SQUIRE PATTON BOGGS

Driverless Vehicles Soon to Be a Reality on California's Roads

On February 26, 2018, California approved regulations proposed by its Department of Motor Vehicles (CA DMV) governing the testing and deployment of autonomous vehicles (AVs) on California's roadways. The most notable part of the regulations is that AVs can now be tested and deployed without a person physically present in the vehicle. Prior regulations required a driver to be inside and able to take control of the AV at all times while in operation. With this change, the CA DMV may issue permits for truly driverless vehicles to be on California roads beginning April 2, 2018, the date the regulations become effective.

History of California AV Regulation

Over the last several years, California has released regulations that have become increasingly more accepting of AVs. The below sets forth the timeline:

- **December 16, 2015** – CA DMV releases the first draft of AV regulations
- **September 30, 2016** – CA DMV releases revisions to the first draft of AV regulations
- **March 10, 2017** – CA DMV publishes revised AV regulations for 45-day public comment period
- **April 25, 2017** – CA DMV holds public hearing to obtain feedback on the proposed AV regulations
- **October 11, 2017** – CA DMV publishes revised AV regulations that include provisions addressing driverless testing and deployment
- **November 30, 2017** – CA DMV publishes further revised AV regulations
- **February 26, 2018** – California Office of Administrative Law (OAL) approves final AV regulations, which include minor changes from the November 30, 2017 regulations

Driverless Testing

In adopting the November 30, 2017 draft AV regulations, the OAL approved regulations require compliance with the following key items in order to obtain a testing permit for a driverless AV:

- Written notice must be provided to local authorities containing key information about the vehicle and manufacturer, as well as the location, date, time and public roads upon which the vehicle will be tested
- The manufacturer must certify that they are able to continuously monitor the test vehicle via communication link between the vehicle and the remote operator that allows for two-way communication, if necessary, along with a description of how the manufacturer will monitor the communication link and how all vehicles tested by the manufacturer will be monitored
- In the event of a collision, there must be a means for the vehicle to provide information on the owner
- The test vehicle must comply with Federal Motor Vehicle Safety Standards or evidence of an exemption that has been approved by the National Highway Traffic Safety Administration
- The test vehicle must be capable of operating without a driver present and meets the automation standards of SAE International Level 4 or 5 vehicles
- The manufacturer must provide an operational design domain to CA DMV
- The manufacturer must develop a law enforcement interaction plan under which the manufacturer provides information to law enforcement and first responders on how to interact with the vehicle in emergency or traffic enforcement situations, to be provided to the California Highway Patrol within 10 days of approval of testing permit
- The manufacturer must implement a training program for remote operators, with a course outline and description of the program to be provided to the CA DMV
- The manufacturer must prepare a publicly disclosed safety assessment
- The manufacturer shall disclose to passengers in the vehicle what personal information may be collected, and how it will be used

It should be noted that the CA DMV removed the requirement holding a manufacturer liable if the AV technology was found to be at fault for a collision involving one of its test vehicles. The CA DMV deleted this provision in the November 30, 2017 revisions, since "existing law provides well-established principles that assist in determining fault and apportioning liability for automobile crashes." See *Autonomous Vehicles Modified Statement of Reasons*, § 227.38, Released November 30, 2017.

Driverless Deployment

Similar to the approved driverless testing requirements, the November 30, 2017 draft AV regulations for deployment were adopted and require the following:

All AV Deployments

- Demonstrate financial responsibility
- Prepare an operational design domain in which vehicles are designed to operate
- Identify any commonly occurring or restricted conditions
- Provide a description of how the vehicle is designed to react when it is outside of its operational design domain or encounters the commonly occurring or restricted conditions disclosed on the application
- Certify compliance with autonomous technology data recorder requirements
- Certify compliance with Federal Motor Vehicle Safety Standards or exemption that has been approved by the National Highway Traffic Safety Administration
- Certify that the vehicle is equipped with industry standard technology to prevent cyberattacks
- Develop a user education plan for fully autonomous vehicles
- Complete registration with the National Highway Traffic Safety Administration

Driverless AV Deployments (in Addition to the Above)

- The manufacturer must certify that they are able to continuously monitor the test vehicle via communication link between the vehicle and the remote operator that allows for two-way communication, if necessary, along with a description of how the manufacturer will monitor the communication link and how all vehicles tested by the manufacturer will be monitored
- In the event of a collision, there must be a means for the vehicle to provide information on the owner
- For vehicles not equipped with manual controls, the vehicle must comply with Federal Motor Vehicle Safety Standards or evidence of an exemption that has been approved by the National Highway Traffic Safety Administration

Two requirements were changed between the October 11 and November 30 AV draft regulations. The first change amended the provision placing responsibility on AV manufacturers for maintaining software updates. The November 30 draft only required manufacturers to notify AV owners of available updates, as well as provide instructions on how to access the updates.

The second change was to delete the requirement that fault would be apportioned between the driver and manufacturer, depending on the type of autonomous driving technology and the automation level. In deleting the provision, the CA DMV noted that "existing law provides well-established principles that assist in determining fault and apportioning liability for automobile crashes." See "*Autonomous Vehicles Modified Statement of Reasons*," § 228.28, Released November 30, 2017.

California's Future

With the April 2, 2018 permit issuance date approaching, companies should consider how they can best advance their AV research while maximizing their resources. The approved AV regulations will allow companies to move away from testing in a controlled environment and gain real time data on actual roadways, which should result in faster deployment of AVs in California. Additionally, since AVs no longer need to have a driver physically present, companies can achieve efficiencies by having one "remote operator" testing multiple vehicles at the same time. Although the approved regulations do not give the green light for driverless trucks, motorcycles, or other commercial vehicles, California seems to be encouraging the continued research and advancement of AV technology, and may well be able to remain a leader in the space.

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