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

Re: Notice Regarding Applicability of NHTSA Federal Motor Vehicle Safety Standards (FMVSS) Test Procedures to Certifying Manufacturers; Doc. No. NHTSA-2020-0119.

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 1,000,000 people nationwide, yet the majority are businesses as defined by the Small Business Administration.

Last year, NHTSA issued a notice of interpretation on the applicability of its FMVSS test procedures to vehicle manufacturer (OEM) compliance certifications.<sup>1</sup> The notice clarifies that FMVSS test conditions and procedures primarily apply to NHTSA compliance testing. Moreover, while such testing can demonstrate a *prima facie* case of certifiable compliance with an FMVSS performance standard, NHTSA is clarifying that it is not incumbent upon OEMs to universally apply FMVSS test conditions and procedures to demonstrate that they have exercised the reasonable care necessary to show compliance. Instead, they may employ strategies such as computer simulations and engineering analyses. Dealerships occasionally act as final stage manufacturers and alter fully certified vehicles. For all new vehicles, they and their customers depend on the accuracy of the FMVSS compliance certifications OEMs make.

NADA supports an interpretation that provides OEMs with flexibility as to how they meet their FMVSS compliance certification obligations. Such flexibility is warranted whether testing is physically possible or not for a given vehicle configuration. However, at some point after it appears that a significant number of new vehicle designs, technologies, and configurations subject to a particular FMVSS cannot be tested using an existing test, NHTSA should develop appropriate modifications to that test's procedures and conditions. If possible, such modifications should result in a technology neutral test. Alternatively, modified test procedures and conditions should be tailored to the most common new vehicle technologies and designs.

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<sup>1</sup> 85 Fed. Reg. 83143, *et seq.* (December 21, 2020).

Either way, appropriate modifications will enable both OEMs and NHTSA to avail themselves of a testing option for certification and compliance monitoring purposes.

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

Respectfully submitted,

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Associate Director – Regulatory Affairs