

## CLIENT ALERT

### Recent Developments in Self-Driving Vehicles: NHTSA Turns On the Yellow Light

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On May 30, 2013, the National Highway Traffic Safety Administration (NHTSA) unveiled its preliminary policy statement on automated vehicles—defined by NHTSA as vehicles in which some, or all, of the main controls are managed without direct input from the driver. Vehicles with varying levels of automation are already out on the roads and many more are in development, ranging from vehicles that can automatically assist in keeping the vehicle in its lane to vehicles that are capable of driving themselves without any assistance from the driver. While NHTSA acknowledged that increasingly automated vehicles have the potential to provide enormous safety, environmental, and economic benefits – like reducing or even eliminating crashes caused by distracted driving, operating under the influence, or other human errors; providing minors, elderly people, and disabled individuals with new-found mobility; and reducing traffic congestion (and with it, emissions) as the vehicles calculate more efficient paths and speeds to travel – the agency's statement recognizes that there is still a lot to do and understand before these technologies can be fully regulated.

NHTSA urged proceeding with caution because substantial research, testing, and technological development remains to be done before vehicles that are entirely self-driving should be authorized for general public use. The industry itself has similarly recognized a number of technological challenges to overcome. As an example, engineers continue to grapple with how self-driving vehicles will operate safely when it is snowing if the snow covers signs or markings that are necessary for the vehicle's sensors to "see."

While the technology behind an entirely self-driving vehicle continues to be perfected, NHTSA has outlined a number of recommendations regarding the agency's views on licensing operators to test self-driving vehicles and on the testing procedures themselves. These recommendations suggest, among other things, that the vehicles record data from the vehicle's sensors and that states should require companies testing self-driving vehicles to report failures of the automated systems and crashes. NHTSA also recommends that testing only take place with a driver present who is able to retake control of the vehicle, if necessary.

Congress is likewise focused on the progression of self-driving vehicles. During a recent Senate Commerce, Science, and Transportation Committee Hearing on advanced vehicle technologies, great enthusiasm was expressed about the potential

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benefits self-driving vehicles have to offer. Some senators, most notably Chairman Jay Rockefeller from West Virginia, however, echoed NHTSA's concerns about the risks of rolling out this technology too quickly.

The federal government's caution is not unprecedented for the developers of self-driving vehicles. Indeed, throughout the development of self-driving vehicles, the technology has far outpaced the law. Just three states – Nevada, California, and Florida, plus the District of Columbia – have enacted laws that expressly allow self-driving vehicles to operate under certain conditions. These jurisdictions are now focused on developing more specific regulations on testing and operating autonomous vehicles. A number of other jurisdictions, including Michigan and Texas, are in the midst of passing their own versions of self-driving vehicle laws. While the operation of self-driving vehicles may not necessarily be prohibited in states without a law expressly authorizing their use, expect more states to consider adding laws and regulations on the testing and use of self-driving vehicles as the technology continues to develop.

While testing of comprehensive self-driving vehicles is ongoing, NHTSA remains focused on less comprehensive types of automation that may be easier to regulate. In particular, NHTSA Administrator David Strickland recently announced that the agency plans to decide by the end of the year whether to regulate or perhaps mandate brakes that automatically react if the vehicle detects that a crash is about to occur.

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