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**Federal Motor Vehicle Safety Standards: Test Procedures
Advanced Notice of Proposed Rulemaking
85 Federal Register 79456, December 10, 2020**

Advocates for Highway and Auto Safety (Advocates) files these comments in response to the National Highway Traffic Safety Administration's (NHTSA, Agency) Advanced Notice of Proposed Rulemaking (ANPRM) on whether any test procedures for the Federal Motor Vehicle Safety Standards (FMVSS) may be a candidate for replacement, repeal or modification, for reasons other than for considerations relevant only to automated driving systems.¹

Motor Vehicle Deaths Remain Unacceptably High

The carnage and financial toll borne from crashes on our roadways is unacceptable. According to NHTSA, 36,096 people were killed, and an estimated 2.74 million more were injured in traffic crashes in 2019.² The crashes, injuries, and fatalities impose a financial burden of well over \$800 billion in total costs to society -- \$242 billion of which are direct economic costs, equivalent to a "crash tax" of \$784 on every American.³ When adjusted solely for inflation, total costs increase to nearly a trillion dollars annually. The American public is paying with their lives and their wallets because of regulatory inaction on proven safety advances by the Agency charged with saving lives, preventing injuries, and reducing economic costs due to road traffic crashes.⁴

Any Change to Agency Testing Procedures Must Not Jeopardize Public Safety

While this notice is ostensibly not about replacement, repeal, or modification of the FMVSS for reasons relevant only to automated driving systems (ADS), recent Agency efforts involving these technologies illustrate the dangers of undertaking such actions without considering the full impact of such changes. As prescribed in the National Traffic and Motor Vehicle Safety Act of

¹ 85 FR 79456 (Dec. 10, 2020).

² Traffic Safety Facts Research Note: Overview of Motor Vehicle Crashes in 2019, NHTSA, Dec. 2020, DOT HS 813 060.

³ "The Economic and Societal Impact of Motor Vehicle Crashes, 2010," NHTSA (2015).

⁴ NHTSA, About NHTSA, Mission.

1966”⁵ codified in 49 U.S.C. 30111, “[e]ach [federal motor vehicle safety] standard shall be practicable, meet the need for motor vehicle safety, and be stated in objective terms.”⁶ Federal law does not require that the standard specifically state the safety need addressed but does require that a FMVSS meet a safety need. Thus, any changes to the regulatory text or test procedures which undermine or eliminate the means by which the FMVSS meets the safety need would not only weaken public safety but also would violate well established federal law. For example, proponents of modifications of FMVSS 111 to accommodate ADS have advanced a strict reading of the regulatory language claiming that a rearview camera system in a vehicle with ADS should only have to supply an image to the ADS that is functioning as a “driver”. However, when considering what an ADS should do when it observes or detects someone or something in the backing path of the vehicle, these same proponents point to the lack of a specific requirement in FMVSS 111 that the vehicle be brought to a stop, whether if the vehicle is under control of a human driver or ADS. This overly simplistic view ignores the requirement that all FMVSS must meet a motor vehicle safety need. The NHTSA has stated how FMVSS 111 meets such a need in the Final Regulatory Impact Analysis⁷:

Instead of a single requirement, three conditions must be met for a technology to successfully provide a benefit to the driver.

- 1) The crash must be one which is “avoidable” with the device. In other words, the pedestrian must be within the target range for the sensor, or the viewable area of the camera or mirror (at a point in time early enough so as to enable the system and driver to react appropriately to avoid the crash).
- 2) Once the pedestrian is within the system’s range, the device must actually detect and provide the driver with information regarding the presence of the pedestrian.
- 3) The driver must both perceive this information and respond appropriately before impact with the pedestrian.⁸

Clearly, the NHTSA recognized that in order to meet the safety need, the “driver” needed to “both perceive...and respond appropriately before impact with the pedestrian.” The regulation only requiring an image to be provided to the ADS would undermine the safety need met by the FMVSS if the “driver” (the ADS) was not required to “perceive” and “respond accordingly before impact with the pedestrian.”

⁵ P.Law 89-561, Sec. 101(2) and 103(a).

⁶ 49 USC 30111.

⁷ Final Regulatory Impact Analysis, Backover Crash Avoidance technologies FMVSS No. 111, NHTSA, Mar. 2014. (FRIA).

⁸ FRIA, p. iii.

Similar examples will likely be found in other proposals to replace, repeal or modify FMVSS. It is incumbent upon the NHTSA to ensure that any changes made to the existing FMVSS continue to address the safety need which the standard is intended to meet.

Any Revisions to the FMVSS Must Be Undertaken in Separate Rulemakings

The present notice is overly broad and could result in critical details being overlooked or ignored. The FMVSS occupy over 834 pages of regulatory text. Given the critical importance of FMVSS to safety on our Nation's roads, each proposal to replace, repeal or modify an individual FMVSS should be undertaken in a separate rulemaking due to the complexity of the issues involved.

FMVSS Should Reflect Current Safety Technologies and Data

When reviewing the FMVSS, the NHTSA must conduct a review of current and emerging safety advances to ensure that each FMVSS is establishing a minimum performance standard on par with available technology. All too often, FMVSS performance requirements are based on performance of technology studied in the years (in some cases several years) prior to the promulgation of the rule. The nature of this process can result in performance standards designed to technology performance that is no longer the most current or state of the art. The Agency should use this current rulemaking as an opportunity to streamline the process for updating FMVSS to improve the minimum requirements for established technologies. Development of such a process would then address claims that rules promulgated for emerging technology could be stagnant and serve as a roadblock to innovation.

Conclusion

FMVSS set the rules by which all vehicles are evaluated and ensure that the Agency has a means by which to determine compliance. Review and improvement of FMVSS is an important part of ensuring that regulations continue to protect individuals on our roads. However, this process must be done carefully and meticulously to ensure that the safety need addressed by the FMVSS is not ignored after any repeal, replacement or modification. Separate rulemakings for each FMVSS are important to ensure that public and all other interested parties can understand and comment meaningfully on proposed changes.

Sincerely,



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