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February 4, 2020

The Honorable James C. Owens
Acting Administrator
National Highway Traffic Safety Administration
c/o 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: Notice of Proposed Rulemaking:
Replica Motor Vehicles; Vehicle Identification Number (VIN) Requirements;
Manufacturer Identification; Certification

Dear Acting Administrator Owens:

Edelbrock LLC welcomes the opportunity to provide comments on NHTSA's proposed rule to implement Section 24405 of the Fixing America's Surface Transportation Act (FAST Act) governing the sale of replica motor vehicles.

Edelbrock LLC is very interested in participating in this program, and wants to aid NHTSA's efforts to obtain a fair and effective rule. Edelbrock has invested heavily in the development of engine packages for the replica car market. In the 4 years that NHTSA has had time to issue the rules, Edelbrock and SEMA have been working with the California Air Resources Board and the US Environmental Protection Agency to refine business plans for a viable program.

Edelbrock is an 82 year old American company producing automotive aftermarket parts that are MADE IN THE USA. Borne of our nation's interest in everything automotive, including racing, hot rods, and restoration, while leading with full modern emissions compliance.

- Over 250,000 USA customers per year are loyal to our brand's MADE IN USA history.
- USA operations include aluminum foundry, manufacturing, and machining operations.
- Member of the Specialty Equipment Market Association (SEMA).

Edelbrock would like to position itself between the interests of major Original Equipment Manufacturers (OEMs) that will supply engines and interests of Replica Car Low Volume Vehicle Manufacturers. Edelbrock will take on the responsibility of becoming the engine Manufacturer of Record (MOR).

- Edelbrock can offer the OEMs an easier pathway to certification, without significant work load added to the OEM high volume production processes. Edelbrock's



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experience with Aftermarket and OEM emissions certification process, as well as manufacturing capabilities, make us uniquely qualified to address these issues.

- Edelbrock can offer Replica Car manufacturers emissions certified engines with customized fitment solutions for their application. Edelbrock is presently working with several chassis manufacturers that are interested in these solutions.

Edelbrock supports the comments submitted by SEMA, and has prepared the following additional comments in the sequence they appear in the NPRM. Edelbrock believes that by working together with NHTSA and SEMA, a reasonable approach for the NHTSA Replica Car rules can be found quickly and efficiently.

III. c. Low Volume Manufacturer Requirement.

For clarification to the following text in the NPRM, suppliers to low volume manufacturers should not be limited to supporting only 325 replica vehicles per year.

Congress specified that replica vehicles must be “manufactured or imported by a low-volume manufacturer.” NHTSA interprets this to mean that the vehicles must be produced by a “low-volume manufacturer,” and that replica vehicles may only be imported by their fabricating low-volume manufacturer. This means that replica vehicles fabricated by a foreign low-volume manufacturer may only be imported by that specific registered low-volume manufacturer (and each low-volume manufacturer would be limited to importing 325 replica vehicles per year, regardless of the calendar year of manufacture).

A supplier to a replica car manufacturer may produce the same components for several low volume manufacturers. For example, an engine manufacturer may produce engines that meet the replica car emissions requirements and sell to several replica car manufacturers. In another example, a rolling chassis manufacturer may produce rolling chassis for several replica car manufacturers. The 325 vehicle per year limit should apply to the replica car manufacturers only, not the engine manufacturers or the rolling chassis manufacturers.

III. d. Vehicles Built in Two or More Stages

Replica car manufacturers may choose to build vehicles in two or more stages [as defined in 49 CFR 567 & 568]. Rolling chassis suppliers and engine suppliers may combine together to supply incomplete vehicles. These incomplete vehicles could be supplied to final stage manufacturers (coachbuilders which build the body and interior), to become completed vehicles.



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- Several different bodies could be designed to fit on the same incomplete vehicle or rolling chassis (e.g. Porsche 356, Volkswagen Beetle and Karmann Ghia; or many combinations of 1930's American made vehicles).
- The incomplete vehicle manufacturer or the final stage manufacturer may also be the replica car manufacturer of record, but not necessarily. This is true even for the original vehicle manufacturers. For example, from 1910 -1940 it was common for luxury vehicle manufacturers (e.g. Packard, Duesenberg, Cadillac) to produce incomplete vehicles, and then one of many custom coachbuilders (e.g. Fisher Body) would finish the body and interior.

