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We Asked California Lawyers for Views on the New Driverless Rules. Here's What They Said.

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California regulators on Wednesday rolled out the latest proposed rules for regulating driverless cars, staking their claim for strong state oversight in the face of increased calls for federal preemption.

The new rules for testing and deployment made mostly minor changes to draft regulations released in March. There's more clarity about notifying cities and counties about testing driverless cars. There's a standard template now, too, for manufacturers to report incidents when a car's autonomous-driving features were disengaged.

The basic rules, however, remain the same. Autonomous vehicles will be able to travel California roads without a human driver—perhaps by next summer—as long as manufacturers certify to the state that their vehicles operate safely.

That requirement could put California at odds with legislation pending in Congress that contemplates preemption of competing state rules. The U.S. Department of Transportation last month released revamped federal guidance for autonomous vehicle manufacturers that relies significantly on voluntary compliance.

California state regulators declined to talk about any looming dispute over preemption. Brian Souble, general counsel for the state Department of Motor Vehicles, said he doesn't see a state-federal conflict in the latest proposal.

"Our regulations recognize that separation between NHTSA's authority to regulate vehicle safety while maintaining the long-standing tradition that it is a state's role to talk about the safe operation of a vehicle on the street," Souble said. "We don't understand why it would be a problem with respect to [manufacturers'] certifying to a state that a car will be operating safely."

The DMV has opened a 15-day comment period on the new regulations. The agency will send them to the Office of Administrative Law for final processing and approval. The new rules could be on the books by June 2018, Souble said.

We reached out to industry lawyers for their observations about California's new rules. Here's a snapshot of what some of them had to say.

Matthew Marmolejo and Philip Recht, Mayer Brown: A number of states recently have enacted legislation, or revised existing legislation, permitting essentially unfettered testing and/or deployment of driverless vehicles. In some sense, these revised regulations are California's response, issued to clarify ambiguities raised through public comment, in part with the hope of ensuring that the large number of companies currently testing this technology in California do not go elsewhere.

The regulations include other important changes clarifying potential autonomous vehicle manufacturer liability, specifying that such liability in at-fault collisions will be constrained by the bounds of existing tort law, and aligning California permitting requirements with NHTSA's recently issued update of its autonomous vehicle policy.

Elliot Katz, McGuireWoods: When the California DMV originally released draft regulations which required that a licensed driver be behind the wheel of a fully autonomous vehicle, it was impeding these vehicles from reaching their full life-saving potential on California roads. The revised regulations released today—while they differ in some respects from the March 2017 proposed regulations—continue to illustrate that the DMV now understands the importance of testing and deploying vehicles without human drivers behind the wheel.

The revised regs are somewhat of a nothingburger in the sense that the biggest sticking point here—whether human drivers need to be behind the wheel of a fully autonomous vehicle—was resolved in previous drafts. There were some minor changes and clarifications made this time around, but the human driver behind the wheel was the big issue, and it was already resolved.

Steve Wernikoff, Honigman Miller Schwartz and Cohn: California's proposed rule changes are an incremental deregulation to accommodate the incredible innovation in this area towards fully autonomous vehicles. However, a number of states like Arizona, Florida and Michigan already allow autonomous vehicles to be tested on their public roads without human drivers. These other states may increasingly attract entities to test on their roads due to the fact that their permitting and reporting requirements remain less restrictive than California. Moreover, the new California rules, like pending federal legislation, do not address autonomous truck testing, so the uncertainty over testing in that space will continue.

John Simpson, Consumer Watchdog: The new California DMV proposal wrongly relies on the federal government, when there are absolutely no Federal Motor Vehicle Safety Standards applying specifically to autonomous vehicle technology. Instead of providing safety rules of the road, the Trump Administration can't even be bothered with nominating the chief of the National Highway Traffic Safety Administration.

Under the Trump Administration approach automakers can glance at the NHTSA policy and say, "that's nice" and then do whatever they want as they use our roads as private laboratories and threaten highway safety.

Bernard Soriano, deputy director, Department of Motor Vehicles: In California our statute requires that we ensure the safe operation of these vehicles. Other jurisdictions, other states do not have that in place, so they have the luxury of not having any regulations that speak to the safe operation of the vehicles. We in California have to do that.