



April 24, 2017

**SENT VIA EMAIL**

Mr. Bryan Soublet  
Deputy Director/Chief Counsel  
Department of Motor Vehicles  
Legal Affairs Division  
P.O. Box 932382, MS C-244  
Sacramento, CA 94232-3820

**RE: Title 13, Division 1, Chapter 1, Articles 3.7 and 3.8 – Autonomous Vehicles**

Dear Mr. Soublet,

We provide the following comments on the Notice of Proposed Regulatory Action dated March 10, 2017, proposing regulations for the testing and deployment of autonomous vehicles without a driver (the “Proposed Regulations”). We appreciate that the Department has recognized the need for guidance for fully autonomous vehicle testing and deployment which are critical to achieving the terms, intent and spirit of SB 1298 (Padilla, 2012).

In creating a path to deployment of autonomous vehicles without human drivers, the Proposed Regulations show that California is supportive and engaged in the future of autonomous vehicles. For California to continue to lead in the autonomous vehicle space, we recommend the following revisions to the Proposed Regulations, including provisions addressing liability, information privacy, allowing for-hire trips and ongoing application submissions, that otherwise may deter testing and deployment in the state.

§227.38 Manufacturer’s Permit to Test Autonomous Vehicles that do not Require a Driver

Section 227.38(a) states that before testing autonomous vehicles capable of operating without the presence of a driver inside the vehicle a manufacturer must notify the local authorities of the operational design domain and must certify that “the testing has been coordinated with those local authorities.” As stated in our comments dated December 16, 2016, the lack of clear flexibility on the ability of companies to notify local communities may impede those jurisdictions from being “appropriately informed of the operational and the safety protocols that have been established for vehicles” by those entities; this could result in a fractured and inefficient testing regime. *Section 227.38(a) should be amended to provide clarification that manufacturers may choose to interpret the coordination requirement as pure notification by a manufacturer to those jurisdictions, to ensure consistency across jurisdictions.*

§228.24 Information Privacy

Section 228.24 adds another layer of information privacy requirements that would unnecessarily complicate the existing law, which provides sufficient protection for Californians. Proposed section 228.24 prohibits companies from denying use of an autonomous vehicle to people who refuse to agree to reasonable privacy terms and conditions. This approach is unprecedented in any technology industry and unnecessary in view of California’s robust existing privacy protections, as well as those afforded under the enforcement authority of the Federal Trade Commission. In order to comply with this provision, companies offering transportation

services in autonomous vehicles may need to expend significant resources designing and implementing methods for differentiating passengers who consent to the company's privacy terms and conditions from those who do not and to tailor data collection accordingly or may otherwise be unable to offer their vehicles to all passengers in California. As reflected in our comments dated December 15, 2016, adding this additional layer of requirements is unnecessary, confusing and put simply, unworkable. *We recommend deletion of this section.*

#### §228.06 Application for a Permit for Post-Testing Deployment of Autonomous Vehicles on Public Roads

**Removal of Bias.** As written, the regulations appear to bias deployment towards traditional automakers and ownership. Specifically under section 228.06, applicants must make a number of certifications regarding their technology and vehicles in order to obtain a deployment permit. These requirements could be construed as narrowly tailored to the sale of autonomous vehicles to members of the public by traditional auto manufacturers, while not allowing flexibility for different ownership models, such as fleet operations. Sections 228.06(a)(1) and (2) require certification that vehicles are designed to be incapable of operating outside a disclosed operational design domain (ODD) or in certain identified restrictive conditions. Manufacturers that plan to sell vehicles to the public may take extra precautions to ensure that such vehicles are not deployed outside their intended whereas manufacturers that operate fleets have alternative options to ensure vehicles are deployed safely. *The DMV should clarify its language to allow manufacturers to meet ODD and restriction condition requirements in more than one way. Limited changes could more clearly give effect to this intent.*

**Submission of commercially sensitive data subject to PRA** - Under section 228.06(c)(7), manufacturers must submit a broad amount of testing data and information in order to obtain a deployment permit. For example, manufacturers have to explain proprietary testing methods used to validate the performance of the AVs, measures taken to remediate safety-critical incidents, and also a description of the operational design domains and restrictive conditions in which their vehicles can operate. The Proposed Regulations should recognize that this type of information may be a confidential trade secret under the California Uniform Trade Secrets Act (a trade secret is defined as secret information that derives independent economic value from not being generally known). *At a minimum, the Department should set forth instructions for applicants to designate information as confidential, commit to keeping such information confidential in the absence of a public records request or requirement by a court of jurisdiction to disclose such information, and provide notice to an applicant when a third party requests such information so that the applicant can take appropriate steps to protect the information.*

#### §228.28 Driver and Manufacturer Responsibility

Policies should ensure companies that test or deploy fully autonomous vehicles are accountable for the safety of their products, however, under proposed § 228.28(b), the manufacturer is responsible for safe operation of the vehicle at all times while operating in its operational design domain, even if a person other than the manufacturer (e.g., the vehicle owner) may be responsible for obtaining updates, maintenance, or other factors essential to safe operation of the vehicle. California has well developed laws governing product liability and negligence that are based upon effective principles proven to protect consumers, but the Proposed Regulations include provisions that would upset those principles by vesting responsibility solely in the manufacturer. This provision would disrupt the existing legal framework that has and should continue to properly allocate responsibility and protect consumers. The result will discourage any business model where the manufacturer relinquishes control over the vehicle, thereby restricting competition and limiting operation of autonomous vehicles to only one segment of automotive technologies. *Because existing law reflects the best approach for allocating responsibility and protecting consumers, we recommend deleting § 228.28. In doing so, California would avoid restricting the development of AV business models in a way that would hamper consumers' ability to obtain the many safety and economic benefits that AVs will provide.*

#### 227.54 Transfers of Interest or Title for an Autonomous Test Vehicle

Under the proposed regulations, a manufacturer who wishes to dispose of an autonomous vehicle through transfer of title is limited to the options permitted under Section 227.54. Manufacturers should have flexibility to dispose of test vehicles without endangering their intellectual property or needlessly wasting components or

vehicles. In many cases, the manufacturer would prefer to dismantle the vehicle themselves to protect proprietary technology or, for some vehicles, to convert them to a certified non-autonomous vehicle (i.e. a regular driver driving vehicle with no AV technology), which could then be sold in the market. *The regulation should be amended to account for both of these options without allowing unauthorized test vehicles on the road by eliminating the requirement that ownership of the vehicle is transferred to an auto dismantler.*

227.02(j) and §228.02(c)(2) Definitions and 227.26(f) Prohibitions on Operation on Public Roads – “for pay passengers”

The Proposed Regulations prohibit members of the public from riding in manufacturer-controlled vehicles during driver-controlled testing or driverless testing if required to pay a fee or if the manufacturer receives compensation. TechNet appreciates why driverless testing should be subject to different safety standards, however, *TechNet asks the DMV to explain the underlying rationale supporting this “fee” limitation for the purposes of driver-controlled testing and its incorporation into the definition of “passenger” for the purposes of driver-controlled testing.*

Conclusion

We thank you for your time and consideration of our comments. We acknowledge that this transformational industry creates unique regulatory questions and challenges and appreciate the Department’s commitment and hard work in finalizing the regulations in a timely manner. We look forward to continuing to work together to ensure the safety of Californians is addressed while also being provided the myriad of benefits of self-driving cars.

Respectfully,



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