Several different replica car manufacturers could use different combinations of incomplete vehicles and coachbuilders to make completed vehicles. Replica car manufacturers may combine various supplier manufacturers (rolling chassis, engine, and coachbuilder suppliers) to make the vehicles, in order to foster competition among the supplier manufacturers for the best price and quality.

- An incomplete vehicle manufacturer (i.e. a rolling chassis manufacturer combined with an engine manufacturer) should not be restricted to 325 vehicles per year, because it may supply several different final stage manufacturers.
- A final stage manufacturer should not be restricted to 325 vehicles per year, because it may supply coachworks for several different incomplete vehicle manufacturers.
- Only replica car manufacturers should be restricted to 325 vehicles per year.

IV. b 1. Requirement To Resemble the Replicated Vehicle

It is recommended that NHTSA adopt the California Air Resources Board (CARB) definition for a replica car, from CCR Title 13, Section 2209.1(a)(16)(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...

The CARB definition carefully considered the marketplace and purpose of a replica car, while still not requiring the exact same height, width, and length of the original. This allows the replica car manufacturers to improve safety as well as market appeal.

For example, it is very common for 1930's replica cars to have modifications that improve safety. These modifications improve the handling and braking performance, as well as allow the replica cars to safely drive at interstate highway speeds, which the original vehicles were not capable of. Common modifications considered for 1930's replica cars would include:



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- Upgrades to braking systems (from original mechanical linkage drum brake systems to modern hydraulic brake systems) which may affect fender fitment.
- Lowered ride heights, independent suspension, and extended wheel bases are used for vehicle stability (which may affect fender fitment).
- Altered bodies which would allow addition of basic safety equipment like safety belts or roll cages, or to allow for modern age larger drivers. This would also affect fenders, hood lines, grille, and running boards. Changes wouldn't be to the extent that the overall look of the vehicle would make it indistinguishable from the original.
- Lowering roof lines or offering convertible, coupe, and sedan versions of the same vehicle (which alters window height). These modifications don't add any benefit or detriment to safety.
- Original stainless steel trim is removed because it can be difficult and cost prohibitive to reproduce, and because it doesn't add any benefit or detriment to safety.

NHTSA could still review in each manufacturer's annual report, "Images of the original vehicle, images of the replica produced, and full and complete descriptive information, views, and arguments sufficient to establish that the replica motor vehicles, as manufactured, resemble the body of the original vehicle."

IV. b 2. Requirement To Manufacture Under License Agreement for Intellectual Property Rights

Edelbrock recommends (in agreement with SEMA) that a registration application allow a certification stating that the replica manufacturer is the owner of the subject intellectual property rights or that the intellectual property rights are in the public domain.

The requirement for manufacturers to provide "binding certification that attests that they can legally produce each replica vehicle model they propose to make" is not feasible in many cases. Some old vehicle marks no longer exist and have fallen out of trademark protection, or never had trademark protection to begin with. Many potential replica car manufacturers are presently kit car manufacturers, and have successfully dealt with licensing issues as part of their business.

There is also a potential issue for large original equipment manufacturers that are still in business today. The original equipment manufacturer may approve of a replica car manufacturer using the likeness of old models to generate customer enthusiasm for its new models, but disapprove of having their trademarked name associated with the replica car to avoid any responsibility for the quality of the replica car manufacturer. NHTSA should not list in public documents the original make and model of the original vehicle. Rather, NHTSA can list the name of the replica motor vehicle that is being produced.



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V. a. Equipment FMVSS

Edelbrock agrees with NHTSA's general discussion that the law applies to equipment-based Federal Motor Vehicle Safety Standards (FMVSS) but not vehicle-based standards.

FMVSS No. 108, lighting equipment: Replica car manufacturers should be allowed the option of complying with the equipment lighting standard for the models that they are replicating. Vehicles that were not originally equipped with side marker lamps or high mounted stop lamps should not be required to have them. The design (shape, size, and placement) of the headlamps and tail lamps for the replica vehicles may not meet the current FMVSS No. 108 requirements.

For replica vehicles which have an applicable equipment lighting standard for the models that they are replicating, replica car manufacturers should be allowed the option of complying with replacement equipment standards that are defined in 49 CFR 571.108 S6.7. The aftermarket may make replacement devices once the original equipment manufacturers and their suppliers have stopped production.

