



January 20, 2021

Honorable James C. Owens
Acting Administrator
National Highway Traffic Safety Administration
1200 New Jersey Avenue S.E.
West Building
Washington, DC 20590

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

Dear Acting Administrator Owens:

Michelin North America, Inc. (“Michelin”) appreciates the opportunity to offer comments on the National Highway Traffic Safety Administration’s (“NHTSA”) Notice of Interpretation (the “Notice” or “Interpretation”) regarding the applicability of FMVSS test procedures to compliance certification by manufacturers of vehicles or equipment whose design precludes application of those specific tests.¹

As a registered motor vehicle equipment manufacturer, Michelin supports NHTSA’s decision to reaffirm its longstanding position that the National Motor Vehicle and Safety Act (“Safety Act”)² does not require motor vehicle or equipment manufacturers to perform specific test procedures described in the FMVSS—or design motor vehicles or equipment in a manner that ensures they are capable of being tested pursuant to test conditions and procedures established in the FMVSS—in order to certify compliance with those standards as required by the Safety Act.

I. Introduction

Michelin manufactures and sells tires for automobiles, airplanes, farm equipment, heavy duty trucks, motorcycles, and bicycles. We operate 19 plants located in 8 States and Nova Scotia

¹ 85 Fed. Reg. 83143 (December 21, 2020).

² 49 U.S.C. § 30101 et seq.

and employ over 22,000 people in North America.³ The Company has earned a reputation for building safe and innovative premium tires. Michelin also offers a full range of innovative services and solutions that help make mobility safer, more efficient, and more environmentally friendly. Michelin’s Research and Development Company in North America employs over 1,060 engineers and other staff who have been responsible for bringing some of the finest products in the world to market.

II. Michelin Responses to Request for Comment

A. NHTSA’s Correct Interpretation of the Safety Act Provides Necessary Flexibility for Manufacturers to Certify Innovative Motor Vehicle and Equipment Designs

Michelin supports NHTSA’s decision to reaffirm its longstanding interpretation of the applicability of the test procedures established under the FMVSS. As explained in the Notice, “test conditions and procedures are not minimum performance criteria; they are a set of preparatory actions that are taken to set up a scenario for *one way* in which performance will be measured.”⁴ By eliminating uncertainty regarding whether manufacturers must design motor vehicles or equipment in a manner that ensures they are capable of being tested pursuant to test procedures established in the FMVSS, the Notice:

- Provides necessary flexibility for manufacturers to certify innovative motor vehicle and equipment designs based on tests, methods or analyses different from those specified in the FMVSS test procedures;
- Enables manufacturers to utilize other means beyond physical testing—such as simulations or analyses—to determine compliance with the performance requirements of the FMVSS;
- Clarifies that the FMVSS establish minimum performance requirements, not design- or technology-based testing standards.

In addition, Michelin observes that the Notice references both certified motor vehicles and motor vehicle equipment throughout NHTSA’s summary and analysis of the Interpretation. However, in the discussion of manufacturers’ certification obligation under Section 30115 of the Safety Act, the Notice focuses primarily on certification of motor vehicles.⁵ To the extent that there is any ambiguity, NHTSA’s Interpretation regarding FMVSS test procedures applies *equally* to certifying motor vehicle manufacturers and vehicle equipment manufacturers.⁶

³ Michelin operates 15 plants in the U.S., located in Greenville, SC; Spartanburg, SC; Lexington, SC; Sandy Springs, SC; Starr, SC; Duncan, SC; Covington, GA; Norwood, NC; Dothan, AL; Tuscaloosa, AL; Louisville, KY; Fort Wayne, IN; Kansas City, MO; Ardmore, OK.

⁴ 85 *Fed. Reg.* 83143, 83147 (December 21, 2020) (emphasis added). While the Interpretation responds to a prior interpretation issued in the context of Automated Driving Systems, the text of the Interpretation and its analysis makes clear it applies equally to all vehicles and equipment covered by FMVSS requirements.

⁵ *See Id.* at 83145-46.

⁶ 49 U.S.C. § 30115(a) (“In general.--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.”) (emphasis added).

