

Understanding NHTSA's Regulatory Tools

**Instructions, Practical Guidance, and Assistance for Entities Seeking to
Employ NHTSA's Regulatory Tools**



The National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act), NHTSA’s organic statute, creates a self-certification system of compliance, in which vehicle and equipment manufacturers certify that their products meet applicable standards. NHTSA chooses vehicles and equipment from the fleet to test for compliance, and pursues enforcement actions when the Agency finds either a non-compliance or a defect posing an unreasonable risk to safety.

NHTSA does not pre-approve new motor vehicles or new motor vehicle technologies. NHTSA will continue to exercise its available regulatory authority over Automated Driving Systems (or ADS) using its existing regulatory tools: interpretations, exemptions, notice-and-comment rulemaking, and defects and enforcement authority. NHTSA has the authority to identify safety defects, allowing the Agency to recall vehicles or equipment that pose an unreasonable risk to safety even when there is no applicable Federal Motor Vehicle Safety Standard (FMVSS).

It is important to note that NHTSA does not prohibit the introduction of new motor vehicles or motor vehicle technologies into the vehicle fleet, provided those vehicles and technologies meet existing FMVSS.¹ A vehicle or equipment manufacturer need ask NHTSA about a new technology or vehicle design only when it will not comply with applicable standards, or when there might be a question as to compliance. If a manufacturer anticipates having such a question, then requests for interpretations, exemptions, and rulemakings are the methods that a manufacturer can use to pursue answers from the Agency. Occasionally, some of these regulatory tools have taken several months to several years for NHTSA to issue, but the Agency has committed to expediting its actions regarding automation.

To aid regulated entities and the public in understanding the use of the Agency’s regulatory tools (including the introduction of new ADS), NHTSA has prepared an information and guidance document. This document, which has wider application beyond automation, provides instructions, practical guidance, and assistance to entities seeking to employ those tools.

A. Introduction

NHTSA has four primary “tools” to address the introduction of new technologies and new approaches to existing technologies, which are:

- Letters of interpretation;
- Exemptions from existing standards;
- Rulemakings to amend existing standards or create new standards; and
- Enforcement authority to address defects that pose an unreasonable risk to safety.

1. Interpretations

Letters of interpretation are both the fastest way to get an answer to a question and the narrowest in terms of scope and effect. Interpretations can help the requestor and others understand how NHTSA believes existing law applies to the requestor’s motor vehicle or motor vehicle equipment. An interpretation describes the Agency’s view of the meaning and application of an

existing statute or regulation. It can better explain the meaning of a regulation, statute, or overall legal framework and provide clarity for regulated entities and the public. For example, an interpretation may clarify a statutory or regulatory term or provide sharper and more detailed lines than the regulation or statute it interprets.

Not all questions can be answered by interpretations. An interpretation may not make a substantive change to the meaning of a statute or regulation or to their clear provisions and requirements. In particular, an interpretation may not adopt a new position that is irreconcilable with or repudiates existing statutory or regulatory provisions.

2. Exemptions

Exemptions from existing standards are intended to provide some flexibility to the general requirement that manufacturers must comply with applicable FMVSS and bumper standards. Exemptions provide for limited exceptions to the obligation to comply with the FMVSS in certain circumstances specified in the Vehicle Safety Act.² They are not intended to allow indefinite non-compliance for large numbers of vehicles. General exemptions are also not a device to excuse non-compliance with applicable standards simply because doing so would be inconvenient or inconsistent with the manufacturers' preferred vehicle design. Additionally, general exemptions are only temporary – two to three years, with the option for renewal for a similar time period.

3. Rulemaking

Notice-and-comment rulemaking is the tool the Agency uses to adopt new standards, modify existing standards, or repeal an existing standard. This procedure has the broadest potential scope and application and generally takes the longest time to complete. If a party wishes to avoid compliance with an FMVSS for longer than the allowed time period for exemptions, or for a greater number of vehicles than the allowed number for exemptions, or has a motor vehicle or equipment design substantially different from anything currently on the road that compliance with standards may be very difficult or complicated (or new standards may be needed), a petition for rulemaking may be the best path forward. Parties wishing to petition NHTSA for rulemaking must follow the procedures at 49 CFR Part 552. Additionally, NHTSA may choose of its own accord to commence a rulemaking, and need not wait for a request from an interested party. Reasons that NHTSA might choose on its own accord to commence rulemaking include directives from Congress, priorities within the Executive Branch, the culmination of NHTSA research projects which indicate the need for standards, or the desire to improve international coordination.³ Rulemaking generally takes the longest of the tools described, but it enables the Agency to make the broadest and most thorough changes to governing regulations, and gives the public the greatest opportunity to participate in the Agency's decision-making process.

4. Enforcement

NHTSA has broad enforcement authority under existing statutes and regulations to address existing and emerging automotive technologies. NHTSA issued an Enforcement Guidance Bulletin relating to safety-related defects and emerging automotive technologies. This bulletin

sets forth NHTSA’s current views on emerging automotive technologies—including its view that when vulnerabilities of such technology or equipment pose an unreasonable risk to safety, those vulnerabilities constitute a safety-related defect—and suggests guiding principles and best practices for motor vehicle and equipment manufacturers in this context. With regard to NHTSA’s enforcement authority over motor vehicles and equipment, it applies “notwithstanding the presence or absence of an FMVSS for any particular type of advanced technology.” NHTSA has the authority to “respond to a safety problem posed by new technologies in the same manner it has responded to safety problems posed by more established automotive technology and equipment.” This includes the Agency determining the existence of a defect that poses an unreasonable risk to motor vehicle safety and ordering the manufacturer to conduct a recall.⁴