FMVSS No. 205, Glazing Materials: Replica car manufacturers should be allowed to follow the aftermarket replacement glazing requirements defined in S5.1.2, which allow optional use of 49 CFR 571.205(a). Replica Cars resemble vehicles that are 25 years old or older have windshields which in most cases are no longer produced by the original equipment manufacturers, but may have windshields available in the aftermarket.

FMVSS No. 208, Occupant crash protection: For clarification, it is assumed that FMVSS No. 208 is only applicable to a replica car if it is equipped with a pressure vessel or explosive device. The references to seat belts or air bags are vehicle performance related criteria which are not required, where the required equipment standard is specified in FMVSS 209.

FMVSS No. 209, Seat belt assemblies: There should be no requirement that replica vehicles have air bags or seat belts unless the original vehicle was equipped with these devices. If there are applicable requirements for the original vehicle, then replica car manufacturers should be allowed to follow the regulations regarding replacement items on the original vehicle in lieu of new vehicle requirements. The aftermarket may make replacement devices once the original equipment manufacturers and their suppliers have stopped production.

V. b. Considered Requirements

Edelbrock agrees with NHTSA that no additional safety requirements beyond the performance of discrete equipment items should be required. Edelbrock also encourages NHTSA to not require structural requirements with respect to the designs of the original vehicle FMVSS. The low volume replica car manufacturers are limited to 325 vehicles per



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year, and are not financially capable of duplicating the validation testing done by the large original equipment manufacturers which made thousands of vehicles.

VI. Registration Requirements

Concerning the requirement to provide documents showing it has obtained intellectual property rights, please refer to “IV. b 2. Requirement To Manufacture Under License Agreement for Intellectual Property Rights” in this letter. Edelbrock recommends (in agreement with SEMA), that a registration application allow a certification stating that the replica manufacturer is the owner of the subject intellectual property rights or that the intellectual property rights are in the public domain.

Edelbrock understands NHTSA’s concerns to ensure that the 325 replica limit set by Congress is not circumvented. Edelbrock asks NHTSA to consider the multi-stage manufacturers as defined in “III. d. Vehicles Built in Two or More Stages” of this letter, so that suppliers are able to support multiple replica car manufacturers.

Edelbrock (like SEMA) strongly disagrees with certain NHTSA proposals on how an application may be deemed approved. The law places the burden on NHTSA to review applications in a timely fashion (90 days, 120 days, or 180 days depending upon circumstance). The law is clear—if no decision is rendered within the allotted time, the registration *shall* be deemed approved. The U.S. Congress included this stipulation in recognition that small businesses have created business models that hinge on expediency and removing any unnecessary regulatory burdens. Nevertheless, NHTSA retains its authority to revoke a registration based on failure to comply with any applicable requirements under the law or a finding by NHTSA of a safety-related defect.

VII. d Other Administrative Requirements, Certification

Edelbrock agrees with SEMA’s position on the certification label, and asks that NHTSA removes the requirement that the make and model be identified. Conversely, a company may voluntarily insert these identifications if so desired.

VIII. Labels and Other Consumer Disclosures

Edelbrock agrees with SEMA that it isn’t necessary to require that manufacturers provide replica motor vehicle dealers and owners with Table 1 summaries of the FMVSS. Edelbrock believes the temporary label described in section VIII c is sufficient, and likely the most practical and effective way of informing consumers that the replica car does not meet all Federal motor vehicle standards.



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XIII. Regulatory Notices and Analyses

Edelbrock agrees with SEMA that in order for the Congressional intent to be implemented and for the replica law to be workable and usable by replica manufacturers, the replica law must compel states to be bound by the exemptions provided to replica motor vehicle manufacturer. States can indeed have titling or registration laws or regulations for a replica motor vehicle—as long as those laws or regulations do not impose safety standard compliance which are exempted under the replica law.

Edelbrock also agrees with SEMA that the replica law does not create a “safety standard”—it creates an exemption. Just like the other exemptions written into the Safety Act, the replica car exemption was intended by the U.S. Congress to provide certain relief from compliance. In order for the intent of Congress to be implemented, a plaintiff cannot use “noncompliance with an exempted standard” as part of its state tort claim.

Conclusion

Edelbrock appreciates NHTSA’s efforts to implement this proposed rule. Edelbrock LLC is very interested in participation in this program, and wants to aid NHTSA’s efforts to obtain a fair and effective rule.

Sincerely,

A handwritten signature in blue ink that reads "Braden Liberg".

Braden Liberg
Director, Compliance and Calibration Engineering