

## CLIENT ALERT

### NHTSA Intends to Enforce MAP-21's Indexing Requirement

Jun.01.2016

On March 25, 2016, the National Highway Traffic Safety Administration (NHTSA) issued [NHTSA Enforcement Guidance Bulletin 2016-01; Guidance on Submission and Treatment of Manufacturer Communications to Dealers, Owners, or Purchasers About a Defect or Noncompliance](#) to (1) inform motor vehicle and motor vehicle equipment manufacturers of their statutory obligations to provide indexes for certain communications they submit to the Agency, (2) provide recommendations for complying with the indexing requirement, and (3) indicate NHTSA's intention to publicly post all such communications and indexes on its website. The bulletin also expresses NHTSA's intention to enforce the indexing requirement.

Effective October 1, 2012, the Moving Ahead for Progress in the 21st Century Act (MAP-21) imposed an indexing requirement upon motor vehicle and motor vehicle equipment manufacturers. In particular, MAP-21 requires these manufacturers to submit indexes to NHTSA to accompany copies of their communications to dealers, owners, or purchasers submitted pursuant to 49 C.F.R. §§ 579.5 (Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications) and 573.6 (Recall communications). MAP-21 specifies the information to be included in the index, which in essence, summarizes the communication. According to NHTSA, although mandated by statute, "the entire industry has been out of compliance with the index requirement." NHTSA will begin enforcing this requirement, though it will "allow manufacturers a reasonable period of time from the date of this notice to come into compliance with the index requirement on a going forward basis."

For prior submissions, "to come into full compliance with the law, a manufacturer must submit complete indexes to the communications it previously submitted to the Agency pursuant to 49 CFR 579.5 between October 1, 2012, and the present, along with copies of all communications listed in the index." Manufacturers cannot submit indexes only; they must also resubmit the original communications. Although MAP-21 also required communications submitted pursuant to 49 C.F.R. § 573.6 to be indexed, NHTSA intends to exercise its enforcement discretion and only require proper indexes for future submissions of § 573.6 communications.

NHTSA "expects manufacturers to make a good faith effort to expeditiously comply with the requirement to provide an index to accompany the communications they submit to the Agency." While the bulletin does not provide a deadline for compliance, NHTSA reminds manufacturers that a failure to provide timely or complete indexes may subject them to civil penalties of up to \$21,000 per violation per day, and up to a maximum penalty of \$105 million for a related series of daily violations.

Finally, the bulletin provides notice of NHTSA's intention to publicly post on its website the manufacturer communications and their accompanying indexes, as also required by MAP-21.

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