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Research and Development Opportunities Expand for US Vehicle and Equipment Manufacturers

1.7.2021

Last week, we provided a forecast of topics that are on the horizon for 2021. As predicted, the landscape is changing to allow for fewer restrictions on the development of electrification and automated driving systems.

The value of on-road testing cannot be understated. NHTSA has been working for some time to expand the coverage of existing safety exemptions (such as those applying to imported vehicles) to adapt to the changing industry. Last week, NHTSA issued an interim final rule which permits manufacturers of vehicles and equipment in the US to seek exemption from federal safety standards for research, investigations, demonstrations, or training relating to vehicles and equipment. The new rule explains, “this program will not be limited to vehicles equipped with [Automated Driving Systems] ADS, [and] NHTSA anticipates that many of the benefits of the program will be derived from new manufacturers and technology companies engaging in domestic production for the [sic] developing and testing these advanced vehicle technologies.”

49 CFR part 589 provides the procedures that allow manufacturers and other entities to seek these temporary exemptions for domestically produced vehicles and equipment. (Notably, Part 591 allows for similar exemptions for imported vehicles). One path to exemption applies to entities with domestically manufactured and certified fully compliant motor vehicles. These entities are now permitted to operate their nonconforming vehicles and equipment on public roads for research or demonstration without first obtaining NHTSA’s permission. To receive the exemption, entities need only provide specified information to NHTSA prior to commencing on-road operation. The other path applies to entities that have not yet manufactured fully-compliant vehicles. For these people or entities, they must first submit a request to NHTSA and receive

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approval for the exemption. In the second instance, the written request must contain information such as intended use as well as compliance with existing notice requirements. As an example, for imported vehicles, 49 CFR 591.6(f)(1), states: "If use on the public roads is an integral part of the purpose for which the vehicle or equipment is imported, the statement shall request permission for use of the public roads, describing the purpose which makes such use necessary, and stating the estimated period of time during which use of the vehicle or equipment on the public roads is necessary."

This new rule allows for three years of exempted use, but there are some restrictions. For instance, vehicle title may not be transferred and commercial use outside of research and demonstration, as described, is not allowed.

Butzel Long attorneys have significant experience working on various matters involving NHTSA certification and compliance with NHTSA safety standards. On behalf of our clients, and also as part of membership with various professional organizations, our attorneys meet and discuss safety and compliance topics with NHTSA regulators on a regular basis. We also work on behalf of our clients to help them prepare for, and participate in, safety and compliance presentations and discussions. Along with dealing with certification issues such as those listed in Part 591, and now Part 589, Butzel attorneys frequently assist clients with addressing Federal Motor Vehicle Safety Standard (FMVSS) questions, Tread Act Reporting, and more as required in order to sell motor vehicles and motor vehicle equipment in the US. We also assist clients dealing with commercial issues related to NHTSA compliance, such as warranty disputes, warranty campaigns, recall reporting, and more. For answers to your NHTSA, FMVSS, and other automotive compliance and certification questions, contact your Butzel Long attorney, today.

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