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Quality Management and a Culture of Transportation Safety – Compliance, Regulations, and Contractual Requirements

Client Alert

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The importance of quality management and a culture of transportation safety has been in the public eye in recent years. On April 10, 2024, a new whistleblower emerged alleging questionable practices at Boeing in relation to the production of their 777 and 787 jets. These allegations follow the questions that arose when critical door bolts were missing in an Alaska Airlines 737 Max. But these issues are not confined to the aviation industry.

For example, 2023 ended with a high-profile automotive investigation highlighting failures to adhere to industry standards and regulatory compliance, while 2024 opened with one of the largest civil penalties ever for evading laws and regulatory compliance. Is your manufacturing organization doing what it takes to identify and mitigate these types of compliance risks internally?

Automotive compliance in the news

Automotive compliance has become a hot topic in recent years, implicating environmental concerns, safety recalls, and accuracy in data reporting. Several car and truck manufacturers have admitted to falsifying emissions and fuel economy data and original equipment manufacturers and suppliers have been found with questions on reporting false information in testing and daily manufacturing operations. For example:

- In 2021, a Tier 1 supplier reported discovering approximately 114,000 instances of misconduct in testing and manufacturing, including the falsification of inspection data. The investigation revealed that nearly 60% of data points documented included falsifications and that the conduct had occurred over the course of 20 years.

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- In late December 2023, another company suspended its production after an investigation found over 170 irregularities in safety testing. The independent investigation determined that the company had tampered with safety tests or documented false test data over the course of 30 years of production.
- On January 10, 2024, the Justice Department, Environmental Protection Agency (EPA), California Air Resources Board (CARB), and the California Attorney General's office presented the details of a proposed settlement with a diesel engine manufacturer for alleged violations of the Clean Air Act involving the use of defeat devices to circumvent emissions testing and certification. Under the settlement, the company would pay a record \$1.675 billion civil penalty while conducting a nationwide vehicle recall.

Meeting regulatory and contractual requirements

The obligations of light- and heavy-duty suppliers are not insignificant. While many of these arise from federal authorities, other obligations are cascaded through the supply chain contractually.

- *Regulatory Compliance.* The automotive and heavy-duty vehicle sector is filled with regulatory requirements and potential reporting obligations. This includes the National Highway Traffic and Safety Administration (NHTSA) requirements to meet any applicable Federal Motor Vehicle Safety Standards (FMVSS) and report any potential safety defects; EPA emissions standards; and even Federal Trade Commission (FTC) obligations in marketing and advertising aftermarket components. In addition, compliance with these regulatory requirements are typically included in supply chain contracts, meaning that if a supplier violates a regulatory requirement, it is likely accountable not only to the government, but to its customers as well.
- *Compliance with Industry Standards.* While regulatory compliance is mandatory, compliance with industry standards is often a key component of contractual requirements for manufacturing suppliers. This could include standards from the SAE International, considered to be the leading authority in mobility standards development; the Automotive Industry Action Group (AIAG) and its core tools including the Advanced Product Quality Planning (APQP) and Production Part Approval Process (PPAP); and the International Automotive Task Force (IATF) and its global quality management system standard, the IATF 16949.

Are you and your supply chain meeting regulatory and contractual compliance obligations?

These well-documented cases demonstrate shortcomings within the industry and the supply chain with respect to design, testing and manufacturing compliance. Often, commercial pressures can become a company's primary focus so daily operational compliance can suffer. To combat this throughout a company's supply chain, manufacturers can take several steps.

- *Implement Compliance Audits.* Often performed initially with an independent committee including third party review, a compliance audit can assess gaps in performance of quality controls and testing methodologies. When cascaded through the supply chain, a supplier can assess its actual performance and compliance with industry standards, customer specifications and regulatory

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requirements.

- *Understand your obligations.* Although this seemingly should go without saying, those obligations, particularly contractual obligations, are too frequently dismissed as “boilerplate,” without an understanding of or a compliance plan for meeting those obligations. In addition, if those obligations are not understood at the outset, that is, before entering into the contract, you may have made promises you cannot keep.
- *Form or Revitalize Compliance and Safety Committees.* These internal groups can be chartered and empowered to review the regulatory and compliance programs within a company.
- *Train the Workforce.* Targeting the appropriate groups, a supplier can provide training on contractual requirements, regulatory reporting, compliance with industry standards and other topics relevant to the product lines involved.
- *Verify the Supply Chain.* Similarly, these recommendations can be cascaded through the supply chain with audits or assessments based on the options present in contracts and supplier quality manuals. This is more than a matter of best-practices, because supply chain contracts with customers often require the suppliers to “flow-down” the contractual compliance obligations often found in the supply chain.

The Butzel Advantage

When compliance is at stake, comprehensive experience is a must. Butzel’s Automotive Team brings significant experience in the automotive industry, including design engineers, program managers, testing engineers and quality and manufacturing leaders. Butzel is uniquely positioned to assist in an audit and review of compliance with both regulations and industry standards across a tiered manufacturer’s supply chain. Butzel’s Automotive Team’s unparalleled experience at automotive terms and conditions is critical in assuring that compliance is managed throughout an organization’s supply chain. Further, for any investigation, Butzel’s White Collar Team has significant industry experience supporting some of the most well-known automotive compliance issues in the last two decades. Contact the authors of this Alert or your Butzel attorney for further assistance.

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