



February 6, 2020

By regulations.gov

National Highway Traffic Safety Administration (NHTSA)
Docket Management Facility
West Building, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Replica Motor Vehicles; Vehicle Identification Number (VIN) Requirements; Manufacturer Identification; 49 CFR Parts 565, 566, 567, and 586; Doc. No. NHTSA-2019-0121

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents more than 16,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ over 1,100,000 people nationwide, yet the majority are small businesses as defined by the Small Business Administration.

Last month, NHTSA issued a proposal addressing how its regulatory requirements should apply to the manufacture and distribution of replica motor vehicles.¹ Generally speaking, NADA's franchised dealership members do not manufacture or sell the new replica motor vehicles that are the subject of NHTSA's proposal. Of course, that could change in the future to the extent that replica motor vehicle manufacturers take advantage of the expertise and experience franchised dealerships offer with respect to selling new and used vehicles, servicing and repairing those vehicles, managing warranty and recall work, handling state titling and registration compliance, etc. In any event, NADA offers the following comments and suggestions on NHTSA's replica motor vehicle proposal.

I. The Exemption Caps

The proposal would allow exemptions to apply to no more than 325 replica motor vehicles introduced into commerce in the U.S. each year by a per low volume manufacturer. A low-volume vehicle manufacturer is one that manufactures no more than 5,000 total motor vehicles each year.² NADA supports these proposed exemption caps, so long as NHTSA makes it clear that replica motor vehicle manufacturers may not evade them through the use of multiple importers, distributors, "shell" subsidiaries, final-stage manufacturers, etc.

¹ 85 Fed. Reg. 792, et seq. (January 7, 2020).

² 49 U.S.C. §30114(b)(7).

II. Identification and Registration

Prior to introducing replica vehicles into commerce, replica motor vehicle manufacturers will be required to comply with the manufacturer registration requirements set out in proposed 49 CFR §586.6 which, among other things, incorporates the manufacturer identification requirements found in 49 CFR Part 566. Regardless of size, but especially with respect to small volume manufacturers, identification and registration requirements help to instill confidence in prospective motor vehicle purchasers, owners, and resellers regarding the willingness and ability of those manufacturers to comply with the important vehicle safety mandates and responsibilities administered by NHTSA. These mandates and responsibilities include both an upfront obligation to build compliant vehicles and on-going obligations with respect to safety-related noncompliances and defects. Note that in most states, motor vehicle manufacturers must obtain licenses, post bonds, and/or register prior to doing business.

Given that, by definition, replica motor vehicles are intended to copy or resemble motor vehicles manufactured not less than 25 years prior, NADA supports a requirement that the manufacturers of such vehicles attest that they have or will obtain appropriate intellectual property licenses or permissions, *if any*, prior to introducing such vehicles into commerce. Such a requirement will help to instill confidence in prospective purchasers, owners, and resellers with respect to the legal status of replica motor vehicles.

III. Safety Requirements

NADA supports a regulatory scheme that generally requires compliance with all Federal Motor Vehicle Safety Standards (FMVSS), bumper standards, and theft standards applicable to the vehicle type and year of manufacture, unless and to the extent that a replica motor vehicle manufacturer can show that compliance is impossible or cost prohibitive. Prospective purchasers of replicas are looking for vehicles that resemble make/models that are more than 25 years-old but, to the greatest extent possible, offer modern active and passive vehicle safety protections. Where exemptions are granted from certain FMVSS, bumper and theft standards, appropriate disclosures will enable prospective purchasers, owners, and resellers to understand what, if any, safety trade-offs are involved with a given replica motor vehicle.

IV. Certification and Labelling

NADA supports appropriate certification and labelling requirements designed to enable prospective purchasers, owners, and resellers to understand the nature and extent to which a given replica motor vehicle is exempt from otherwise applicable FMVSS, bumper standards or theft standards. In addition to a permanent certification label, each replica motor vehicle manufacturer should be required to ensure that first purchasers other than for resale receive a written notice *or* a temporary label referring to a vehicle's exempt status. To ensure full yet appropriate disclosure, NHTSA need not mandate both a notice *and* a temporary label, and should allow replica motor vehicle manufacturers to reference websites where more detailed information can be found as to a vehicle's exempt status.

V. State Titling and Registrations

Many states have laws conditioning the introduction of new motor vehicles into commerce on their compliance with applicable federal standards. NADA is unaware of any state with such a requirement that has attempted either to prohibit the sale of motor vehicles falling under a federal small volume manufacturer exemption, or that has attempted to adopt rules imposing additional state safety standards on those vehicles. Consequently, NADA concurs with the Specialty Equipment Manufacturer's Association with respect to its comments on the nature and extent of the Motor Vehicle Safety Act's preemption language. At the same time, NADA appreciates the important role states play with respect to the proper titling and registration of new and used motor vehicles, replicas and otherwise, and generally supports the comments submitted by the American Association of Motor Vehicle Administrators in that regard.

VI. Conclusion

On behalf of NADA, I thank NHTSA for the opportunity to comment on this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Douglas I. Greenhaus".

Douglas I. Greenhaus
Chief Regulatory Counsel,
Environment, Health and Safety