With regard to new motor vehicle technologies, including ADS, NHTSA states in its bulletin that its “enforcement authority concerning safety-related defects in motor vehicles and equipment extends and applies equally to new and emerging automotive technologies.” Furthermore, “[w]here an autonomous vehicle or other emerging automotive technology causes crashes or injuries, or has a manifested safety-related failure or defect” that presents a safety concern, NHTSA will evaluate the ADS or technology through its investigative authority and, if necessary, “exercise its enforcement authority to the fullest extent.”⁵

B. Requesting an Interpretation from NHTSA⁶

This procedural guidance is meant to provide the public with informal information about requests for interpretation and NHTSA’s process of responding to requests for interpretation. It provides general recommendations and suggestions in plain language about the types of information, explanations, and arguments that requestors might consider to facilitate a more rapid response. This document is not meant to be binding on requestors or on the Agency.

1. Background

NHTSA’s Office of the Chief Counsel interprets the statutes that the Agency administers and the regulations that it issues. When members of the public ask the Agency a question about the meaning or application of these statutes and regulations, the Chief Counsel may respond with a letter of interpretation that examines the particular facts and questions presented and explains how the law applies given those facts. These letters of interpretation, signed by the Chief Counsel, represent the opinion of the Agency on the question(s) addressed at the time of signature. Such a letter of interpretation may be helpful in determining how the Agency might answer questions that are similar. Interpretation letters represent the opinion of the Agency based on the specific facts of individual cases at the time the letter was written. A person should not assume that a prior interpretation will necessarily apply to its situation. There are a number of reasons why prior NHTSA interpretation letters might not be applicable to another situation, such as:

- The facts may be sufficiently different from those presented in prior interpretations, that the Agency’s answer to a new question is different from the answer in the existing interpretation letter;

- The situation may be new and not addressed in an existing interpretation letter;
- The Agency's standards and regulations may have changed since the time when it issued the existing interpretation letter;
- The Agency has withdrawn or overruled the prior interpretation, and that interpretation no longer applies; or
- Some combination of all of the above, or other factors.

2. Purpose of Interpretation Letters

Interpretation letters are intended help the requestor and others understand how the Agency believes existing law applies to the requestor's motor vehicle or motor vehicle equipment. Some questions are better suited to interpretations than others. An interpretation describes the Agency's view of the meaning and application of an existing statute or regulation. It can better explain the meaning of a regulation, statute, or overall legal framework and provide clarity for regulated entities and the public. For example, an interpretation may clarify a statutory or regulatory term or provide sharper and more detailed lines than the regulation or statute it interprets. An interpretation may not, however, make a substantive change to a statute or regulation or to their clear provisions and requirements. In particular, an interpretation may not adopt a new position that is irreconcilable with or repudiates existing statutory or regulatory provisions.

If a person would like the Agency to consider changing an existing regulation or adopting a new regulation, they should petition for a rulemaking by following the procedures at 49 CFR Part 552. If a motor vehicle or motor vehicle equipment is unable to comply with provisions of the FMVSS and a person would like the Agency to consider granting that vehicle or equipment an exemption from those provisions, they may petition for exemption by following the procedures at 49 CFR Part 555.

3. Process for Agency Review and Ruling on Interpretation Requests

a. Agency Consideration of Interpretation Requests

After receiving an interpretation request, the Agency will consider and respond to it. Following finalization of the interpretation response, it is typically mailed to the requestor either that day or the following business day, and posted in the online database at <http://isearch.nhtsa.gov>. The response, along with the request, also is then posted in the docket at www.regulations.gov.

b. Factors Affecting the Time it Takes the Agency to Respond to an Interpretation Request

Several factors can affect the time it takes the Agency to respond to an interpretation request. Examples of such factors include:

- The complexity of the question or issue;
- The novelty of the question or issue;
- Whether the requestor has provided all necessary information;
- Whether the question asked is ripe for interpretation;
- Whether prior interpretations on the topic at hand, if any, are consistent, both with each other and with the Agency's best current thinking on the topic; and
- Agency resources and the number and complexity of other interpretation requests.

NHTSA prioritizes requests that promote vehicle safety when allocating its available resources for interpretations.

c. Information That NHTSA Seeks When Responding to an Interpretation Request

NHTSA's interpretations are based on the information and arguments provided by the requestor and the Agency's analysis and conclusion(s) regarding how laws apply in the context of particular information and arguments. It is the burden of the requesting person or entity to provide NHTSA with all information, data, explanations, and arguments necessary for NHTSA to decide on an interpretation request. If a request fails to provide any necessary information, NHTSA may deny the request for interpretation. It is important that a request for interpretation is clear, thorough, and well-supported.

Following is a non-exhaustive list of information that requestors should include in an interpretation request:

- Requestors should make an express request for a specific interpretation, not merely inform the Agency of the requestor's plans or view of the law.
- Questions should be stated clearly, and the specific question asked should be the question for which an answer is sought.
- Requestors should state clearly how they would like the Agency to interpret the statute or regulation.
- Requestors should explain clearly what it is about the facts of their situation that makes the application of the statute or regulation unclear, not merely state that their product is safe or will be beneficial for safety in general.
- Requestors should provide a clear, well-supported, and complete legal argument for why the interpretation they seek from NHTSA is legally reasonable and appropriate for an interpretation rather than a rulemaking or other action. Requestors should identify the relevant provisions in the Agency's statutes and regulations and demonstrate that the

requested interpretation is consistent with each of those provisions. If requestors are seeking a change in existing performance criteria or test procedures, or to avoid compliance with existing performance criteria or test procedures, a request for exemption or rulemaking is more likely to be the correct mechanism to address the issue.