B. NHTSA’s Interpretation of the Safety Act Should Inform Future Rulemakings Adopting New or Modified FMVSS

NHTSA is charged under the Safety Act with protecting the driving public against unreasonable risks of harm caused by the design, construction, or performance of motor vehicles or motor vehicle equipment. NHTSA has established two primary regulatory mechanisms to maintain motor vehicle safety: (1) the FMVSS and the manufacturers’ obligation to certify motor vehicles and/or motor vehicle equipment to these standards;⁷ and (2) the manufacturers’ obligation to identify and remedy defects that present an unreasonable risk to motor vehicle safety.⁸

In their current form, FMVSS test procedures largely reflect the technologies currently used in motor vehicles and motor vehicle equipment. The Interpretation removes unnecessary and unintended regulatory barriers to innovation by clarifying that manufacturers have the means to certify innovative motor vehicles or equipment that cannot be tested using the procedures included in the FMVSS. Given the rapid pace of technological change and innovation in the motor vehicle and equipment industry, this action further highlights the need for greater flexibility in the test procedures established under the FMVSS.

NHTSA notes that independent compliance verification using the FMVSS test procedures has historically been the backbone of its standard compliance enforcement program and will remain so under the Interpretation. However, reliance on non-applicable test procedures under the FMVSS is inefficient and limits the effectiveness of NHTSA’s oversight. Accordingly, to keep pace with innovation, new or modified FMVSS should adopt test procedures that are technology neutral and allow for design flexibility.⁹ Future FMVSS tire rulemakings should evaluate testing procedures based on credible research, industry standards or recommendations, and recommendations by industry standards organizations (such as ASTM, ISO, SAE, T&RA).

C. NHTSA Should Develop Clear Guidance for Evaluating Innovative Motor Vehicles or Equipment that Cannot be Tested Pursuant to FMVSS Test Procedures

NHTSA acknowledges that the inability to test motor vehicles or motor vehicle equipment using established FMVSS test procedures will impact the regulatory tools at its disposal to conduct oversight and enforcement activities. Accordingly, the Agency identifies several potential methods to evaluate the compliance of novel vehicles or equipment that cannot be tested pursuant to FMVSS test procedures, including adapting existing FMVSS test procedures; applying some FMVSS test procedures but not others that do not apply to a particular design; investigating a manufacturer’s basis for certification by reviewing documentation or other support for a manufacturer’s exercise of “reasonable care” prior to self-

⁷ 49 U.S.C. §§ 30111, 30115.

⁸ 49 U.S.C. §§ 30116, 30118, 30120.

⁹ See 49 CFR § 5.5 (e) (“Regulations should be technologically neutral, and, to the extent feasible, they should specify performance objectives, rather than prescribing specific conduct that regulated entities must adopt.”).

certification; or applying NHTSA's own "engineering judgment" regarding the performance of the vehicle or equipment.

Michelin recognizes the challenges that NHTSA faces in evaluating the compliance of motor vehicles or equipment that cannot be tested using the established procedures in the FMVSS and, more importantly, the vital importance of NHTSA's role in ensuring the safety of motor vehicles and equipment. However, because the FMVSS must be objective measures of minimum performance, Michelin cautions against reliance on subjective measures or evaluations (for example, NHTSA's "engineering judgment").¹⁰ We also recognize the need for NHTSA to evaluate FMVSS compliance, which may include use of its investigative authority to verify a manufacturer's exercise of "reasonable care" in certifying that a vehicle or item of equipment meets FMVSS performance standards. In so doing, NHTSA should protect confidential business information provided by manufacturers to the full extent authorized under the Safety Act and other applicable law.

III. Conclusion


Michelin supports NHTSA's decision to reaffirm its position that the Safety Act does not require motor vehicle or equipment manufacturers to perform specific test procedures described in the FMVSS in order to certify compliance with those standards as required by the Safety Act. This correct interpretation of the Safety Act provides a clear regulatory signal that the FMVSS establish minimum performance requirements, but do not require certifying manufacturers to use test procedures set forth in the FMVSS, or any particular test or test procedure, to determine compliance with the standards.

Michelin appreciates the opportunity to submit these comments.

Sincerely,



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¹⁰ 49 U.S.C. § 30111(a) ("Each [FMVSS] shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.").