

California and the federal government have recently issued further guidance in the world of autonomous driving. In this article, we highlight the key changes and updates.

Updated California Regulations

On November 30, 2017, the California Department of Motor Vehicles (CA DMV) released its revised regulations (the "Nov. 30 Regulations"), updating the previous draft regulations (originally issued on December 16, 2015, and updated on September 30, 2016, March 10, 2017, and October 11, 2017). Our coverage of these earlier changes can be found in our previous publication, "[California Continues to Inch Closer to an Autonomous Reality](#)". The Nov. 30 Regulations provide an additional 15-day public comment period, ending December 15, 2017.

The main substance of the revisions included in the Nov. 30 Regulations relate to liability and responsibility issues.

- **Manufacturer Liability for Collisions Caused by AV Technology.** The Nov. 30 Regulations delete a provision that held a manufacturer liable if autonomous vehicle technology was found to be at fault for a vehicle collision involving one of its test vehicles. The CA DMV made this revision in response to public comment arguing that existing law provides well-established principles to assist in determining fault and apportioning liability for automobile crashes. This conclusion may puzzle many who believe that the existing law is, in fact, ill-equipped to deal with questions regarding liability when the "driver" has been created by lines of software code. It should be noted, however, that the deleted provision only related to liability with respect to test vehicles and not the deployment of autonomous vehicles.
- **Liability for Operation Depending on Automation Level.** In the October 11 version of the CA DMV regulations, operational liability was apportioned between the driver and manufacturer depending on the type of autonomous driving technology and the automation level. In general, the manufacturer would be responsible for the safe operation of the autonomous vehicle, provided the vehicle was operated in compliance with the manufacturer's specification. The Nov. 30 Regulations delete this provision. Although this section served to hold manufacturers responsible, it was also a potential loophole for manufacturers to escape liability. For example, if the manufacturer could demonstrate that any aspect of a vehicle was not maintained according to specifications, it could potentially avoid all responsibility for a collision or "unsafe" operation of the vehicle. By deleting this section, the determination of fault and the

apportionment of liability are left to general tort law rules and court interpretation of these rules. While these changes might appease consumer protection groups, which sharply criticized this section in the October 11, 2017 version of the regulations, the changes will also contribute to uncertainties regarding the application of "well-established principles" to the uncharted territories of autonomous driving technology.

- **Responsibility for Software Updates.** The Nov. 30 Regulations revise the provision that placed responsibility on the vehicle owner to maintain regular software updates and ensure the vehicle was operating with the most recent update. Under the revised provision, manufacturers must notify the autonomous vehicle owner of available updates and provide instructions on how to access the updates. As a result, autonomous vehicle manufacturers who plan to deploy vehicles in California should begin to develop systems to notify owners of updates and provide sufficient information for owners to access and update the vehicle software.

Recent Federal Developments

The Safely Ensuring Lives Future Deployment and Research in Vehicle Evolution Act (the "SELF DRIVE Act") was approved by the House of Representatives in September; work continues in the Senate. Our coverage of these earlier developments can be found in our article, "[The Feds Try to Get a Handle on Autonomous Driving](#)".

The Senate Commerce Committee has approved the American Vision for Safer Transportation through Advancement of Revolutionary Technologies Act (the "AV START Act"). The leaders of the committee hope to move the bill this year, as they seek to address issues such as:

- Whether the proposed bill provides sufficient protections against cyberattacks and privacy protections
- Whether the proposed bill is drafted so broadly that manufacturers would be permitted to not include certain safety features that are standard on today's vehicles
- Whether the proposed bill should be applicable to trucks (a key issue given the trucking industry is expected to be more disrupted by autonomous vehicle technology than any other industry)

We believe there is still strong support in the Senate for passage of the bill.

Conclusion

While it remains uncertain how quickly the federal government will move in an effort to keep up with state progress on regulating the autonomous vehicle industry, it is encouraging to see new developments. We will continue to monitor and update the progress at both the state and federal levels.

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