- Requestors should provide all supporting data and information necessary for the Agency to make an informed determination of the interpretation request.
- Before submitting a request for interpretation, requestors should search the Agency's interpretation data base at <http://isearch.nhtsa.gov> for prior relevant interpretations (both favorable and unfavorable). With respect to favorable interpretations, requestors should explain in their interpretation request why they believe that the current situation is comparable. With respect to unfavorable ones, requestors should explain in their interpretation request why they believe that the current situation is distinguishable.
- Requestors should identify and discuss the possible policy implications (both positive and negative) of the requested interpretation, with particular emphasis on the safety-related implications.

4. Timeline for NHTSA Action on Requests for Interpretation That Advance Safety

In order to promote the safe adoption and deployment of ADS, NHTSA has streamlined and expedited its process for evaluating and responding to interpretation requests. For a simple ADS-related interpretation request that appears to improve safety and follows the foregoing guidelines, NHTSA will endeavor to issue a response within 60 days. For a more complex request that appears to improve safety and follows the foregoing guidelines, NHTSA will endeavor to issue a response within 90 days.⁷

5. Response to a Denial of Interpretation

If NHTSA denies a request for interpretation, a requestor may send a subsequent request for interpretation with additional information and/or arguments. Requestors should be aware that NHTSA will summarily reject redundant and duplicative petitions. If the Agency has stated that the question in the original request is not well-suited to interpretation, the requestor may petition for rulemaking or exemption.

C. Requesting a Temporary Exemption from the Federal Motor Vehicle Safety Standards

This section provides the public with informal information about requests for temporary exemption and NHTSA's process of responding to requests for temporary exemption. It provides suggestions about the types of information, explanations, and arguments that requestors might provide to facilitate a more rapid response. This document is not meant to be binding on requestors or on the Agency. To the extent that this document summarizes or discusses statutory or regulatory text, the actual text of the statutes or regulations controls.

1. Background

Congress requires vehicle manufacturers to comply with NHTSA's vehicle safety standards⁸ and bumper standards⁹ in order to sell vehicles in the United States. However, recognizing that occasionally certain manufacturers temporarily may have difficulty meeting those standards, Congress allows DOT (by delegation, NHTSA) to exempt motor vehicles from one or more Federal Motor Vehicle Safety Standards (FMVSS), for up to three years in certain circumstances, if the manufacturer can make a sufficient showing to the Agency that the exemption is necessary.¹⁰ For vehicles uses other than sale, NHTSA may exempt motor vehicles and items of motor vehicle equipment from compliance with certain standards if the Agency determines that doing so is necessary for research, investigations, demonstrations, training, competitive racing events, show, or display.¹¹ Additionally, Congress recently amended the Vehicle Safety Act to allow certain vehicle manufacturers (those who, prior to enactment of the FAST Act, had manufactured and distributed FMVSS-compliant vehicles and have registered with NHTSA) to introduce non-FMVSS-compliant motor vehicles into interstate commerce "solely for purposes of testing or evaluation" so long as they "agree[] not to sell or offer for sale the motor vehicle at the conclusion of the testing or evaluation...."¹² Manufacturers choosing this latter path should advise NHTSA of this action, but need not petition NHTSA for exemption.

Vehicles that have been granted exemptions and are intended for sale must have permanent labels affixed to their windshield or side window that list the standards (by number and title) for which an exemption has been granted, along with the exemption number from NHTSA.¹³

2. Purpose of General (Temporary) Exemptions

General exemptions are intended to provide some flexibility to the general requirement that manufacturers must comply with applicable FMVSS and bumper standards, but they are not intended to allow indefinite non-compliance for large numbers of vehicles. General exemptions do not excuse non-compliance with applicable standards simply because doing so would be inconvenient or inconsistent with the manufacturers' preferred vehicle design. Rather, they provide for limited exceptions to the obligation to comply with the FMVSS in certain circumstances specified in the Vehicle Safety Act.

General exemptions are only temporary. The Vehicle Safety Act allows exemptions on the basis of substantial economic hardship to last no longer than three years; exemptions and renewals of exemptions on the bases of development or field evaluation of a new motor vehicle safety feature, a low-emission vehicle, or 'overall safety level' are allowed for up to two years. If a party wishes to avoid compliance with an FMVSS for longer than the allowed time period, or for a greater number of vehicles than the allowed number, a petition for rulemaking may be a better path forward. Parties wishing to petition NHTSA for rulemaking must follow the procedures at 49 CFR Part 552.¹⁴

3. Eligibility for Temporary Exemptions

Congress specifies the conditions under which temporary general exemptions from the FMVSS may be granted for vehicles intended for sale in the U.S. market, as follows:¹⁵

a. “Substantial economic hardship”

A manufacturer whose total motor vehicle production in the most recent year of production is fewer than 10,000 motor vehicles may petition for exemption on the basis of “substantial economic hardship.” A manufacturer seeking to use this basis for exemption must have attempted to comply with the applicable standard in good faith, and must provide extensive documentation to the Agency proving both the economic hardship and its good faith attempt to comply, as discussed in Section III.C.4.c below.

b. “Development or field evaluation of a new motor vehicle safety feature”

Any motor vehicle manufacturer may petition the Agency for exemption in order to facilitate the development or field evaluation of a new motor vehicle safety feature, for up to 2,500 vehicles per year. A manufacturer seeking to use this basis for exemption must provide documentation of the research performed already on the safety feature, how the safety feature is innovative, and how the safety level of the feature at least equals the safety level of the FMVSS for which exemption is sought, as discussed in Section III.C.4.c.

