little assurance that their personal safety and economic interests are fully protected in the face of a rapidly evolving marketplace that appears to value the interests of AV manufacturers over the public interest.

In the absence of federal authority, the California DMV efforts on AV regulation are of great importance to the nation's conversation regarding the initial testing, development, and deployment scenarios that these manufacturers have proposed. While we applaud and support many of the DMV's proposals, the Center is concerned that the certain proposed modifications to these regulations would require consumers to bear impracticable burdens in their ownership of autonomous vehicles.

In sum, the promise of fully AV technology is that the safety equipment built into the vehicle, and operated by the vehicle, will remove human driver "error" and dramatically reduce or even eliminate road and traffic accidents and fatalities. Drivers who purchase this technology, particularly in its first few years in the marketplace, will be dependent upon manufacturers to produce vehicles that are, quite simply, never wrong. Yet, unfortunately, some of the proposed regulations completely reverse decades of established understanding regarding who is responsible for an auto defect or malfunction once the car leaves the lot.

Today, absent intentional malfeasance, if a vehicle has a defect or leaves the factory with a safety problem, it is the responsibility of the manufacturer to fix it or make the consumer whole. The DMV's proposed modifications, however, appear to condition manufacturer liability on the vehicle owner's ability to properly maintain and update AV systems.

The proposed modification to § 228.28(a)(2) and (b) suggest that manufacturers are only responsible for the safe operation of autonomous vehicles "where such vehicle has been maintained in compliance with the manufacturer's specifications and any modifications to the vehicle that affect the operation of the vehicle's autonomous technology are in compliance with the manufacturer's specifications." This is a standard that is poorly worded, ill-defined and fails to meet basic common-sense tests. If an owner does not change the oil according to the manufacturer's specifications, thereby falling out of compliance, is the manufacturer then excused from ensuring the safe operation of that autonomous vehicle? Likewise, if an owner "modifies" a vehicle using parts that are not in compliance with manufacturer's specifications, but such parts have no relation to the functional safety of the autonomous vehicle, is the manufacturer nonetheless excused from the responsibility to ensure safe AV operation? Our answer to both of these questions is a resounding "NO."

Similarly, in §228.06(a)(9)(C) of the proposed regulation, owners of autonomous vehicles "shall be responsible for ensuring that the vehicle is operated using the manufacturer's most recent update as specified in this subsection." This would once again seem to have placed the burden for something that simply cannot be done by the consumer alone – exclusively on the consumer. In a world of push-technology that allows software and hardware distributors ultimate control over the end users' ability to use a product, this proposed modification makes little sense. Many potential AV owners have limited technological skills, including disadvantaged or disabled members of the population, who should not be expected to perform such tasks. If AVs are to truly be of the maximum benefit that is being promised to the most vulnerable members of our society such as seniors, disabled, and disadvantaged, upkeep and use of the vehicle must be practical and reasonable. This burden shift is neither.

Both of these proposed modifications run counter to the advertised promise of AV, which explicitly intends to remove the human driver from control of the automobile. Requiring AV owners to perform tasks beyond their capability, and letting manufacturers off the hook when the vehicle predictably fails, is an improper regulatory approach to ensure consumer safety.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Levine". The signature is fluid and cursive, with a large initial "J" and "L".

Jason K. Levine
Executive Director