



January 11, 2021

Docket Management Facility, M-30
U.S. Department of Transportation
1200 New Jersey Avenue, SE
West Building, Room W12-140
Washington, DC 20590-0001

**RE: Notice Regarding the Applicability of NHTSA FMVSS Test Procedures to Certifying Manufacturers
[Docket No. NHTSA-2020-0119]**

The American Association of Motor Vehicle Administrators (AAMVA) welcomes the opportunity to comment on this latest notice of interpretation on applicability of Federal Motor Vehicle Safety Standards (FMVSS). While AAMVA defers matters of design evaluation to NHTSA as the appropriate federal authority to provide oversight in this regard, AAMVA stresses the continued need for accountability of the manufacturer to assure all safety performance aspects of a motor vehicle prior to its use on public roadways.

NHTSA cites that the current notice supersedes prior contrary statements the Agency has made – including those in NHTSA’s 2016 letter of interpretation to Google, Inc. – stating that manufacturers could not validly certify FMVSS compliance unless NHTSA could verify compliance using the FMVSS test procedures. AAMVA is generally pleased with this superseding interpretation and believes that NHTSA and trustworthy manufacturers are best able to understand the holistic embodiment of all complex design systems integrated into a single vehicle. However, AAMVA does have concerns regarding how application of the FMVSS will be expressed in situations where the testing methodologies, separate from application of the standard, cannot be reasonably applied to validate safety performance.

NHTSA describes the certification requirements set out in the Safety Act by stating that:

“[a] manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter.” It also states that “[a] person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect.”

If AAMVA understands the above correctly, the description of the self-certification process as described through this notice of interpretation remains largely intact. The manufacturer is still subject to ensuring reasonable care towards FMVSS conformance is accomplished but is not responsible for ensuring that NHTSA testing methodologies be applicable to production vehicles.

NHTSA goes on to differentiate testing requirements from the actual standard (FMVSS) by stating that:

“Test procedures, and the conditions under which they are conducted, serve an important role in the FMVSS: They provide context to the performance requirement and provide notice to the industry of NHTSA’s methodology for determining compliance with the minimum performance standards established in the FMVSS. However, they are not performance requirements themselves.”

AAMVA concurs that testing requirements are evaluation tools used to determine compliance with the standard rather than the standard itself. However, it is critical to ensure accountability for conformance to a self-certification process be visible and documented where testing requirements are inapplicable. Certification of performance must be publicly documented and attested to if there is a movement away from application of testing requirements to the standard prior to self-certification.

While AAMVA appreciates the need to better accommodate innovation in safety performance, our organization still has difficulty understanding how the 2016 interpretation and the requirement that manufacturers pursue an exemption for vehicles that deviate from the FMVSS is problematic. We understand that there are going to be numerous deviations for ADS-enabled vehicles over time, but the reliability of those variations in the absence of being sufficiently tested by independent parties or a safety oversight agency seems to warrant pursuit of an exemption from the standard. AAMVA understands that with some innovations, NHTSA may not be able to accurately evaluate vehicle systems. But documented evidence that the manufacturer has sought independent review of the vehicle meeting the safety performance factors of the standard may provide a solution where testing procedures do not apply. Where this is difficult or unreasonable, the exemption process should still require manufacturers of “these unique vehicles pursue an exemption from certain FMVSSs or wait until the Agency issued amendments to the FMVSS test conditions and procedures accommodating the new designs.” This application for exemption may assist in providing that accountability chain between manufacturers, self-certification, adherence to FMVSS and allowable latitude for innovation in design.

Through this action, NHTSA is “rescinding the portions of the 2016 Google Interpretation stating that manufacturers must ensure that NHTSA could conduct the FMVSS test procedures on the vehicle using the test conditions and procedures specified in the standard. Instead, the Agency clarifies that for those vehicles with designs that preclude testing under existing FMVSS test conditions and procedures, a manufacturer acting in good faith and exercising reasonable care may certify the vehicle as compliant even if the Agency cannot conduct the exact test procedure set forth in the standard.” AAMVA understands the necessity of the change in terms of application of testing methodologies. But by NHTSA’s own description, the first aspect of certification requires that the vehicle be compliant with all FMVSS prior to certification. Understandably, strict testing methodologies may not be applicable to all innovative vehicle designs. However, it is still important to test the overall performance of the vehicle and where applicable, document exemptions from FMVSS specific to individual vehicle function.

AAMVA concurs with the interpretation’s assertion that, ““the question of whether there is compliance with the standard can be answered by objective measurements and without recourse to any subjective determination.” As with prior comment, third-party, independent evaluation may be helpful. Another potential avenue may simply require attestation from the manufacturer that the vehicle has met the standard but is unable to validate performance via the NHTSA-described standard testing methodology.

Further, beyond the manufacturer attesting to, or providing third-party evaluation of the vehicle, it may be necessary for NHTSA to indicate in its post-certification evaluation of a vehicle any instances where the vehicle meets the standard but that it does so absent the ability for NHTSA to be able to verify via testing.

AAMVA agrees that testing methodology may not be applicable to all new designs, but where the test is not applicable, and the manufacturer wishes to pursue self-certification, AAMVA recommends that the FMVSS which are unable to be tested by current testing methodologies be documented and that an exemption to the FMVSS be issued in the interim. This way the specific performance-based functions by vehicle are documented for further review and it is understood which FMVSS were not subjected to test.

AAMVA is not recommending that all FMVSS be subjected to NHTSA testing in the same manner as application of the performance standard, nor that the inability to test should stand in the way of self-certification; just that where NHTSA is unable to test for adherence to the standard, that those instances may be documented and catalogued in some fashion. AAMVA is appreciative of the fact that where the whole test cannot be applied, NHTSA will conduct a partial compliance test or employ additional testing techniques.

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