c. “Development or field evaluation of a low-emission motor vehicle”

Any motor vehicle manufacturer may petition the Agency for exemption in order to facilitate the development or field evaluation of a low-emission motor vehicle, for up to 2,500 vehicles per year. A manufacturer seeking to use this basis for exemption must provide documentation of research establishing that the motor vehicle is a low-emission motor vehicle, and how the safety level of the low-emission motor vehicle would not be reduced unreasonably by exemption from the FMVSS for which exemption is sought, as discussed in Section III.C.4.c.

d. “Overall safety level of exempted vehicle at least equal to overall safety level of nonexempt vehicles”

Any motor vehicle manufacturer may petition the Agency for exemption in order to sell a vehicle model that does not comply with one or more applicable standards, but only for up to 2,500 vehicles per year. A manufacturer seeking to use this basis for exemption must provide a detailed analysis showing how the exempted vehicle provides an overall safety level at least equal to the overall safety level of nonexempt vehicles, as discussed in Section III.C.4.c. For exemptions from bumper standards, the “substantial economic hardship” test applies.

4. Process for Agency Review and Ruling on Temporary Exemption Requests

a. Agency Consideration of Temporary General Exemption Requests

Upon receipt of an application for temporary exemption, NHTSA publishes a notice in the Federal Register including the information in the application and allowing opportunity for public

comment, unless the application does not contain the required information.¹⁶ If the application lacks needed information, NHTSA informs the applicant of the areas of insufficiency and that the Agency will take no further action on the application until the information is submitted.¹⁷

Once the comment period has ended, NHTSA considers the available information and determines whether to grant or deny the exemption request. If NHTSA determines that the application does not contain adequate justification, the Agency will deny the request and notify the applicant in writing, and also will publish a Federal Register notice of the denial and the reasons for it.¹⁸ Conversely, if NHTSA determines that the application does contain adequate justification, the Agency will grant the request, notify the applicant in writing, and publish a Federal Register notice of the grant and the reasons for it.¹⁹

Interested parties may discuss applications for exemption or the Agency's response to such applications with Agency officials, but no public hearing, argument, or other formal proceeding (other than the public comment period described above) is held on an application prior to the Agency's decision.²⁰

When NHTSA grants a request for temporary exemption, the exemption is effective upon publication of the grant notice in the Federal Register and exempts vehicles manufactured on and after the effective date, unless the Federal Register notice specifies a later effective date.²¹

b. Factors affecting the time it takes the Agency to respond to a request for exemption

Some factors that can affect the time it takes the Agency to respond to a request for temporary exemption may include, for example:

- Determining whether the information and justification provided is adequate for the Agency to assess the merits of granting or denying the request;
- Determining whether the Agency is deciding on an exemption request consistently with prior decisions on prior similar requests, if any, and whether such a decision remains consistent with the Agency's best current thinking on the topic;
- Complexity of the exemption request and issues presented; and
- Agency workload.

NHTSA generally prioritizes requests that promote vehicle safety.

c. Information that NHTSA seeks when evaluating a request for temporary exemption

The Safety Act directs manufacturers applying for exemptions to provide specific information in their applications to NHTSA, which has given further substance to those directions in regulations. The information required for an application under each exemption category is discussed below. All information submitted as part of applications (except that withheld as

confidential business information) will be publicly available at <http://www.regulations.gov> as part of the docket for the exemption request.²²

i. “Substantial economic hardship”

If a manufacturer is petitioning for exemption on this basis, the manufacturer must submit a complete financial statement describing the economic hardship and a complete description of the manufacturer’s good faith effort to comply with the relevant standards.²³ 49 CFR Part 555 further requires that information submitted in support of a “substantial economic hardship” petition include the following:²⁴

- Engineering and financial information demonstrating in detail how compliance or failure to obtain an exemption would cause substantial economic hardship, including –
 - * A list or description of each item of motor vehicle equipment that would have to be modified in order to achieve compliance;
 - * The itemized estimated cost to modify each such item of motor vehicle equipment if compliance were to be achieved (A) as soon as possible, (B) at the end of a one-year exemption period (if the exemption is for one year or more), (C) at the end of a two-year exemption period (if the petition is for two years or more), and (D) at the end of a three-year exemption period (if the exemption is for three years);
 - * The estimated price increase per vehicle to balance the total costs incurred if the equipment were modified to comply, and a statement of the anticipated effect of each such price increase;
 - * Corporate balance sheets and income statements for the three fiscal years immediately preceding the filing of the application;
 - * Projected balance sheet and income statement for the fiscal year following a denial of the application;
 - * A discussion of any other hardships (e.g., loss of market, difficulty of obtaining goods and services for compliance) that the petitioner desires the Agency to consider; and
- A description of the petitioner’s efforts to comply with the standards, including –
 - * A chronological analysis of such efforts showing its relationship to the rulemaking history of the standard from which exemption is sought;
 - * A discussion of alternate means of compliance considered and the reasons for rejection of each;
 - * A discussion of any other factors (e.g., the resources available to the petitioner, inability to procure goods and services necessary for compliance following a

timely request) that the petitioner desires the Agency to consider in deciding whether the petitioner tried in good faith to comply with the standard;

- * A description of the steps to be taken, while the exemption is in effect, and the estimated date by which full compliance will be achieved either by design changes or termination of production of nonconforming vehicles; and
- * The total number of motor vehicles produced by or on behalf of the petitioner in the 12-month period prior to filing the petition, and the inclusive dates of the period. (49 U.S.C. 30113(d) limits eligibility for exemption on the basis of economic hardship to manufacturers whose total motor vehicle production in the year preceding the filing of their applications does not exceed 10,000.)

