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**CALIFORNIA DMV'S PROPOSED RULES
ON TESTING & DEPLOYMENT OF HAVS**

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Overview: The California DMV has proposed two sets of rules covering the operation of HAVs, also known as driverless cars. If adopted, both would require affirmative DMV approval for the testing and deployment of HAVs on California roads, at least until the National Highway Traffic Safety Administration steps in and imposes different requirements. The comment period has closed and there was a hearing held on April 25, 2017 in Sacramento. The proposals and comments are at <https://www.dmv.ca.gov/portal/dmv/detail/vr/autonomous/auto>.

Testing Rules

Coverage: The rules would apply to any vehicle which falls within categories 3-5 of the SAE standards for automation in vehicles. The testing rules (section 3.7) apply when the vehicle is driven by, or under the control of, an individual who is an employee, agent, etc of the manufacturer. Commercial as well as personal vehicles may apply for approval, but no trucks or other vehicles over 10,000 pounds are eligible for testing. The deployment rule (section 3.8) applies when an HAV is sold to, or used or controlled by, members of the public

Substantive Standards: The proposed rules attempt to bring in existing federal requirements in various ways (see references to Policy Guidelines, FMVSS, and Safety Assessment Letters), but it is not clear which exiting federal standards the DMV believes cover the automated equipment in these vehicles, or what happens if there are no directly applicable

standards or other requirements. The proposal requires approval by NHTSA of vehicles that do not have manual control through a pre-existing NHTSA exemption process.

Each locality where a completely driverless HAV is being tested must be informed of the tests, which DMV will coordinate with the locality. It is not clear if pre-testing approval by the locality is permitted, or whether a city or county could limit the times and places for testing a particular HAVs, even if DMV approves its testing. A surety bond of \$5 million must be posted. It is not clear whether the bond requirement is a statement of absolute liability for the vehicle owner, or whether the normal liability rules apply, with the bond there to assure that adequate funds are available, although \$5 million may not be adequate.

The owner must provide information to any passengers in an HAV what information is being collected and how it might be used. Owners are required to report all collisions to DMV promptly, and, on an annual basis, they must all incidents in which the self-driving features of an HAV disengage. It is unclear who outside the DMV can gain access to these reports.

Application Process: The application is quite lengthy, and the DMV is given 30 days in which to inform the applicant whether the application is complete. There is no time limit within which DMV must decide whether to grant or deny the application. There is a current application process for testing HAVs, which takes about two days for an approval. It is unclear whether DMV expects the new application process to take more or less time, a vital question since no testing can be done without DMV's prior approval. Under current rules, an approval is good for only one year, and prior approvals would be continued, but only until their annual expiration. The new rules make approvals good for two years, but DMV would, presumably, have the authority to revoke that approval even under current law if a significant safety issue arose.

Deployment Rules

Coverage: The rules would apply to HAVs sold to the public in California, if they have the capacity to operate without a driver in active control, whether it is operated in that mode or not. It is unclear whether the prior testing of the HAVs in California and the DMV's review (approval) of the results, or similar testing elsewhere, is a prerequisite for deployment approval. If so, trucks and other large vehicles, which are excluded from testing would appear not be eligible to be approved for deployment. If no prior testing is required, on what basis would DMV approve or disapprove an application for deployment?

Substantive Standards: Deployment approval is conditioned on meeting various standards, but there are currently none for many major HAV features. There are provisions for NHTSA exemptions etc, but it is uncertain whether the manufacturer needs an express NHTSA ruling or whether its assertion of no applicable NHTSA standard will suffice.

Deployed HAVs must have data recorders with a sensor that collects data for 30 seconds prior to any collision and for 5 seconds thereafter (unless the vehicle has stopped). There is no express statement that the data on collisions must continue to be reported or who will have access to all reported information. There is a requirement for an annual update on all autonomous features. The manufacturer must also provide to DMV certain consumer information, including an education plan, an owner's manual, and a future education plan for subsequent owners.

There is a requirement that the driver and owner establish financial responsibility, but there is no amount specified. Will DMV decide on a per person/per manufacturer basis or develop a new rule that covers everyone? It is also unclear if this provision establishes a rule of

absolute liability, which would change the law of comparative negligence. Would such a liability rule apply to out-of-state HAVs? Does DMV have authority to establish liability rules at all?

The applicant must certify that the vehicle complies with the industry standard for cybersecurity, but there is no provision for what must be done, if anything, if (when) the standard changes. Manufacturers are required to disclose what information will be collected (and quite possibly sold or otherwise used) that is “not necessary for the safe operation of the vehicle.” The proposal does not say who will make that “necessity” determination and on what basis. The alternative is to anonymize the data, but the ability to do that is at least in doubt.