December 30th, 2019

Submitted via www.regulations.gov

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue S.E.
West Building Ground Floor, Room W12-140
Washington, D.C. 20590-001

Re: Docket No. NHTSA-2019-0121 – Comments in Response to Proposed Rulemaking Replica Motor Vehicles; Vehicle Identification Number (VIN) Requirements; Manufacturer Identification; Certification

Dear Sir/Madam:

Callaway Cars is a U.S. company that creates commercial value by providing driving enthusiasts with maximum satisfaction. We produce specialty vehicles, engineering services, and performance products that showcase technological sophistication, artistry in design, and beauty in craftsmanship. The company was founded in 1976 and has produced some of the world's most exciting automobiles, partnering with brands such as General Motors, Mazda, Aston Martin, Land Rover, and more.

When the U.S. Congress introduced the Fixing America's Surface Transportation Act or the FAST Act, Public Law No: 114-94 on December 4th, 2015, and in particular Section 24405, directing the DOT to exempt from FMVSS applying to motor vehicles, up to 325 replica motor vehicles per year manufactured or imported by a registered low-volume manufacturer, Callaway was both enthused, and motivated to pursue business opportunities to bring these nostalgic icons from American History to life in a way that only Callaway could do. Since its introduction into law, Callaway, and the specialty automobile industry as a whole, has followed closely the development of regulatory action and rulemaking that has followed, and has begun to construct business plans, and invest in the development of vehicles in compliance with this evolving regulatory landscape.

Up until now, the entirety of definition and guidance on what will be required and allowed has come from the California Air Resource Board by way of Title 13, Section 2209, and the United States Environmental Protection Agency, by way of guidance document CD-19-10 (LDV and LDT). Upon the publication of these documents, the only thing lacking for companies like Callaway to participate in this program, per the FAST Act, was a means to register with the National Highway Traffic Safety Administration. Now, four years later, after multiple businesses, including Callaway, have collectively invested millions of dollars and countless hours of development time, producing business plans, investing in property, and building prototypes that comply with the CARB and EPA language, NHTSA has released a proposed rule that in many ways is divergent and contradictory to the language in the

aforementioned documents. Below is a listing of our commentary to the individual sections of the proposed rule, in order of their appearance in the document.

III. d. Vehicles Built in Two or More Stages:

For the purposes of clarification, vehicles built in two or more stages, incomplete vehicle, incomplete vehicle manufacturer, intermediate vehicle manufacturer and final stage manufacturer should be defined clearly in accordance with the definitions provided in 49 CFR 567.3. Specifically, the incomplete vehicle means:

An assemblage consisting, at a minimum, of chassis (including the frame) structure, power train, steering system, suspension system, and braking system, in the state that those systems are to be part of the completed vehicle, but requires further manufacturing operations to become a completed vehicle.

This is important to delineate from replica manufacturers who source subassemblies from suppliers that consist of some of the abovementioned equipment, but those subassemblies do not on their own constitute an incomplete vehicle per the definition above, such as a rolling chassis, or "roller".

Per the definitions in 49 CFR 567.3 it is not likely that multi-stage manufacturers would seek to participate in the replica car program, however there is no reason not to pursue the policy allowing joint registration, as has been proposed.

IV. b. 1. Replica Motor Vehicle

The FAST act, section 30114(b)(7)(B) defines a "replica motor vehicle" as:

a motor vehicle produced by a low-volume manufacturer and that— ''(i) is intended to resemble the body of another motor vehicle that was manufactured not less than 25 years before the manufacture of the replica motor vehicle; and ''(ii) is manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated from the original manufacturer, its successors or assignees, or current owner of such product configuration, trade dress, trademark, or patent rights.

The term used is *"resemble the body of another motor vehicle"*. Resemble, as defined by Webster's dictionary denotes: to be like, or similar to. Resemble does not mean to replicate exactly. NHTSA's proposed clarification to this definition overreaches in its declaration that a replica motor vehicle have the same length, width and height as the original. It is not necessary for a vehicle to be dimensionally the same in order to resemble another vehicle. For example, Ford's 2005 GT clearly "resembles" the original GT-40 as depicted below, however its dimensions are slightly divergent.

Understanding of course that this vehicle would otherwise not qualify due to it being manufactured by a high volume manufacture, one can clearly demonstrate the intent to resemble the original, while the dimensions, detailed below, are as much as 14% different from the original.

