49 USC 30112

U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

1200 New Jersey Avenue, SE
Washington, DC 20590

Mark Hestrin
P.O. Box 261070
Encino, CA 91426

Dear Mr. Hestrin,

This responds to your March 5, 2019 letter to the National Highway Traffic Safety Administration (NHTSA) regarding an aerodynamic device to improve the aerodynamic efficiency of heavy vehicles. We have interpreted your letter as asking whether such a product would be in compliance with NHTSA regulations.

Applicable Requirements

The National Traffic and Motor Vehicle Safety Act (Safety Act; 49 U.S.C. Chapter 301) authorizes NHTSA to issue Federal motor vehicle safety standards (FMVSSs) applicable to new motor vehicles and new items of motor vehicle equipment.

NHTSA does not provide approvals of motor vehicles or motor vehicle equipment and does not make determinations as to whether a product conforms to the FMVSSs outside of agency compliance tests. Instead, the Safety Act requires manufacturers to self-certify that their products conform to all applicable FMVSSs that are in effect on the date of manufacture. *See* 49 U.S.C. 30112(a)(1). Manufacturers of motor vehicles and motor vehicle equipment are also responsible for ensuring that their products are free of safety-related defects. Regardless of whether a product is subject to specific FMVSSs, if the entity that created the product or this agency finds the product to contain a safety-related defect after the product is marketed, the creating entity is responsible for conducting a notice and recall campaign as required under 49 U.S.C. §§ 30118-30120.

Additionally, entities producing and installing motor vehicle equipment are subject to the "make inoperative" provision set forth at 49 U.S.C. § 30122. That section provides, in relevant part: "A manufacturer, distributor, dealer, rental company, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard." Entities subject to the "make inoperative" provision, including those that produce so-called "aftermarket" equipment, would be prohibited from installing a product on a vehicle if doing so would take the vehicle out of compliance with any FMVSS.

Discussion

Your letter broadly inquires whether an aerodynamic device to improve the aerodynamic efficiency of heavy vehicles would be in compliance with NHTSA regulations. As stated above, NHTSA does not make determinations as to whether a product conforms to the FMVSSs outside of agency compliance tests. We can, however, provide some general information about our requirements.

NHTSA has interpreted the information provided in your letter to mean that such a device would be motor vehicle equipment as defined in 49 U.S.C. 30102(a)(8)(B), "any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle." There is no single FMVSS that applies directly to such a device, but if it is installed as original equipment on a new vehicle, the vehicle manufacturer would be required to certify that, with the device installed, the vehicle satisfies the requirements of all applicable FMVSSs. To determine how installation of such a product could affect compliance with applicable FMVSSs, you should carefully review each FMVSS, available online at: https://www.nhtsa.gov/laws-regulations/fmvss.

If such a product would be installed as aftermarket equipment, not as original equipment, and if such a product would not replace original equipment, the primary potential restriction on such a product is the Safety Act's "make inoperative" provision. If an entity subject to the "make inoperative" provision wishes to install aftermarket equipment, that entity is responsible for determining whether installation of that aftermarket equipment makes inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard.

Examples of a way that aftermarket equipment might "make inoperative" any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment include the following: for example, if an entity were to install a trailer hitch in a new or used vehicle, it would need to ensure that its installation does not make inoperative the vehicle's compliance with the lamps, reflective devices, and associated equipment requirements of FMVSS No. 108.[1] Or, an entity manufacturing a holographic car navigation system could not knowingly place a film on windshields that reduces the light transmittance or abrasion resistance of the glazing material or reduces the ability of the glazing to meet any other applicable requirement of FMVSS No. 205.[2]

Without further information about the device mentioned in your inquiry, NHTSA cannot provide further information about the FMVSSs of which you should be particularly aware. But note again, as mentioned above, manufacturers of motor vehicle equipment are

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[1] *See* Letter to Mr. Robert Listou (May 4, 2016), available at https://isearch.nhtsa.gov/files/ES16-001603%20Listou%20Trailer%20Response.htm.

[2] *See* Letter to Mr. Philippe D. Monnier (January 19, 2017), available at https://isearch.nhtsa.gov/files/15-004254%20WayRay%20Glazing_sb_3.htm.

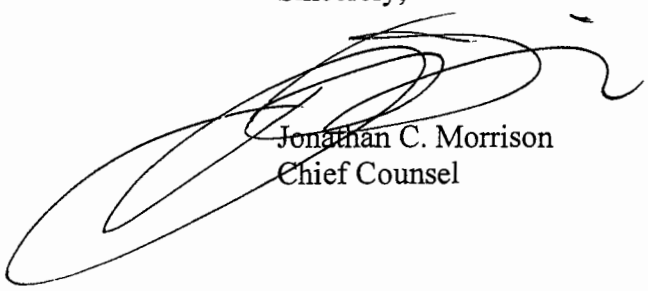
responsible for ensuring that their products are free of safety-related defects. If a safety-related defect is found after the product is marketed, the notice and recall provisions at 49 U.S.C. §§ 30118-30120 apply.

Other Considerations

You should be aware that even if such a product does not take the vehicle out of compliance with any applicable FMVSSs, it is possible that State and local laws or restrictions may apply. You may wish to consult the State and local transportation authorities in the areas the product is, or is intended, to be marketed to make sure it is permissible under these laws. Additionally, if such a product is applied to commercial vehicles, e.g., heavy trucks and buses, the U.S. Department of Transportation Federal Motor Carrier Safety Administration (FMCSA) requirements may apply. For further information about FMCSA, please contact FMCSA at 1-800-832-5660 or visit https://www.fmcsa.dot.gov/.

I hope this information is helpful. If you have further questions, please contact Ms. Hannah Fish of my staff at (202) 366-1099.

Sincerely,



Jonathan C. Morrison
Chief Counsel

Mr. Jonathan Morrison,
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March 5, 2019

Dear Mr. Morrison,

I am reaching out to your office requesting a Letter of Interpretation please regarding my [redacted at petitioner's request] project to create a new aerodynamic device for [redacted at petitioner's request] truck tractors to improve aerodynamic efficiency, and thus, its fuel economy. Thank you for taking an interest in helping me to ensure this device in compliance with NHTSA regulations.

[Redacted at petitioner's request].

I hope that helps define the device, at least for purposes of legal interpretation. I am typically in the DC area every Tuesday and Wednesday afternoons if it is at all possible to further discuss this concept in person.

Thank you very much for your time and consideration and best regards,

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