

## CLIENT ALERT

### Infrastructure Investment and Jobs Act Requires Secretary of Transportation to Issue Vehicle Safety Standards and Conduct Studies on Vehicle Safety

November 24, 2021

On November 15, President Biden signed into law the Infrastructure Investment and Jobs Act (“Infrastructure Act”), which reauthorizes various surface transportation programs and allocates \$550 billion for new infrastructure spending over the next five years. Notably, the legislation also includes provisions requiring the Secretary of Transportation (“Secretary”) to establish a number of vehicle safety standards, and various federal agency officials to conduct vehicle safety studies.

#### Vehicle Safety Standards

The following are the vehicle safety standards that the Infrastructure Act directs the Secretary to enact over the course of the next three years.

##### Automatic Shutoff

Within two years of its passage, the Infrastructure Act requires the Secretary to issue a rule requiring automatic shutoff technology to be installed in all keyless ignition vehicles with internal-combustion engines. Such a system would automatically shut off the engine after the vehicle has idled for a period of time to be set by the Secretary. The threshold idle period may differ among vehicles, depending on the rate at which the vehicle emits carbon monoxide.

##### Crash Avoidance Technology

The Secretary must establish minimum performance standards with respect to crash avoidance technology and require motor vehicles sold in the U.S. after a certain date to be equipped with forward collision warning, automated emergency braking, lane-departure warning, and lane-keeping assist systems. The Secretary has discretion in setting the timeline for implementation, including a phase-in period, if necessary.

Not only does the Infrastructure Act require the Secretary to enact these crash-avoidance standards, it requires the Secretary to publish a notice to establish a means to provide information about this technology to *consumers*. The notice must include a methodology for determining which crash-avoidance technologies are addressed; a plan for developing performance test criteria for vehicle manufacturers to use in implementing crash-avoidance technology; a distinct rating system for each crash-avoidance technology; and an update to overall vehicle ratings incorporating crash-avoidance technology ratings.

##### Hood and Bumper Standards

The Secretary must also issue a notice regarding potential updates to hood and bumper vehicle standards. In issuing the notice, the Secretary must incorporate or consider crash-avoidance technology; standards or technologies to reduce injuries to and

fatalities suffered by pedestrians, bicyclists, or other vulnerable road users; and performance test criteria for manufacturers to use in implementing crash-avoidance and vulnerable road user safety technology.

#### Vehicle Headlamp Standards

The Infrastructure Act also calls on the Secretary to update vehicle headlamp standards by requiring adaptive beam technology in new vehicles. In doing so, the Secretary can advance the Infrastructure Act's goal of harmonizing domestic vehicle safety regulations with international safety standards.

Unlike many European motor vehicles, which have already incorporated adaptive beam headlamp technology, American motor vehicles have relatively simple headlamps that adjust only for brightness. Adaptive headlamps are expected to improve vehicle safety because they can adapt high beam illumination based on the surrounding environment, which would in turn allow drivers to see farther at night without dazzling or blinding drivers in oncoming traffic. Adaptive headlamps can also project patterns onto the road to help drivers see when a lane ends, and dim their beam when directed at road signs to prevent from blinding drivers with a bright reflection.

#### Child Safety

In order to improve child safety in motor vehicles, the Infrastructure Act requires the Secretary to promulgate a rear-seat reminder standard and seatback safety standard. The rear-seat reminder standard will require new motor vehicles weighing less than 10,000 pounds to be equipped with an alert system that would remind the driver to check the rear seat after the vehicle engine is turned off.

Additionally, the Secretary must also update the current motor vehicle seatback standard, which leaves vehicle front seats susceptible to collapsing in rear-end crashes. Such collapses have been known to seriously injure or result in the death of rear-seated children.

#### Drunk and Impaired Driving Prevention Technology

In light of the significant human and economic cost associated with alcohol-impaired driving, the Infrastructure Act requires the Secretary to prescribe a federal safety standard requiring vehicles manufactured after a certain date to be equipped with advanced drunk and impaired driving prevention technology. Such technology would passively monitor driving performance to identify whether the driver may be impaired and/or detect whether the driver's blood alcohol concentration is above the legal limit. The provision's broad language gives the Secretary discretion in developing the standard and provides an extension period should the Secretary fail to promulgate a standard within three years. To allow sufficient time for vehicle manufacturers to comply, the mandatory compliance date will be set for at least two years after the rule is issued.

#### **Vehicle Safety Studies**

In addition to directing the enactment of the standards described above, the Infrastructure Act directs the Secretary and other agency officials to conduct studies or research on specified safety-related topics.

#### Preventing Motor Vehicles from Rolling Away

The Infrastructure Act requires the Secretary to conduct a study within one year of the Act’s passage that evaluates the consequences and benefits of mandating technology that prevents vehicles with automatic transmissions and keyless ignition from inadvertently rolling away. This provision is intended to prevent unattended vehicle rollaway accidents, which kill and injure hundreds of individuals annually. The Infrastructure Act also invites the Secretary to provide additional recommendations with the submission of the study to Congress.

