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## NHTSA to Require Reporting of Crashes Involving SAE Automation Levels 2+

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On June 29, 2021, the National Highway Traffic Safety Administration (NHTSA) issued a Standing General Order (SGO) to manufacturers and operators of Automated Driving Systems (ADS) and Level 2 Advanced Driver Assistance Systems (ADAS). For the first time, NHTSA is requiring the separate and standalone reporting of certain types of crash-related incidents involving autonomous vehicle technology. The SGO applies to vehicle manufacturers and operators as well as to suppliers of the ADS and ADAS systems. Incidents involving qualifying crashes must be reported for both deployed vehicles equipped with L2 technology and ADS vehicles that are being tested. Depending on the characteristics of the incident, reporting may be required within one calendar day. NHTSA has also made clear that it intends to make the reports publicly available and, with limited exceptions, will not consider the information contained within the reports to be protected as Confidential Business Information (CBI). While certain aspects and details of the SGO remain to be clarified, given the breadth of potentially qualifying incidents, the short reporting cadence, and the expectation that NHTSA will publicize certain information in the report, manufacturers and operators of ADS and ADAS vehicles and equipment should consider the potential regulatory and litigation implications.

### **NHTSA's Authority to Regulate Autonomous Vehicles**

By issuing the SGO, the current NHTSA administration has indicated a more proactive approach to overseeing potential risks arising from these advanced technologies. NHTSA observed that the "rapid evolution" of autonomous vehicle technology in both testing and deployment has made it "critical" for the agency to "exercise its robust oversight over potential safety defects in vehicles operating with ADS and Level 2 ADAS." The significance of the move is underscored by the fact that NHTSA has reserved issuing SGOs, compulsory process, for topics that may generate an industry-wide impact and present a potentially substantial safety concern.



### **Required Reporting of Safety-Related Incidents**

The SGO broadly requires reporting about qualifying incidents from vehicle and equipment manufacturers and operators of vehicles with ADS or Level 2 ADAS while that technology was engaged, or immediately after it was in use. Reports are required regardless of whether the crash occurred during testing (prototype) or deployment.

The most significant crashes – those that result in death or injury, hospitalization, any vehicle tow-away or air bag deployment, or that involve a vulnerable road user – must be reported within one calendar day after the manufacturer or operator receives “notice” of the crash. “Notice” is defined more expansively than existing regulations and is deemed to be information received from “any internal or external source and in any form,” including media reports, test reports, and customer complaints. Because of this expanded definition, “notice” may not necessarily be limited to traditional sources of information being reported from the field. Questions also remain regarding how, whether, and when certain sources of data may trigger notice, including, for example, whether media reports or social media posts could constitute “notice” even if not affirmatively sent to the manufacturer.

Because under the SGO a manufacturer is deemed to have notice when the alleged facts sufficiently meet the threshold reporting criteria, manufacturers may have little opportunity to investigate before a report is required. While the SGO largely holds the industry to a good-faith system for much of the reporting, failure to report information fully and timely could subject an entity to civil penalties of nearly \$23,000 per violation, per day.

### **Potential Regulatory and Litigation Consequences**

The SGO raises larger questions regarding legal responsibilities imposed on manufacturers and suppliers. For instance, NHTSA warns of the possibility that safety-related defects could emerge from a number of different sources including both hardware and software. In particular, NHTSA emphasizes that “misuse” of an L2 ADAS function, including driver overreliance on it, could “create a foreseeable risk and potential safety defect.”

The SGO could also have collateral consequences for litigation, whether personal injury cases or class actions. Here, for instance, NHTSA flags software updates, a means to improve technology which is fluid, as a potential area for concern. Further, because NHTSA intends to make public the reports submitted by manufacturers, these reports may be used by the plaintiffs’ bar to argue that manufacturers have “knowledge” of an alleged defect based on the manufacturer communications to NHTSA.

Manufacturers and operators subject to the SGO should begin to think carefully about how to ensure compliance with their new reporting obligations in order to reduce risk on these multiple fronts.



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