



Wednesday, January 17<sup>th</sup>, 2020

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

Reference: No. NHTSA-2019-0121

To whom it may concern:

MOKE USA, LLC is a subsidiary company of MOKE International. The US subsidiary was created in February 2017 in response to the Low Volume Manufacturer's Act (Replica Law) of 2015. MOKE USA is licensed to introduce the vehicle in North America. The Replica Law directs the National Highway Traffic Safety Administration to establish a program allowing low volume motor vehicle manufacturers to produce a limited number of vehicles annually within a regulatory system that addresses the unique safety and financial issues associated with limited production, and to direct the Environmental Protection Agency to allow low volume motor vehicle manufacturers to install engines from vehicles that have been issued certificates of conformity. On discussion with EPA personnel, we have been advised of Electric Vehicle allowance so long as CARB certification is achieved.

For this exemption to apply, the low volume manufacturer is treated as a vehicle manufacturer and must follow an application process to be implemented by the Secretary of Transportation. For the manufacturer's application for the exemption to be granted, the following must be true:

- The manufacturer must not produce more than 5,000 motor vehicles per year total;
- The manufacturer must not produce more than 325 replica motor vehicles per year;
- The manufacturer must register with the Secretary of Transportation as a replica motor vehicle manufacturer when the application process opens;
- The manufacturer must affix a permanent label to the vehicle that identifies it as a replica and designates the model year it is intended to replicate;
- The manufacturer must give notice of the vehicle's status as a replica to the dealer and first purchaser;
- The manufacturer must submit an annual report to the Secretary of Transportation regarding each vehicle produced that year after the exemption has been approved;
- The vehicle must be manufactured under a license for the product configuration, trade dress, trademark, or patent, for the motor vehicle that is intended to be replicated; and
- The vehicle must intend to resemble the body of a motor vehicle that was manufactured at least 25 years prior.

Considering the above, MOKE USA initiated contractual obligations and has thus far spent millions of dollars in setting up an assembly facility, designing a vehicle, and allocating staff for diverse functions. MOKE USA seeks to reduce the financial loss as a result of delays by the NHTSA. The industry has been hurt financially because of this delay. By December of 2016, under the Replica Law, the National Highway Traffic Safety Administration should have enabled the necessary regulations to implement this exemption.

MOKE USA spent time in redeveloping our vehicle based on direction from the California Air Resources Board (CARB) through Title 13, Section 2209, and the United States Environmental Protection Agency (EPA) through CD-19-10 (LDV and LDT). NHTSA's proposed ruling creates some variations and contradictions from those addressed by CARB and the EPA addressed below.



### III. NHTSA's Proposed Replica Vehicle Program – d. Vehicles built in two or more stages:

While the primary nature of the Low Volume Manufacturers Act will entail manufacturing and assembling of vehicles, the law places a ceiling of 325 vehicles per annum per licensed manufacturer. Such direction can place budget limits on engineering and manufacturing complete vehicle assemblies if suppliers exist that can qualitatively improve a product.

The boutique manufacturing nature of Low Volume Manufacturers may require support by various suppliers in the supply chain to ensure qualitative safety requirements of vehicles designed for full speed roads. (i.e. superior re-enforced chassis). Limiting such resources has the potential to limit specialization and sourcing of best resources.

Large car manufacturers take advantage of this clause to focus production in areas that they maintain a competitive advantage in. It should only make sense, that smaller entities working in Low Volume Manufacturing Spaces might need to operate in similar fashion.

MOKE USA thereby requests NHTSA remain open to vehicles manufactured in two or more stages; we agree with requirement that the final-stage and certified manufacturer be the Replica Manufacturer.

On September 1<sup>st</sup>, 2006 the NHTSA entered 49 CFR 567 which sets precedent for Vehicles Manufactured in two or more stages. In short, the law states multistage vehicles must be certified as complying with all applicable Federal motor vehicle standards before it is introduced into the interstate commerce. Certification is provided in the form of a label permanently affixed to the vehicle in a prescribed location, which, among other things, identifies the vehicle's manufacturer and date of manufacture, and states that the vehicle conforms to all applicable FMVSS in effect on date.

49 CFR 567 further states that although the final-stage manufacturer normally certifies the completed vehicle's compliance with all applicable FMVSS, this responsibility can be assumed by any of the assemblers in the production chain. To hold liability responsibility, the vehicle builders must be identified on the certification label that is permanently affixed to the vehicle.

### IV. Relevant definitions – b. 1. Replica Motor Vehicle

The Low Volume Motor Vehicle Manufacturers Act as part of the Fixing America's Surface Transportation Act (Section 24405) defines a replica vehicle as one that 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.

Webster dictionary defines Resemble as to be like or similar to. Cambridge Dictionary states, to look like or be like someone or something.

In light of delay by the National Highway Transportation Administration, MOKE International and its United States subsidiary MOKE USA, considered CARB and EPA regulations in place. We took definition for development of the MOKE vehicle spending expansive financial and human resources to meet California Code Regulations Title 13. Motor Vehicles Division 3. California Air Resources Board, Chapter 4. Criteria for Evaluation of Motor Vehicle Pollution Control Devices and Additives, Article 1.4. Light Duty Engine Packages for Use in New Light-Duty Specially Produced Motor Vehicles and Environmental Protection Agency enclosure CD-19-10.