ii. “Development or field evaluation of a new motor vehicle safety feature”

If a manufacturer seeks an exemption on this basis, Congress requires the manufacturer to submit a record of the research, development, and testing establishing the innovative nature of the safety feature and a detailed analysis establishing that the safety level of the feature at least equals the safety level of the standard for which exemption is sought.²⁵ 49 CFR Part 555 further requires that supporting information include the following:²⁶

- A description of the safety or impact protection features, and research, development, and testing documentation establishing the innovational nature of such features;
- An analysis establishing that the level of safety or impact protection of the feature is equivalent to or exceeds the level of safety or impact protection established in the standard from which exemption is sought, including –
 - * A detailed description of how a vehicle equipped with the safety or impact protection feature differs from one that complies with the standard;
 - * If applicant is presently manufacturing a vehicle conforming to the standard, the results of tests conducted to substantiate certification to the standard; and
 - * The results of tests conducted on the safety or impact protection features that demonstrates performance which meets or exceeds the requirements of the standard;
- Substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle;
- A statement whether, at the end of the exemption period, the manufacturer intends to conform to the standard, apply for a further exemption, or petition for rulemaking to amend the standard to incorporate the safety or impact protection features; and

- A statement that not more than 2,500 exempted vehicles will be sold in the U.S. in any 12-month period for which an exemption may be granted, and an application for renewal of such an exemption shall also include the total number of exempted vehicles sold in the United States under the existing exemption.

iii. “Development or field evaluation of a low-emission motor vehicle”

If a manufacturer petitions for exemption on this basis, it must submit a record of the research, development, and testing establishing that the motor vehicle is a low-emission motor vehicle and that the safety level of the vehicle would not be unreasonably reduced by exemption from the standard.²⁷ 49 CFR Part 555 requires that that information include the following:²⁸

- Substantiation that the vehicle is a low-emission vehicle as defined by 49 U.S.C. § 30113(a);
- Research, development, and testing documentation establishing that a temporary exemption would not unreasonably degrade the safety or impact protection of the vehicle, including –
 - * A detailed description of how the motor vehicle equipped with the low-emission engine would, if exempted, differ from one that complies with the standard;
 - * If the applicant is presently manufacturing a vehicle conforming to the standard, the results of tests conducted to substantiate certification to the standard;
 - * The results of any tests conducted on the vehicle that demonstrate its failure to meet the standard, expressed as comparative performance levels; and
 - * Reasons why the failure to meet the standard does not unreasonably degrade the safety or impact protection of the vehicle;
- Substantiation that an exemption would facilitate the development or field evaluation of the vehicle;
- A statement whether, at the end of the exemption period, the manufacturer intends to conform to the standard; and
- A statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted. An application for renewal of an exemption must also include the total number of exempted vehicles sold in the United States under the existing exemption.

iv. “Overall safety level of exempted vehicle at least equal to overall safety level of nonexempt vehicles”

A manufacturer petitioning for exemption on this basis must submit a detailed analysis showing how the vehicle provides an overall safety level at least equal to the overall safety level of non-

exempt vehicles.²⁹ 49 CFR Part 555 further requires that that information include the following.³⁰

- A detailed analysis of how the vehicle provides the overall level of safety or impact protection at least equal to that of non-exempted vehicles, including –
 - * A detailed description of how the motor vehicle, if exempted, differs from one that conforms to the standard;
 - * A detailed description of any safety or impact protection features that the vehicle offers as standard equipment that are not required by the FMVSS or bumper standards;
 - * The results of any tests conducted on the vehicle demonstrating that it fails to meet the standard, expressed as comparative performance levels;
 - * The results of any tests conducted on the vehicle demonstrating that its overall level of safety or impact protection exceeds that which is achieved by conformity to the standards;
 - * Other arguments that the overall level of safety or impact protection of the vehicle is at least equal to that of non-exempted vehicles;
- Substantiation that compliance would prevent the sale of the vehicle;
- A statement whether, at the end of the exemption period, the manufacturer intends to comply with the standard;
- A statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted; and an application for renewal shall also include the total number of exempted vehicles sold in the United States under the existing exemption.

5. Termination and Renewal of Temporary Exemptions

As discussed, temporary exemptions are not permanent. If a temporary exemption is granted on the basis of “substantial economic hardship,” it will terminate according to its terms no later than three years after the date of issuance, unless NHTSA terminates it sooner.³¹ If a temporary exemption is granted on any other basis, it will terminate according to its terms but not later than two years after the date of issuance, unless NHTSA terminates it sooner.³² If a manufacturer with an exemption applies for renewal within 60 days of the termination date for the existing exemption, and the renewal application meets the requirements of 49 CFR § 555.5, the exemption does not terminate until NHTSA grants or denies the renewal application.³³

NHTSA may terminate or modify a temporary exemption if the Agency determines that either (1) the temporary exemption is no longer consistent with the public interest and the objectives of the Vehicle Safety Act; or (2) the temporary exemption was granted on the basis of false,

fraudulent, or misleading representations or information.³⁴ Any interested person may petition for the termination or modification of an exemption granted under Part 555, and NHTSA will process those petitions according to the procedures in 49 CFR Part 552.³⁵ NHTSA publishes notices in the Federal Register for both applications for termination or modification of an exemption and the Agency's action in response to it, and also for any termination or modification of an exemption pursuant to the Agency's own motion.³⁶

6. Timelines for NHTSA Action on Compliant Petitions

NHTSA has streamlined its process for reviewing and determining exemption petitions that advance safety and that follow these guidelines. For simple exemption petitions that promote improved safety and that follow these guidelines, NHTSA will endeavor to grant or deny the petition(s) within six months. For more complex petitions that promote improved safety and that follow these guidelines, NHTSA will endeavor to grant or deny the petition(s) within 12 months.

