

California DMV's Proposed Autonomous Driving Regulations: Public Hearing Provides Insight Into the Obstacles to Overcome

Self-driving vehicles have rapidly developed from a concept seen as part of the distant future to a current reality in those states where laws allow for the testing and deployment of these vehicles. Although there has been a lot of discussion about the pioneering technology and its ability to dramatically improve safety on public roads, there are still many challenges that lie ahead. Legal uncertainty, diverging interests and objectives of the main stakeholders, and reports about specific safety related incidents involving self-driving vehicles raise questions about the ability to quickly deploy autonomous driving technologies on the nation's roadways.

Despite the challenges and in an effort to stay at the forefront of this evolving technology, California has taken an active role in developing a regulatory approach to autonomous vehicles. On March 10, 2017, the California DMV (CA DMV) released its proposed draft regulations on the testing and deployment of Level 3 and higher autonomous vehicles (summarized in our prior article, which then opened a 45-day comment period. Industry representatives, consumer advocacy groups, local governments, individual residents and other interested parties submitted comments on the draft regulations. While these comments and other industry lobbying efforts were not made public, some of these insights were shared during the CA DMV public hearing held on April 25, 2017. The below summarizes some of the key takeaways from that hearing.

Regulations Leave Room for Improvement

The CA DMV hearing was attended by those within the industry, including vehicle manufacturers, technology companies and ride-sharing companies, as well as consumer advocacy groups and government representatives, all of whom agree the proposed regulations should be modified before being finalized, although with different views on what modifications should be made.

Industry

Those actively engaged in developing autonomous driving technologies took the opportunity to highlight what many believe is the main benefit of autonomous driving technologies – the potential to prevent accidents caused by human error and to save thousands of lives each year. A second benefit touted by the companies is the ability to transform the ways in which cities are able to minimize traffic and build a more efficient and less expensive infrastructure.

Industry representatives, concerned that the CA DMV proposed regulations are too restrictive and could hinder the advancement of autonomous driving technologies, encouraged the CA DMV to provide more flexibility for testing and deployment of autonomous vehicles. In particular, comments were made that the draft unnecessarily regulates privacy protection and liability issues and does not correspond with already existing regulations in these and other areas. In addition, it was suggested that deference to a federal framework would avoid the challenges of a state-to-state patchwork system that is currently being created.

Consumer Advocacy Groups

Consumer advocacy groups and individuals shared the industry's general praise for a technology that has the potential to reduce accidents caused by human error. Of note, specific interest groups shared their support for technology that has the potential to change people's lives generally, but could also benefit specific groups. As an example, they stressed that autonomous vehicles will provide disabled and blind people with the opportunity to have independent vehicle mobility.

Despite highlighting the positive impact of the technology, consumer protection groups and individuals also voiced significant safety concerns. They urged California to require more transparent and extended testing of the technology before deployment of autonomous vehicles. They also remarked that even testing, especially in bigger dense cities, has significant safety implications for other drivers, as well as cyclists and pedestrians. With minimal federal motor vehicle safety standards relating to self-driving technologies currently in effect, safety advocates called for stricter oversight rules on a state and local level.

On non-safety related issues, there was significant disagreement between consumer protection groups on the issue of data protection. While some saw the draft regulations as being sufficient in this regard, others demanded better protection of confidential consumer data.

Local Governments

Representatives from Los Angeles, San Francisco, San Jose and Beverly Hills participated in the hearing and noted that solving traffic problems by utilizing autonomous technologies is high on the priority list of many local governments. Local governments expressed their desire to create safer roads, in particular if it also resulted in a decrease in infrastructure costs. In working towards these goals, local government representatives pointed out that more clarity is needed as to how the CA DMV's regulations will ultimately be implemented.

Specifically, local governments are looking for more specific guidance and more control over the testing and deployment of autonomous vehicles on their roads. Some indicated that they would like to extend the current testing period for at least two more years and want discretion to deny deployment of certain autonomous vehicles as well as the authority to determine when and how testing occurs. It was also the position of local governments that the proposed framework will rely too heavily on self-certification of the manufacturers' safety technology.

City representatives also requested regular access to data collected by self-driving cars. This would allow the government to measure traffic congestion and road surface conditions in order to improve the infrastructure used by autonomous vehicles. There was also a push for regular (not just annual) provision of information regarding when self-driving cars actually forfeit control back to a human driver.

Significant Obstacles to Overcome

There are many obstacles yet to overcome in the autonomous driving context, three of which will likely be of particular significance – public perception of the groundbreaking technology, conflicting state and local regulations and the lack of mandatory federal coordination.

The public needs to feel they are safer with autonomous driving technology than without. Isolated cases of malfunctioning or misuse of autonomous driving technology can easily cause consumers to fear the lack of control that comes with the new technology. The industry will need to convince the public of what is already scientifically established – that the technology is safe and ultimately more reliable than human drivers.

Furthermore, not only do state regulations need to rapidly evolve in order to keep up with the pace of new technology being developed, but they also should be consistent throughout the state. The push by local governments to assert greater control over self-driving technologies could create a system of different jurisdictions within a given state. If cities are provided with authority to regulate testing of self-driving vehicles and have the discretion to deny their deployment, this would result in deployment options being even more limited than they are under the CA DMV proposed regulations.

Needless to say, the automobile and technology industry are not supportive of such an approach. They have made it clear that such a disparate statewide system would not only stifle the deployment of advanced autonomous technologies, but possibly prevent it entirely.

Finally, federal coordination of the state rules is a key aspect of being able to successfully deploy self-driving technologies that are capable of being used across different jurisdictions. The current voluntary NHTSA guidelines are not binding for the states. The importance of the current CA DMV draft regulations lies in its potential to be a model framework for federal rules. With all eyes on the largest car market in the US and the home to many of the companies on the forefront of developing autonomous driving technologies, it remains to be seen how the CA DMV will implement the suggestions and comments of the different stakeholders.

Is The Future Around The Next Bend?

Already existing and recently announced collaborations between autonomous driving technology companies and automobile manufacturers and ride-hailing companies clearly demonstrate that the decades-long testing behind closed doors has come to an end. The industry seems prepared to deploy self-driving vehicles on public roads and has already done so in states and cities with a supportive legal framework. If the CA DMV moves forward in accordance with their communicated timetable, it will enact regulations which will allow testing of self-driving vehicles without a human driver on California's roads by November 2017, and deployment shortly thereafter. This could significantly alter the public's notions of traditional means of transportation and their related safety implications in California and beyond. If new state regulations can also avoid an intra-state patchwork system of competing local jurisdictions and federal coordination can be accomplished at least in significant aspects, the future of autonomous driving may be just around the next bend.

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