



Oct. 25, 2017

**Consumer Watchdog comments on revised DMV Autonomous Vehicle Regulations:
Premature, irresponsible deployment rules weaken protections further in latest iteration**

Current California Department of Motor Vehicles regulations covering autonomous vehicle testing have set the standard for the nation by promoting innovation while protecting the safety of our highways. Sadly, rules covering deployment of robot cars proposed last spring were premature and irresponsible. September's revision has made the regulations worse.

As Consumer Watchdog said in our April 24 comments, it makes sense to propose the regulations in two articles, one covering testing and the other deployment, rather than one article covering both as was suggested in early drafts. As we noted then, the testing regulations, Article 3.7, could – with some appropriate amendments – be adopted. Please refer to our April comments as they remain relevant.¹ Article 3.8, as first proposed, demonstrates that the DMV has fallen victim to the siren song of the robot car developers over the last two years and the substance of the proposed regulations no longer puts the public's safety first. The deployment regulations are a license to kill.

There are two fundamental flaws in the revised proposed regulations:

First, the regulations provide no enforceable safety standards, passing the buck to the federal government, where the Trump Administration stresses the voluntary nature of any safety guidance and can't even be bothered to nominate an administrator for the National Highway Traffic Administration.

¹ Consumer Watchdog Comments on DMV Autonomous Vehicle Regulations, April 24, 2017, <http://www.consumerwatchdog.org/resources/dmvavcomments042417.pdf>

Second, language in the first proposal, that appeared to hold manufactures liable when the robot technology caused a crash, has been gutted to place the burden on consumers and to give manufactures an easy path to escape responsibility when their robots go awry. The DMV does not have the authority to determine liability issues in its regulations and Sec. 228.28 is a substantial overreach beyond the Department's authority.

No Safety Standards

Autonomous vehicle testing, as has been demonstrated with the current regulations, can be safely conducted without enforceable FMVSS or their equivalent state standard so long as there is adequate monitoring by a human driver. Proving that sound regulations don't deter innovation, forty-two companies have received permits to test their robot cars in California. Deployment requires enforceable Federal Motor Vehicle Safety Standards or their state equivalent if the federal government fails to meet its responsibility and does not act.

Consumer Watchdog calls on the Department to focus only on Article 3.7 at this time. Action on most of Article 3.8 and deployment of robot cars must be deferred until the federal government acts or the state sets its own safety standards.

The DMV's proposed Article 3.8 is fundamentally flawed because it relies on the federal government to set safety enforceable safety standards for autonomous vehicles. However, as the DMV's Initial Statement of Reasons notes, "NHTSA has not adopted any regulations governing the testing or operation of automated, or self-driving, vehicles on public roads, streets, and highways."² In the National Highway Traffic Safety Administration's *Federal Automated Vehicles Policy*, released by the Obama Administration, the agency called for manufacturers to voluntarily file a 15-point safety assessment letter that outlines how they are dealing with 15 self-driving policy issues. However, as the DMV noted then, "NHTSA has not yet finalized the safety assessment process."³

² Initial Statement of Reasons, Page 3, March 10, 2017

³ Initial Statement of Reasons, Page 3, March 10, 2017

So, there was no federal safety standard specifically governing autonomous technology and NHTSA's policy amounted to asking automakers voluntarily to please drop a letter in the mail that says, "yes, we thought about these issues." The Trump Administration is weakened that request and now simply asks that a manufacture voluntarily publish a safety assessment. The first version of the regulations required manufacturers to file the NHTSA safety assessment with the DMV. The new version asks the assessment be filed, but only if one is published. If one isn't published, there's no obligation.

Anchoring California's autonomous vehicle policy to such ephemeral federal policies – actual standards don't even exist – cannot possibly provide adequate protection for the public. Without Federal Motor Vehicle Safety Standards (FMVSS) that apply to autonomous vehicles, California must enact its own safety standards.

Article 3.8, Section 228.28 Driver and Manufacturer Responsibility

In the original proposed language, the DMV appeared to try to hold the manufacturer liable when there is a crash caused by a robot car. Although that language perhaps made intuitive sense, attempting to set liability is an overreach of your authority and you should not try to do it.

Instead of correcting you error and simply deleting Sec. 228.28, the revised proposed regulations threaten consumers and give manufacturers a gigantic loophole, essentially allowing them to escape all responsibility for their robot technology when it goes awry. The new language states: the manufacturer is responsible (under Level 3 and 4/5) only when the vehicle has **"been maintained in compliance with manufacturer's specifications and any modifications to the vehicle that affect the operation of the vehicle's autonomous technology are in compliance with the manufacture's specifications."**

You can be assured that whenever there is a crash involving an autonomous vehicle, the manufacture will tell the operator, "You didn't properly maintain the vehicle."

