

April 24, 2017

Brian G. Souble, Deputy Director/Chief Counsel
Department of Motor Vehicles
Legal Affairs Division
P.O. Box 932382, MS C-244
Sacramento, CA 94232-3220
LADRegulations@dmv.ca.gov

Re: Comments of the Competitive Enterprise Institute in the Matter of Proposed Driverless Testing and Deployment Regulations (Mar. 10, 2017)

Dear Mr. Souble,

On behalf of the Competitive Enterprise Institute (“CEI”), I respectfully submit these comments in response to the Department of Motor Vehicles’ (“DMV”) Proposed Action on Driverless Testing and Deployment Regulations published on March 10, 2017.¹ CEI is a nonpartisan, nonprofit public interest organization that focuses on regulatory policy from a pro-market perspective.²

Many of the proposed amendments to Article 3.8, Chapter 1, Division 1, Title 13 of the California Code of Regulations are reasonable. But there is room for improvement. In keeping with the National Highway Traffic Safety Administration’s (“NHTSA”) Federal Automated Vehicles Policy (“FAVP”), DMV should not require permit applicants to supply a copy of the Safety Assessment Letter referenced in the FAVP.³

The FAVP is a nonbinding guidance document and NHTSA makes clear on page 11 that “this Guidance is not intended for States to codify as legal requirements for the development, design, manufacture, testing, and operation of automated vehicles.”⁴

NHTSA has yet to develop a template for the Safety Assessment Letter, let alone a process for reviewing them. It is still reviewing public comments on the entire FAVP and the new administration has indicated that dramatic revisions may be on the way. As Secretary of Transportation Elaine Chao recently told the National Governors Association, “This administration is evaluating this guidance and will consult with you and other stakeholders as we update it and amend it, to ensure that it strikes the right balance.”⁵

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1. Proposed Driverless Testing and Deployment Regulations, *Express Terms*, California Department of Motor Vehicles (Mar. 10, 2017), available at https://www.dmv.ca.gov/portal/wcm/connect/caa2f466-fe0f-454a-a461-f5d7a079de49/avexpressterms_31017.pdf?MOD=AJPERES [hereinafter Regulations].
 2. See About CEI, <https://cei.org/about-cei> (last visited Apr. 21, 2017).
 3. Regulations, *supra* note 1, at 15, 26 (§§ 227.38(g), 228.06(d)).
 4. National Highway Traffic Safety Administration, *Federal Automated Vehicles Policy*, U.S. Department of Transportation (Sep. 20, 2016), at 11, available at <https://www.nhtsa.gov/av>.
 5. David Shepardson, *Trump Administration Reviewing Obama’s Autonomous Vehicle Guidance*, INSURANCE JOURNAL (Feb. 27, 2017), available at <http://www.insurancejournal.com/news/national/2017/02/27/442848.htm>.

Furthermore, even when the Safety Assessment Letter template and review process are established, they are likely to remain voluntary for at least some period of time. Until NHTSA formally establishes regulations standardizing and requiring the submission of the Safety Assessment Letter through the notice-and-comment rulemaking process, it is inappropriate for DMV to attempt to mandate that developers comply with nonbinding federal guidance—which is itself in direct contradiction of the FAVP guidance.

For these reason, DMV should remove all references to the Safety Assessment Letter from its final testing and deployment rules.

Thank you for the opportunity to comment on the proposed regulations and we look forward to continued engagement on these matters.

Sincerely,

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