	1969 Ford GT40	**2005 Ford GT**
Length	160”	183”
Width	70”	77”
Height	40.5”	44”

It must further be recognized that the National Highway Safety Administration has had four years to develop this proposed rule which was required by law to be issued within one year. In that time, other agencies, such as the U.S. EPA, and California’s Air Resource Board, have issued their rules, with conflicting definitions. Many U.S. businesses have invested millions of dollars, and constructed business plans, and prototype vehicles, conforming to these alternate definitions, as these were all that was available as guidance. For NHTSA to come in years later, and offer conflicting definitions, presents an undue burden on U.S. businesses. It is recommended that NHTSA adopt the well-defined CARB definition, from Title 13, Section 2209.1(a)(16)(A) stated below:

(16) “Specially produced motor vehicle” or “SPMV” means a newly produced current model year passenger car or light-duty truck, with a gross vehicle weight rating (GVWR) at or below 8,500 pounds, that meets all of the following requirements:

> *(A) Resembles the body of a motor vehicle, on an overall 1:1 scale (+/- 10 percent) of original body lines, excluding roof configuration, ride height, trim attached to the body, fenders, running boards, grille, hood or hood lines, windows, and axle location, that had been commercially manufactured during consecutive model years, for sale not less than 25 years after the latest model year, with a production run of at least 50 units of a unique body style, before production of the current model year motor vehicle;*

Conformance to these above-mentioned requirements could still be documented, as proposed, in the manufacturer’s registration. Additionally, the financial feasibility for low volume manufacturers to produce replica motor vehicles, relies on their ability to leverage existing aftermarket components, produced for the vintage car market. For example, several manufacturers produce chassis and bodies for 1932 Ford Model A roadsters, however, most incorporate modern suspension systems that lower the vehicle to the ground, for improved handling. Likewise, most of the available bodies have modified dimensions, such as shorter rooflines. The CARB language was crafted specifically, with public input, to address these realities.

IV. b. 2. Requirements to Manufacture Under License Agreement for Intellectual Property Rights

The provision in the FAST Act to require that a manufacturer produce the vehicle under any applicable or needed license was to ensure that this program does not encourage or facilitate any violations of existing intellectual property laws. Likewise, the intent of this program is to allow for the manufacture of replica cars, and not new motor vehicle designs, as covered in the above section. That said, it provides

for no requirement that the replica motor vehicle be badged with the trademarked model identification as contemplated in IV.b.2. It is therefore requested that NHTSA refrain from adding this requirement to the final rule. Likewise, already established legal president, in cases involving kit car manufacturers, has paved a path for manufacturers of replica kits to produce bodies that resemble original vintage makes, but differ enough, as to not infringe on other's trade dress rights. The example stated in the proposed rule of the Shelby Cobra exemplifies this situation, and it should not be the intent or effect of this rule to divert from this established legal precedent.

V.a. Equipment FMVSS.

While it is not in dispute that the FAST Act stops short of exempting Replica Car Manufacturers from applicable equipment standards, there are some situations in which this could prove problematic, and special consideration or accommodation should be considered. For example, some early model vehicles had unique headlight designs, which are not reproduced today in a certified configuration. Asking a Replica Car Manufacturer to certify a new (replica) headlight design would be extremely burdensome financially, and in some cases, the design of the light would inherently prevent it from meeting today's standards. Another example to consider would be the requirements for seat belts. While most of the requirements of FMVSS 209 should and can be followed, the incorporation of a retractor, for example, may not be physically possible in some older vehicle designs that did not incorporate these originally. Likewise, their presence would contradict the vintage appearance and intent of the replica.

VI. Registration Requirements

The FAST Act specifically states:

Any registration not approved or denied within 90 days after initial submission, or 120 days if the registration submitted is incomplete, shall be deemed approved.

This is important, because it prevents undue waiting times for manufacturers who wish to enter commerce with their vehicles due to a lack of capacity, or otherwise, within the administration. The proposed rule states the following:

We propose that a low-volume manufacturer is not considered registered with NHTSA unless the manufacturer receives confirmation from NHTSA that its registration is approved. A manufacturer whose registration is not approved or denied within the allotted time, who believes its registration is thus deemed approved, must obtain confirmation of the approval from NHTSA. When NHTSA confirms the approval, NHTSA would add the manufacturer to the up-to-date list of registrants.

We believe that this circumvents the intent of the language in the FAST Act, allowing the agency an unspecified and seemingly unlimited time to respond with acknowledgement that the application is overdue for review, and there for "deemed approved". This language should not be included in the final rule.

In closing, we do appreciate the opportunity to submit these comments on behalf of our company, and on behalf of our great industry. We welcome further discussion on these and other issues affecting the timely release of a fairly constructed rulemaking that meets the spirit of the law and is consistent with the guidance and rules previously published by other agencies, as mentioned in this letter.

Sincerely,

Callaway Cars, Inc.
Reeves Callaway
Chief Executive Officer
erc@callawaycars.com
860-434-9002