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USG 5005
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Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue SE
West Building Ground Floor, Room W12-140
Washington, DC 20590-0001

Re: Docket No. NHTSA-2020-0119
Federal Register: 85 Fed. Reg. 83143 (Dec. 21, 2020)
Notice of Interpretation; request for comments.

General Motors, LLC and Cruise LLC (“GM/Cruise”) appreciate the opportunity to comment on the National Highway Traffic Safety Administration’s (“NHTSA” or the “Agency”) Notice of Interpretation, *Notice Regarding the Applicability of NHTSA FMVSS Test Procedures to Certifying Manufacturers* (the “Notice” or “proposed interpretation”).¹ GM/Cruise agrees with NHTSA’s legal and procedural concerns with the 2016 Google interpretation and we thank NHTSA for reestablishing its longstanding position that manufacturers are not required to use the test conditions or procedures provided in the FMVSS for their self-certification. Importantly, through this new interpretation, NHTSA reaffirms that manufacturers are not required to design vehicles in such a manner as to ensure that they are capable of being tested pursuant to such standards as a condition of self-certification. NHTSA’s interpretation is consistent with the Safety Act,² and will, as NHTSA explains, promote innovation and remove a barrier that “hinders innovation of all types, including innovative technological methods of meeting or exceeding the actual performance standards that constitute the FMVSS.”³

As NHTSA notes in its discussion of FMVSS 135, barriers remain to certifying vehicles that lack manual driving controls and are operated exclusively by an Automated Driving System (ADS vehicles). For example, ADS vehicles subject to FMVSS 135 cannot currently be certified compliant with FMVSS 135 if they lack a foot control (i.e., a brake pedal).⁴ Going forward, we are committed to continuing to work with the Agency on its ongoing rulemaking to address these barriers and urge NHTSA to complete the rulemaking it began in May 2019 (“100-series Rulemaking”) to address barriers related to certain manual controls and displays/telltales predicated on the existence of a human “driver”— e.g., FMVSS 135’s requirements that service

¹ 85 Fed. Reg. 83143 (Dec. 21, 2020).

² 49 U.S.C. 30101, *et seq.*

³ Notice at 83147.

⁴ *Id.* at 83148.

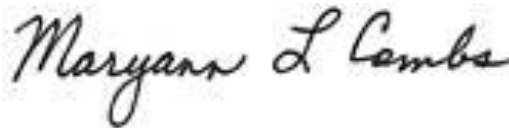


brakes “shall be activated by means of a foot control.”⁵ In NHTSA’s 100-series Rulemaking, NHTSA outlined four options to address existing manual-control requirements like FMVSS 135’s foot-actuated brake pedal requirement. GM/Cruise view the foot-control requirement as a design option that, in the context of an ADS vehicle, is unnecessary to establish compliance with the substantive braking performance requirements of FMVSS 135. As such, GM/Cruise recommend that NHTSA adopt the third approach identified in its 100-series Rulemaking and find that the foot/manual control is not required to establish compliance with FMVSS 135, and, accordingly, NHTSA should exclude level 4/5 AVs designed to be operated exclusively by the ADS from the requirement. We are encouraged by NHTSA’s interpretation and recent rulemaking efforts, and we are hopeful that NHTSA will continue these efforts to update other motor vehicle safety standards to address instances where an FMVSS design feature necessarily depends on the design feature of a human “driver.”⁶

Conclusion

Again, GM/Cruise appreciates the opportunity to provide comments and critical work clarifying the applicability of FMVSS test procedures. GM/Cruise welcomes any questions or requests for additional information. Please feel free to contact Matthew Jerinsky of our Washington, D.C. office at (202) 775-5061 or matthew.jerinsky@gm.com with any questions you might have.

Sincerely,



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cc:

Kerry Kolodziej, Assistant Chief Counsel for Litigation and Enforcement (via e-mail)
Daniel Koblenz, Attorney-Advisor, Vehicle Safety Standards and Harmonization (via e-mail)

⁵ 84 Fed. Reg. 24433, 24438.

⁶ GM/Cruise would also like to note that there is a remaining incongruity with NHTSA’s 2016 Google interpretation that reasonably interpreted Google’s AI system as the “driver,” and certain FMVSS requirements that necessarily depend on the existence of a human “driver”—e.g., the foot control requirement in FMVSS 135. (See Letter to C. Urmson, Google (Feb. 4, 2016), available at <https://www.nhtsa.gov/interpretations/google-compiled-response-12-nov-15-interp-request-4-feb-16-final>).