7. Response to a Denial of Request for Temporary Exemption

If NHTSA denies a request for temporary exemption, the requestor may submit another request with new/additional information and/or arguments. Duplicative exemption requests will be summarily denied. If the Agency has stated in its denial that the issue presented is not well-suited to temporary exemption, the requestor may petition for rulemaking under 49 CFR Part 552.

D. Preparing Well-Supported Petitions for Safety Rulemaking and Reconsideration of Final Safety Rules

This section is intended to aid the process for petitioning the Agency to take either of two types of actions: (1) initiate a rulemaking under the Vehicle Safety Act to amend existing vehicle safety standards or to establish new ones; or (2) reconsider a final rule amending or establishing safety standards. NHTSA must be able to allocate and manage its vehicle safety resources in a way that allows the Agency to focus its efforts on those vehicle technologies having the greatest potential for improving safety at reasonable cost. When the Agency decides to grant a petition for a rulemaking on a technology with substantial safety potential, it is critical that the Agency be able to complete the rulemaking on a sound and complete basis and as expeditiously as possible. This guidance will aid the Agency in doing so by clarifying the existing minimum content requirements for petitions for rulemaking and reconsideration and offering guidance on meeting those requirements.

1. Introduction

Through this guidance, NHTSA seeks to aid its ability to focus on petitions for rulemaking that offer the greatest safety potential and on meritorious petitions for reconsideration. The Agency also seeks to obtain data and analysis that will enable it to complete rulemakings initiated in response to petitions expeditiously and on a sound and robust scientific and analytical basis.

This guidance is intended to clarify the existing minimum content requirements for rulemaking petitions and offers guidance on meeting those requirements. It also describes additional contents

whose inclusion in petitions is not required, but is helpful to the Agency. The description of these additional contents is intended to aid the public in preparing better supported petitions, thereby increasing the likelihood that the Agency will grant and act on them. The submission of more thoroughly explained and better supported petitions will aid the Agency by reducing the resources and time it would otherwise need to expend in order to evaluate the merits of petitions and to develop proposals (and supporting analyses required by various Executive Orders and statutes) to act on those petitions that it grants.

2. Agency Regulations on Petitions

a. Contents of petitions for rulemaking or reconsideration of a rule

NHTSA's current administrative requirements concerning the contents of petitions for rulemaking and petitions for reconsideration are found in regulation: Part 552 – Petitions for Rulemaking, Defect, and Noncompliance Orders.³⁷ 40 FR 42013; September 10, 1975.

In § 552.4 of Part 552, the Agency specifies that petitions for rulemaking must “(s)et forth facts which it is claimed establish that an order is necessary” and “(s)et forth a brief description of the substance of the order which it is claimed should be issued.”³⁸ The necessity of providing the required information is emphasized in §552.5 (b). That paragraph says “(a) document that fails to conform to one or more of the requirements of §552.4(a) through (e) will not be treated as a petition under” Part 552. “Such a document will be treated according to the existing correspondence or other appropriate procedures of the NHTSA, and any suggestions contained in it will be considered at the discretion of the Administrator or his delegate.”

Recognizing the impact that evaluating pending petitions and implementing granted petitions could have on the Agency resources available for priority safety activities, NHTSA also addressed the variety of factors, including resource management, which it might consider in deciding whether to grant or deny a petition. In section 552.8, Notification of Agency action on the petition, it specified: “After considering the technical review conducted under §552.6, and taking into account appropriate factors, which may include, among others, allocation of Agency resources, Agency priorities and the likelihood of success in litigation which might arise from the order, the Administrator will grant or deny the petition. ...”

Parties may petition for reconsideration within 45 days after a final rule has been issued to establish a new standard or amend an existing standard, if they disagree with the Agency's action.³⁹ The regulation on petitions for reconsideration, Section 553.35 reads:

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest. ...

(b) If the petitioner requests the consideration of additional facts, he must state the reason they were not presented to the Administrator within the prescribed time.

(c) The Administrator does not consider repetitious petitions.

b. Improperly filed petitions

Paragraph (b) of section 552.5, “Improperly filed petitions,” provides: A document that fails to conform to one or more of the requirements of §552.4(a) through (e) will not be treated as a petition under this part. Such a document will be treated according to the existing correspondence or other appropriate procedures of the NHTSA, and any suggestions contained in it will be considered at the discretion of the Administrator or his delegate.

3. Consideration of Petitions for Rulemaking

NHTSA generally will closely consider sound, well-supported petitions that will promote safety, to the extent that the Agency resources and other priority vehicle safety actions allow such consideration. The Agency will consider granting a rulemaking petition that would promote safety if, in the Agency’s judgment, the Agency would be able to develop and issue a sound, well-supported proposed rule, including regulatory text with performance requirements and test procedures, without conducting more than minimal additional research (e.g., to establish a sound basis for taking the recommended action or to develop and validate performance requirements, test conditions, or test procedures). In addition, in order to wisely and efficiently use its limited rulemaking resources and focus on priority matters, the Agency will distinguish between matters ready for rulemaking in the short term (based on information presented by the petitioner and/or otherwise readily available that supports and defines the requested course of action) and those longer-term matters for which significant additional research is needed before a rulemaking proposal can be developed and supported.

