

Client Alert

Automotive and Transportation Practice Group

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NHTSA Releases Guidance on Enforcement of Safety-Related Defects in Automated Vehicle Technologies

Agency's stance raises implications for software manufacturers and suppliers

Last week, the National Highway Traffic Safety Administration (NHTSA) released its final Enforcement Guidance Bulletin on Safety-Related Defects and Automated Safety Technologies. The Guidance makes clear that the agency's enforcement authority and oversight of safety-related vehicle defects applies equally to emerging technologies and autonomous vehicles as it does to traditional human-operated vehicles and mechanical parts.

NHTSA's unequivocal position is that automated motor vehicle safety technologies are motor vehicle equipment regulated under the Vehicle Safety Act. Even more broadly, a vehicle's software and software updates, along with associated data, lines of code and programs also constitute motor vehicle equipment.

Acknowledging that the rapidly evolving nature of automated vehicle technologies is highly complex, NHTSA relies upon fundamental Safety Act principles as the guiding points for its position. For example, software configurations and designs that do not account for foreseeable consumer abuse, error or driver distraction could also create an unreasonable safety risk. Under basic tenets of the Safety Act, an insecure software update that introduces a vulnerability creating a safety risk would be considered a safety defect as well.

The Guidance has significant implications for suppliers and developers of any software that may interact with a motor vehicle. Software need not have been specifically designed to perform a safety function - if software creates or introduces an unreasonable safety risk into the vehicle, it will be considered a safety-related defect, triggering the legal obligation to recall. While the specific criteria the agency considers when determining whether a product is deemed to be motor vehicle equipment will be forthcoming, the agency further recognized the possibility that software which communicates with or enables devices not physically located on the motor vehicle to connect and interface with the vehicle, could be considered motor vehicle equipment subject to NHTSA regulation.

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The Guidance serves as a bookend to the Federal Automated Vehicle Policy, released last week and reinforces NHTSA's leading role in the regulation of autonomous vehicles and technologies.

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