

Client Alert

Automotive and Transportation Practice Group

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NHTSA Proposes Adding Electronic Communication to Notify Consumers of Recalls

Last week, NHTSA issued a Notice of Proposed Rulemaking (NPRM) that proposes to allow manufacturers to notify owners and purchasers of a safety recall through electronic means. Currently, under the National Traffic and Motor Vehicle Safety Act, manufacturers must notify owners and purchasers of a recall involving defective and noncomplying vehicles and equipment by sending a letter via first-class mail. Under the proposed rule, manufacturers would be permitted to notify affected consumers of safety recalls by electronic means, in addition to the longstanding requirement to notify by first-class mail.

As set out in the NPRM, the rule is designed to allow manufacturers the flexibility to use the form and format of electronic communication that it deems appropriate to maximize recall completion based on the particular facts of each recall campaign. Under the proposed rule, “electronic means” is defined broadly as “electronic mail, text messages, radio or television notifications, vehicle infotainment console messages, over-the-air alerts, social media or targeted online campaigns, phone calls, including automated phone calls, or other real time means.”

Although the method of communication may vary, all communications made through electronic means must still meet the content requirements set out in 49 C.F.R. Part 577. The agency recognized that it may not be feasible to include all of the necessary information in certain modes of electronic communication due to space constraints or otherwise. As an alternative approach, manufacturers may instead include a hyperlink to a notice that contains all information required by the regulation, or a link to a representative copy of a notice with instructions on how the owner can determine whether his or her vehicle is impacted by the recall, by directing the customer to the manufacturer’s VIN look-up tool as well as NHTSA’s search tool.

Notably, electronic notification is being proposed as an option for communicating with customers in addition to, and not in-lieu of, notification by first-class mail. Manufacturers must also continue to submit all recall related documents and representative copies of communications through the NHTSA Recalls Portal. Copies of owner notification letters sent by electronic means will also be required to be submitted to the Recalls

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Portal, either through a screen shot, copy of an e-mail or script of an advertisement or call. Finally, there are no proposals to change the regulations governing notification to dealers and distributors in this NPRM; communication will still be made through certified mail or other verifiable electronic means.

By expanding the means of communication through which manufacturers communicate recalls, the agency seeks to increase consumer awareness and action to remedy vehicles and equipment subject to recall, but at the same time retain the key information found in the longstanding hard-copy owner notification letters.

Next Steps

NHTSA is soliciting the public's input on the proposed rule, including the agency's planned approach to allow each manufacturer to select the mode of electronic communication and the proposed definition of "electronic means." Comments to the proposed rule must be submitted on or before October 31, 2016.

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