



February 6, 2020

James Clayton Owens, Esq.
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: Replica Motor Vehicles; Vehicle Identification Number (VIN) Requirements;
Manufacturer Identification, Certification

REF: 85 Fed. Reg. 792 (January 7, 2020)(Docket No. NHTSA 2019-0121)

Dear Mr. Owens:

On behalf of the members of the Alliance for Automotive Innovation (Auto Innovators), this letter provides comments on the above-referenced proposal to establish a program in which NHTSA will grant applications from certain low-volume manufacturers for exemptions from Federal Motor Vehicle Safety Standards (FMVSS) that apply to motor vehicles. Under this program, eligible manufacturers may apply for exemptions for a maximum of 325 replica vehicles annually and must provide certain reports to NHTSA and certain disclosures to the customers who purchase the exempted replica vehicles.

The Replica Exemption Program was created by Congress in Section 24405 of the Fixing America's Surface Transportation Act (FAST Act) in 2015. The above-referenced proposal was issued to implement this statutory mandate.

Auto Innovators appreciates NHTSA's faithful implementation of the Congressional direction. In enacting the Replica Exemption Program, Congress was balancing competing goals of encouraging innovation and entrepreneurship in the thriving specialty vehicle market with the significant goal of ensuring that new motor vehicles sold to American consumers meet the Federal Motor Vehicle Safety Standards to the extent possible. This is important, not only for the consumers who will purchase these replica vehicles for their own use, but also for the millions of Americans who will share the road with these vehicles.

Auto Innovators wants to highlight several aspects of the proposal for more detailed comments.

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First, Auto Innovators supports NHTSA's interpretation of the statute as prohibiting replica exemptions to resemble vehicles that were built only in prototype or experimental form, and never sold to the public. NHTSA correctly notes that such vehicles are not "motor vehicles" within the meaning of the Vehicle Safety Act, because they were not built for sale or for operation in interstate commerce. Moreover, there is normally no way to know whether the original prototype or experimental vehicle was designed with the basic structural integrity of a modern motor vehicle intended to carry passengers. Allowing replicas of such prototypes or experimental vehicles under the Replica Exemption Program is inconsistent with the statutory mandate to permit exemptions for "replica motor vehicles," and potentially incompatible with safety goals. On the other hand, if a vehicle is built as a true replica of the body of a classic motor vehicle that was actually sold to the public, Auto Innovators does not believe that the Replica Exemption Program statute prohibits the fabrication of that replica vehicle with an electric engine, even if the original classic vehicle had an internal combustion engine. In this respect, Auto Innovators agrees with NHTSA that the focus of whether a vehicle is an eligible "replica" should be on the body, and not the electronic components or mechanics, of the vehicle.

Second, Auto Innovators supports NHTSA's careful attention to ensuring that the eligibility for the exemptions is limited to persons who are truly low-volume manufacturers and to ensuring that the statutory cap of 325 vehicles per year will be honored. NHTSA achieves these goals in part by prohibiting the importation of replica vehicles manufactured by a foreign manufacturer which is not itself a low-volume manufacturer registered with NHTSA under the Replica Exemption Program. Moreover, NHTSA proposes to exclude vehicles built in two or more stages from the Replica Exemption Program. Auto Innovators supports this proposal as a prudent interpretation of the statute. Allowing larger entities to fabricate an incomplete vehicle that would be finished into a final-stage replica vehicle would defeat the statutory intent of limiting this program to low-volume manufacturers. For the same reason, Auto Innovators supports NHTSA's proposal to enforce the statutory cap of 325 exempted vehicles with respect to all manufacturers who are under common control. NHTSA gives the example of two low volume manufacturers who are owned by the same parent company. NHTSA proposes that the two companies will be limited to a maximum of 325 exempted replica vehicles per year on a combined basis. Auto Innovators supports this proposal.

Finally, Auto Innovators supports NHTSA's balancing of the rights of intellectual property owners of the product configuration, trade dress, trademark, or patent rights for the motor vehicle that is intended to be replicated. Congress insisted that a low-volume manufacturer applying for a replica exemption would need to demonstrate that it has obtained the necessary licenses or other permission from the entity owning the intellectual property. Auto Innovators supports NHTSA's proposed approach to this requirement, which requires the applicant to provide supporting documentation that sets forth a description of the types of intellectual property that are necessary to produce the replica vehicle, addressing the status of each of those rights. It is our understanding that in these regulations' NHTSA is not proposing to alter any existing requirements or practices with respect to intellectual property and designs.

Although NHTSA does not intend to verify the adequacy of an applicant's intellectual property permissions, obtaining the supporting documentation (which will presumably be placed on the public records) will permit intellectual property owners to take action to protect their rights if they believe that the applicant does not have the necessary authorizations. For this reason, it will be crucial for NHTSA to ensure that the intellectual property authorization documentation is placed promptly in the public record after it is received from the applicant.

Auto Innovators appreciates this opportunity to provide comments.

Sincerely,
ALLIANCE FOR AUTOMOTIVE INNOVATION

A handwritten signature in black ink, appearing to read "Scott A. Schmidt". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Scott A. Schmidt
Senior Director, Safety