4. Petitions for Vehicle Safety Standard Rulemaking

a. Petitions seeking adoption of new or more stringent performance requirements, test conditions or test procedures

i. Hazard

The petition should describe the nature, cause, size, and severity of the hazard (e.g., how many deaths and injuries result from this hazard, in what types of crashes does the hazard occur, and what is the severity of the injuries? How do the injuries occur?). The petition should also identify the nature and size of target population (e.g., who might benefit—which persons, in what seating positions, in what types of vehicles, and in which types of crashes?).

ii. Practical means

The petition should describe technologies and designs that are or will be available to comply with the performance requirements and demonstrate the level of effectiveness of those technologies and designs in addressing the problem or hazard.

iii. Substance of standard

The petition should describe the requested standard (i.e., the performance requirements, test conditions, and test procedures), the supporting research and reasons why those performance requirements, test conditions, and test procedures are appropriate and better than alternative performance requirements, test conditions, and test procedures, and provide proposed regulatory text.

b. Petitions seeking amendment of existing vehicle safety standard to reduce cost or allow the use of a new design or technology

i. Problem and potential impact

In petitions seeking to permit the use of new technology or design or new application of an existing technology, the petition should describe the technologies, designs or applications, identify the regulatory text that restricts their use, explain specifically how the regulatory text restricts their use, and discuss the utility of the proposed technology or design to consumers, especially any safety impacts. The petition should quantify the impacts and explain the underlying calculations and the basis for them; if quantification is impossible, the reasons for that impossibility should be stated and the petitioner's best attempt should be presented. In petitions seeking to relieve a restriction to facilitate cost reductions, petitions should identify the regulatory provisions or text that prevents the cost reduction, explain specifically how the regulatory provisions or text prevents the cost reduction, quantify the cost reduction, and explain the underlying calculations and their basis.

ii. Likelihood of impact

The petition should indicate the extent to which the described technologies or designs are likely to be used, or cost reductions made, in the near future if the standard is changed in the manner requested.

iii. Substance of standard

The petition should describe the necessary changes in the regulatory text of existing standards (i.e., the changes to the performance requirements, test conditions, and test procedures), along with the research supporting and reasons why those performance requirements, test conditions, and test procedures are appropriate and better than alternative performance requirements, test conditions, and test procedures.

c. Supporting data and analysis

The petition should provide data and arguments to support all of the minimum required contents specified in section 552.4 and, in order to assist the Agency in a timely disposition of the petition, should also provide support for the items in paragraph E.4.a or E.4.b of this guidance, including relevant test results, data, and studies reasonably available to the petitioner. The petition should explain the origin of any recommended numerical values, and provide any underlying calculations. The petition should precisely identify, but need not submit, any data readily available to the public and identify its source.

d. Supplementary supporting justification, data and analysis

To assist the Agency in evaluating and implementing the petition, the Agency encourages petitioners to submit detailed justification and supplementary data and analyses. To the extent that a petition contains the following, it will facilitate Agency action:

i. Regulatory text

The petition should provide the proposed regulatory text, i.e., text of performance requirements, test conditions, test procedures and similar parameters, that the petitioner requests the Agency to establish, add, or delete. In addition, explain how those requirements, conditions and procedures will effectively measure safety performance and objectively differentiate between compliant and noncompliant technologies and designs consistent with the interests of safety. A petition should describe the extent to and manner in which those requirements, conditions and procedures have been validated through research (e.g., testing), and submit the research results.

ii. Benefits and costs

The petition should identify and describe the type and amount of anticipated benefits and costs of adopting the requested regulation amendments, show how the figures were calculated, and submit studies or other materials or data supporting those figures.

5. Petitions for Reconsideration of Agency Final Rules

a. Guidance

The Agency will reconsider a rule based on a party or commenter's claim that: (a) the rule was based on material error(s) of fact or law; (b) new facts, evidence, or circumstances that could not have been raised previously compel a different result; or (c) compliance with a new rule or standard is not practical, is not reasonable, or is not in the public interest.

The Agency will summarily deny any reconsideration petition based on any claim or argument other than those set forth in paragraphs a-c below. The Agency will not consider a request for reconsideration that is based on repetition of arguments previously raised before the Agency.

Any petition must include a statement of the complaint that explains the petitioner's difficulty, if any, in complying with the rule as adopted. It must also identify the specific regulatory text that the petitioner believes needs to be changed, explain how that text creates the petitioner's compliance difficulty or problem, and explain how the text should be changed. Finally, the petitioner must explain how the change would resolve their compliance difficulty or problem.

i. Required minimum contents of petition based on claim that compliance is impractical, unreasonable, or not in the public interest

The petition must provide the factual and analytical basis for its belief that compliance with the rule is not economically or technologically practical, unreasonable, or not in the public interest.

- ii. Required minimum contents of petition based on new facts, circumstances, or evidence*

The petition must set forth and support claim that the facts, evidence or circumstances submitted in support of the petition are new, could not have been raised before the issuance of the rule whose reconsideration is sought, and compel a different result.

- iii. Required minimum contents of petition based on claim that rule was based on material error of fact or law*

The petition must identify and describe the alleged error and why that error is material to the provision for which petition seeks reconsideration.

b. Suggested supplementary justification, data and analysis

To assist the Agency in evaluating and potentially implementing the petition, the Agency encourages the submission of detailed supplementary data and analyses. To the extent that petitions contain the following, it will facilitate faster Agency action:

- i. Regulatory text*

Any petition should provide the actual regulatory text, e.g., performance requirements, test conditions and test procedures, which the petitioner wishes to have established, added or deleted. In addition, explain how the new requirements, conditions and procedures to be established or added will accurately measure safety performance and differentiate between acceptable and unacceptable technologies and designs. The petition should describe the extent and manner in which the new requirements, conditions and procedures to be established or added have been validated through research, e.g., testing, and submit the research results. Finally, explain the reasons why the performance requirements, test conditions, and test procedures to be established or added are appropriate and better than alternative performance requirements, test conditions, and test procedures.