The burden of proof falls to the operator and even worse the manufacturer sets the standards for maintenance. The DMV is not the appropriate entity to decide issues of liability. Those questions must be resolved by courts and the system of tort law.

There is nothing in the law that gives the DMV the right to enact Sec. 228.28. The law that charged the Department with writing autonomous vehicle regulations, SB 1298 (Padilla, 2012) has no such language. In fact, as the law was being debated manufactures did attempt to insert language giving immunity when a third party converted a vehicle to autonomous technology, but that language was rebuffed. We can only believe that the new proposed language in this regulation is another attempt by industry to immunize itself from any responsibility.

The courts are the place to address new technologies and how liability should be allocated. Traditional theories of accident liability under California law will and should apply. This unwarranted overreach will only muddy the laws and must not be enacted.

Article 3.7, Testing of Autonomous Vehicles

As noted above California's testing regulations have set the standard for the nation, allowing innovation while protecting our safety. For the most part Consumer Watchdog supports the proposed testing regulations. We welcome the new specificity of the all-important required "disengagement reports" and the form to file them. Given the pace of the developing technology, however, they must be filed more frequently. Consumer Watchdog believes the quarterly reports should be required.

Section 227.38 as amended makes important clarifications about local authorities that must be notified about a manufacturer's testing plans. Nonetheless, it falls far short of what should be required. It requires notification, not approval. An early draft proposal had appropriate language that ensured a municipality would approve of a robot car company's test plans. It said, "The manufacturer provides a reference to the ordinance or resolutions from

local authorities that specifies the operational design domains within the jurisdiction of the local authorities that vehicles may be operated.⁴” Approval by local authorities is essential, particularly when robot cars without drivers are being tested. Under the revised regulations, a company could decide that it wanted to test how a robot car interacts with children headed to school. Under the proposed regulation the company would simply have to tell authorities what school zone they planned to target and at what time. Municipal authorities must be able to grant – or refuse – permission before a city’s public roads are used as private laboratories and threaten residents’ safety.

Although enactment of Article 3.8 is premature and irresponsible at this time, there is one section that should be enacted as soon as possible and Consumer Watchdog proposes it be added to Article 3.7. This provision, *Section 228.30 Statements About Autonomous Technology*, would prevent manufacturers from using terms to describe a vehicle that would lead people to believe it is autonomous when it is not. The section refers to “the use of terms to describe the performance of a vehicle that is known, or by the exercise of reasonable care should be known, will likely induce a reasonably prudent person to believe a vehicle is autonomous.⁵”

This is an important protection. However, the language in the earlier draft proposal, which gave examples, is much stronger. It said, “Terms such as “self-driving”, “automated”, “auto-pilot”, or other statements made that are likely to induce a reasonably prudent person to believe a vehicle is autonomous ...⁶”

Examples whenever possible are important. Tesla’s “Autopilot” has killed two people who likely thought their Level 2 car was more autonomous than was the case. Consumer

⁴ Autonomous Vehicle Draft Regulations, 9/30/2016, Sec. 227.54 (b), Page 16

⁵ Modified Express Terms, Article 3.8, Deployment of Autonomous Vehicles, Section 228.30 (b), Page 36

⁶ Autonomous Vehicle Draft Regulations, 9/30/2016, Sec. 227.90 (b), Page 35

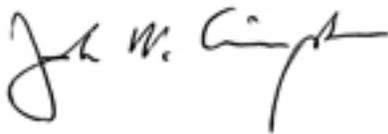
Watchdog urges the original draft language be restored and this language be offered as a section of Article 3.7

Conclusion

The DMV's original autonomous vehicle regulations put safety first, while still fostering responsible innovation. It is imperative that the Department maintain those high standards, continuing to put public safety first, as it proposes new regulations. The proposed regulations – especially Article 3.8 – fail to pass that threshold and the latest amendments make them even worse.

As the department moves toward enacting regulations covering testing of robot cars without drivers and the deployment of self-driving vehicles, both with and without human drivers, it is appropriate that the new regulations are offered in two separate articles, Article 3.7 and Article 3.8.

Deployment of robot cars and enacting Article 3.8 is premature and irresponsible. Deployment requires enforceable safety standards and there are none. If the Trump Administration fails to act, California must protect its citizens. The proposed regulations rely on federal safety standards, but there are none. Regulations that rely on a foundation that simply does not exist are at best little more than a meaningless house of cards and at worst a license to kill. Consumer Watchdog calls on the Department to withhold Article 3.8.



John M. Simpson
Privacy Project Director

Enclosure: With these comments I am also submitting Consumer Watchdog's report, *Self-Driving Vehicles: The Threat to Consumers*, by Harvey Rosenfield, and ask that it be included in the public comment record.