#### Child Safety Seat Accessibility

In coordination with other federal agencies, including the Secretaries of Agriculture, Education, and Health and Human Services, the Secretary of Transportation must conduct a study to review the status of motor vehicle child safety seat accessibility for low-income families and underserved populations, such as those living in rural parts of America. Relatedly, the Secretary must develop a plan for addressing any needs identified in the study, including working with social service providers.

#### Reduction of Driver Distraction

The Secretary must conduct research on the installation and use of driver monitoring systems to minimize driver distraction, driver complacency as a result of automation, and foreseeable misuse of advanced driver-assist systems. The motivation behind this provision was likely to ensure that vehicle automation technology does not inadvertently reduce driver and vehicle safety.

If, based on the research, the Secretary determines that additional safety standards are necessary to reduce driver distraction, the Secretary must initiate rulemaking within two years. Otherwise, the Secretary must submit to Congress the reasons for not prescribing additional motor vehicle safety standards.

#### Vulnerable Road Users

The Secretary must publish a notice to provide consumers with information relating to pedestrian, bicyclist, or other vulnerable road user safety technologies. The notice must include a methodology for determining which technologies will be included in the notice; performance test criteria for manufactures to use in evaluating the extent to which automated pedestrian safety systems prevent pedestrian injury; a distinct rating for each technology included in the notice; and an update to overall vehicle ratings to incorporate vulnerable road user safety technology ratings.

#### Early Warning Reporting

The Administrator of the National Highway Traffic Safety Administration (“NHTSA”) must conduct a study to evaluate the early warning reporting data it receives and identify ways in which the use of such data could be used to improve vehicle safety. Under the existing early warning reporting program, manufacturers of motor vehicles, motor vehicle equipment, child safety systems, and tires are required to submit, as applicable, quarterly reports containing specified information about vehicle accidents involving deaths and injuries, including the number of warranty claims, consumer complaints, property damage claims, and field reports that the manufacturers receive. NHTSA then uses this information to detect potential vehicle safety defects.

#### Crash Dummies

The Comptroller General must conduct a study that examines NHTSA’s use of crash test dummies, including the types of dummies used, the dummies’ seating position during testing, whether the seating position affects disparities in vehicle safety

outcomes based on demographic characteristics, and challenges that NHTSA faces in deploying new crash test dummies. Specifically, the Comptroller General must evaluate the crash test dummies that are available in the global market, and whether they reflect the physical and demographic characteristics of certain groups of vehicle passengers, such as females, the elderly, young adults, children, and individuals of differing body weights.

#### Rear-Seated Children

The Infrastructure Act requires the Secretary to conduct a study on the potential retrofitting of existing passenger motor vehicles with technologies that may address the problem of children being left in rear-seats after the vehicle has been shut off.

#### Connected Vehicle Technology

The Infrastructure Act also requires the Administrator of NHTSA (“Administrator”) to expand research efforts to incorporate bicyclists and other vulnerable road users into the deployment of connected vehicle systems. Such communication can then be used to avoid or mitigate motor vehicle crashes. When fully developed and deployed, it is expected that connected vehicle safety systems will enable drivers to have 360-degree awareness of road hazards.

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Finally, the Infrastructure Act directs efforts related to evaluating the effectiveness of recall campaigns conducted under NHTSA’s jurisdiction. In particular, the Infrastructure Act extends the current requirement that each motor vehicle manufacturer conducting a defect or noncompliance notification campaign submit quarterly progress reports to NHTSA, increasing the number of reports from six to eight. Notably, this change aligns with Canada’s existing requirement, which also requires manufacturers to submit eight quarterly reports. In turn, the Administrator must publish an annual list of recall completion rates for each recall campaign, including the total number of vehicles subject to recall, the total number of recalls issued by each manufacturer, and the percentage of those vehicles that have been remedied under the campaign.

The Administrator must also conduct a study to determine the ways in which vehicle recall notices could be more effectively communicated to vehicle owners, and how they can be made easier for consumers to understand. In addition, the Infrastructure Act calls on the Administrator to submit recommendations for increasing the rate of repairs for vehicles subject to open recalls.

Relatedly, the Infrastructure Act requires the Comptroller General to study the reasons why vehicle owners do not repair their vehicles that are subject to an open recall, and whether engagement by third parties, including state and local government or insurance companies, could increase repair rates. The Comptroller General must also conduct a study to determine the number of passenger motor vehicles in each state that are used for ridesharing and have one or more open recalls.

Motor vehicle manufacturers and suppliers should closely track these regulatory developments and consider creating technical standards and deployment timelines, which could ultimately impact supply chains and product deliveries.

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