- ii. Benefits and costs*

The petition should describe type and amount of anticipated impacts on safety benefits and costs of making the requested changes, while showing how the figures were calculated, including key assumptions. The petitioner should submit studies or other materials or data supporting those figures and the methodology for calculating them.

NOTES

¹ The FMVSS are codified at 49 CFR Part 571. DOT's Volpe Center recently reviewed the FMVSS to identify potential barriers to introduction of AV technology, and found very few. See Kim, *et al.*, "Review of Federal Motor Vehicle Safety Standards (FMVSS) for Automated Vehicles," March 2016, *available at* http://ntl.bts.gov/lib/57000/57000/57076/Review_FMVSS_AV_Scan.pdf.

² A recent change to NHTSA's organic statute in the FAST Act allows manufacturers who had manufactured and distributed FMVSS-compliant vehicles as of the date of enactment of the FAST Act to introduce non-compliant vehicles *for testing purposes only* without petitioning NHTSA for an exemption.

³ With respect to international coordination, DOT recognizes that it is important to avoid regulatory inefficiencies and concurrently maximize safety as we collectively strive to facilitate the introduction of ADS into the marketplace. DOT is actively working to remove potential regulatory barriers for ADS, both in the U.S. and abroad. DOT is actively involved at the World Forum for the Harmonization of Vehicle Regulations and directly with individual foreign governments. These activities are intended to reduce barriers to innovation while preserving safety. Where appropriate, DOT will intensify its efforts to develop well-designed and globally-consistent regulations for ADS.

⁴ See www.nhtsa.gov/AV.

⁵ *Id.*

⁶ While NHTSA intends for this information to assist members of the public in interacting with the Agency, we emphasize that if there are any discrepancies between the statements in this document and applicable statute or regulation, the statute or regulation controls, and that this document is not intended to be binding on the Agency or outside parties. If an outside party has a question about the contents of this notice and guidance, NHTSA encourages them to contact the Office of the Chief Counsel at 202-366-2992.

⁷ Both interpretations and exemption requests have often taken years for NHTSA to decide.

⁸ 49 U.S.C. § 30112.

⁹ 49 U.S.C. § 32506. Exemptions from bumper standards are allowed only for "passenger motor vehicles," which NHTSA defines as "a vehicle with motive power designed to carry not more than 12 individuals, but does not include a truck not designed primarily to carry its operator or passengers, or a motorcycle." 49 CFR § 555.4.

¹⁰ 49 U.S.C. § 30113.

¹¹ 49 U.S.C. § 30114.

¹² FAST Act, Sec. 24404, to be codified at 49 U.S.C. § 30112(b)(10). Because "replica" is defined in that provision as a motor vehicle intended to resemble the body of another motor vehicle that was manufactured not less than 25 years prior, DOT assumes for purposes of this particular document that manufacturers wishing to introduce ADS technologies are not likely planning to install them on "replica" vehicles, and will more likely seek exemption from applicable FMVSS under the § 30113 provisions.

¹³ 49 U.S.C. § 30113(h); 49 CFR § 555.9; FAST Act, Sec. 24405.

¹⁴ NHTSA recently issued guidance to assist persons wishing to petition for a rulemaking. See Section III.C.

¹⁵ 49 U.S.C. § 30113(d).

¹⁶ 49 CFR § 555.7(a).

¹⁷ *Id.*

- 18 49 CFR § 555.7(d).
- 19 49 CFR § 555.7(e).
- 20 49 CFR § 555.7(b) and (c).
- 21 49 CFR § 555.7(f).
- 22 49 U.S.C. § 30113(f); 49 CFR § 555.10.
- 23 49 U.S.C. § 30113(c)(1).
- 24 49 CFR § 555.6(a).
- 25 49 U.S.C. § 30113(c)(2).
- 26 49 CFR § 555.6(b).
- 27 49 U.S.C. § 30113(c)(3).
- 28 49 CFR § 555.6(c).
- 29 49 U.S.C. § 30113(c)(4).
- 30 49 CFR § 555.6(d).
- 31 49 CFR § 555.8(a).
- 32 49 CFR § 555.8(b).
- 33 49 CFR § 555.8(e).
- 34 49 CFR § 555.8(d).
- 35 49 CFR § 555.8(c).
- 36 49 CFR § 555.8(f).

37 The purpose of Part 552 is set forth in § 552.1, Scope:

This part establishes procedures for the submission and disposition of petitions filed by interested persons pursuant to 49 U.S.C. Chapters 301, 305, 321, 323, 325, 327, 329 and 331 to initiate rulemaking or to make a decision that a motor vehicle or item of replacement equipment does not comply with an applicable Federal Motor Vehicle Safety Standard or contains a defect which relates to motor vehicle safety.

38 § 552.4 Requirements for petition.

... Each petition filed under this part must:

- (a) Be written in the English language;
- (b) Have, preceding its text, a heading that includes the word "Petition";
- (c) Set forth facts which it is claimed establish that an order is necessary;
- (d) Set forth a brief description of the substance of the order which it is claimed should be issued; and
- (e) Contain the name and address of the petitioner.

39 "Agency's action" refers to the regulatory text that is added to, changed in, or deleted from the Code of Federal Regulations by the final rule. Disagreement with the Agency's preamble describing the Agency's action and its rationale for that action is not grounds for petitioning for reconsideration, because the preamble is not the rule itself.