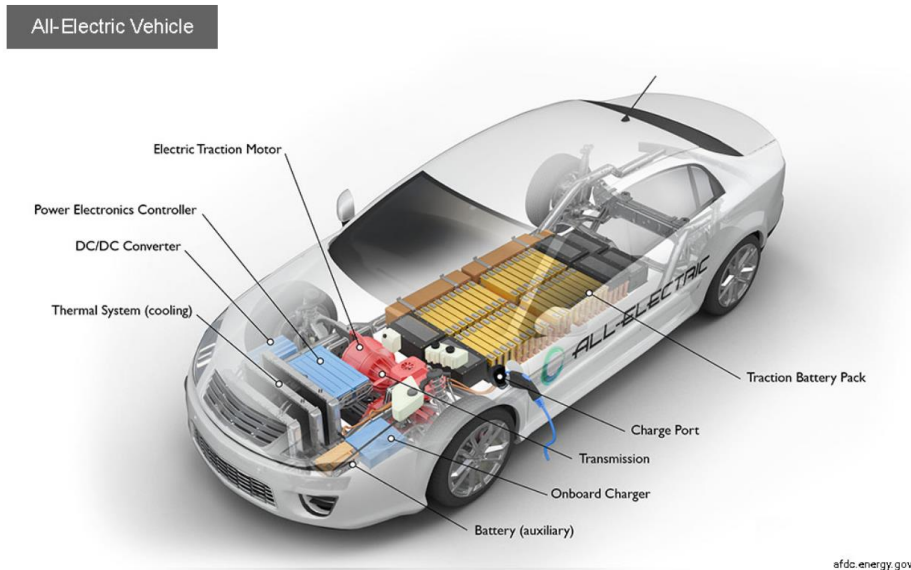
CARB Section 2209.1 Definitions provides; "Resembles the body of a motor vehicle, on an overall 1:1 scale (+/- 10 percent) of original body lines, excluding roof configuration, ride height, trim attached to the body, fenders, running boards, grille, hood or hood lines, windows, and axle location, that 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."



As an added request for allowance on variation, CARB promotes the use of cleaner technologies through its Order for this program. MOKE believes in a cleaner future and has actively engineered a Full Speed Electric Vehicle that is presently headed for a California Lab to certify our EV Drive Train under this program in conjunction with meeting NHTSA FMVSS known requirements.

The US Department of Energy <sup>1</sup> – Alternative Fuels Data Center provides that; All-electric vehicles (EVs) use a battery pack to store the electrical energy that powers the motor. EVs are sometimes referred to as battery electric vehicles (BEVs). EV batteries are charged by plugging the vehicle in to an electric power source. Although electricity production may contribute to air pollution, the U.S. Environmental Protection Agency categorizes all-electric vehicles as zero-emission vehicles because they produce no direct exhaust or emissions.

Electric Vehicles tend to have shorter ranges (per charge) than comparable conventional vehicles have (per tank of gas). Battery packs require a larger vehicle design footprint than gasoline drive trains. The efficiency and driving range of EVs varies substantially based on driving conditions. High driving speeds reduce range because of the energy required to overcome increased drag. Compared with gradual acceleration, rapid acceleration reduces range. Hauling loads or driving up significant inclines also reduces range.



MOKE USA concurs with the laws establishment of maintaining resemblance or similar outward appearance as the original vehicle. In our case, a larger space ratio is required in Electric Vehicles for battery space than gasoline tanks to achieve marketable horsepower output and range.

We re-affirm concurrence with NHTSA in addressing a need to meet FMVSS on installed equipment per Docket No. NHTSA-2019-0121 as a requirement for Low Volume Manufacturers. However, provided the low volume nature of this program per manufacturer and taking as an example; replicating headlights would involve:

- tooling costs,
- minimum order quantities of thousands of units by lightning manufacturers,
- DOT certification costs.

The above costs, when taken as an aggregate of the entire vehicle if exact replication was required, might make costs unbearable for manufacturers. Off the shelf items with DOT approval will surely be sourced by industry participants likely to create variation in final length, width, and height of the vehicle.

<sup>1</sup> US Department of Energy – 2020 – Accessed January 16<sup>th</sup>, 2020 [https://afdc.energy.gov/vehicles/electric\\_basics\\_ev.html](https://afdc.energy.gov/vehicles/electric_basics_ev.html)



Equally important, Low Volume Manufacturers cannot just replicate the original model as times have changed like music and fashion. Replica Car main requirements need adjustment too like enhancements for improved road-holding, braking, suspension and so on for newer faster roads.

Sample upgrades on our vehicle design include:

- 12" tires upgraded to 13" for improved handling in higher speeds
- headroom space between passenger and roll cage has been increased for safer environments.
- rounded bumpers that are safer

Requiring an exact replication of vehicles will limit safety, performance, and technology enhancements.

Low Volume Manufacturers Act Vehicle:



Original MOKE:



#### IV. Relevant definitions – b. 2. Requirement to Manufacture Under License for Intellectual Property Rights

NHTSA views this provision as requiring replica vehicles manufactured under this program to be licensed products. There exists a possibility that some manufacturers are the rightful owners of the brand



trademark. We hereby request that the NHTSA maintain consideration for vehicles manufactured under license or by the rightful trademark holder.

Entrepreneur.com defines a licensed product as a business arrangement in which one company gives another company permission to manufacture its product for specified payment. MOKE agrees with NHTSA's interpretation that vehicles should be badged with the intended product brand the vehicle will resemble as is the case with licensed products across most industries.

V. Vehicle Safety Requirements a. FMVSS:

As stated previously in this letter, MOKE USA does not suggest that vehicles should have uncertified DOT parts. However, designing pieces, certifying, and manufacturing will make it inherently impossible to achieve provided the limited number of vehicles to be assembled annually.

We kindly request that the NHTSA allow for some variation in vehicle design in order to meet such standards and implement automotive innovation.

MOKE USA is grateful to the National Highway Transportation Safety Administration for providing space for comment and expediting the enactment of this law. We look forward to providing further commentary and or discussion as you might see necessary.

Yours truly,

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