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On a Different Course – US Minimum Sound Requirements for Hybrid and Electric Vehicles

By: Megan McCurdy



In 2003, the National Federation of the Blind (NFB) voiced safety concerns for blind and all pedestrians resulting from the increase of “quiet vehicles.”^[1] While the NFB applauded the work of the automobile industry in creating a “less noisy environment,” it continued to caution safety concerns that are inevitable from the growing quiet car regime.^[2] While environmental groups were irked at the notion of an objection to the decades long efforts to address environmental hazards caused by the automotive industry, the efforts from NFB pushed forward.^[3] On January 6, 2011, President Obama signed the Pedestrian Safety Enhancement Act of 2010.^[4] The Act directed the National Highway Traffic Safety Administration (NHTSA) to enact a Federal Motor Vehicle Safety Standard that would address the pressing concerns quiet cars posed to blind and other pedestrians.^[5]

On December 14, 2016, NHTSA established Federal Motor Vehicle Safety Standard (FMVSS) No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles, a new federal standard in which hybrid and electric vehicles would be required to emit a

minimum sound level for low-speed operations.[6] The overall goal of the regulation is to reduce “the risk that these ‘quiet’ vehicles will be involved in low-speed pedestrian crashes.”[7]

There is a rule within FMVSS No. 141 which states when automobile manufacturers of hybrid and electric vehicles will begin phasing in the new requirements.[8] Originally, compliance was required to begin in 2018, with full compliance by 2019.[9] However, after the rule was published, petitions for reconsideration were submitted by The Auto Alliance in Conjunction with Global Automakers (Alliance/Global), American Honda Motor Company, Inc. (Honda), and Nissan North America, Inc (Nissan).[10] One of the six requests made by petitioners, specifically Alliance/Global and Honda with supporting comments from General Motors Corporation, was to delay the compliance phase-in schedule by one year.[11] Their petition stated discrepancies between the new US regulation and a European regulation on minimum vehicle sound requirements which were already in place.[12] Petitioners argued that these differences in regulation would force manufacturers to make changes to prospective vehicle designs and therefore require necessary additional design time.[13] NHTSA decided that phase-in requirements should be modified; they were set to begin on September 1, 2019, with 50 percent of the hybrid and electric vehicles being manufactured pursuant to FMVSS No. 141, while full compliance was to begin a year later, on September 1, 2020.[14]

About halfway through the already modified phase-in requirement, the COVID-19 pandemic became prominent in the US.[15] Alliance submitted an emergency petition which requested additional changes to the phase-in requirement within FMVSS No. 141 due to disruptions in the supply chain caused by COVID-19.[16] NHTSA agreed that the unprecedented disruptions caused by the pandemic made compliance with the current phase-in schedule impractical and deferred the compliance dates by six months.[17] NHTSA’s decision was in line with Executive Order 13924 which, in short, directed agencies “to address the current economic emergency by using, to the fullest extent possible, available emergency authorities to support the economic response to the COVID-19 outbreak.”[18]

Compliance with executive orders appear to have given weight to petitions received by NHSTA. However, attitudes towards decreasing more stringent regulation were at bay even when they would harmonize international regulation. Withal, Executive Order 13609 seeks to address different regulatory approaches in the US verses foreign counterparts.[19] The order speaks to the US’s ability to compete internationally and how “international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation.”[20]

Nissan submitted a request to NHSTA to modify the minimum sound requirements until they reached a speed of 20 km/h (12.4 mph).[21] This suggested adjustment to the current rule was in line with regulation already set in place by the United Nations Economic Commission for Europe (UNECE) and Japan.[22] Despite various studies and comments which contributed to Nissan’s request, NHSTA concluded that hybrids and electric vehicles would be subject to minimum sound requirements until they reached a speed of 30 km/h (18.6 mph).[23] NHSTA acknowledged the discrepancy in minimum sound but stated the divergence was supported by NFB.[24] To fully understand why this discrepancy goes beyond a more strict regulation in the US, it is important to look at the varying acts and orders which made this decision more contentious than it facially appears.

NHSTA appears to have ignored the pressing measures in section 3(d) of Executive Order 13609, which state, “for significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.”[25]

In June of 1998, the US entered into the 1998 Global Agreement with the European Community (EC) and Japan, which established the Global Technical Regulations (GTRs).[26] GTRs concern “the safety, emissions, energy conservation and theft prevention of wheeled vehicles, equipment and parts.”[27] Through the implementation of GTRs, the US, EC and Japan sought to “pursue harmonization in motor vehicle regulations not only at the national and regional levels, but worldwide as well.”[28] When addressing the agreement, NHSTA appears to have clung its reasoning for adopting stricter regulations to the part of the agreement which states, “[t]he ultimate decision whether or not to adopt the GTR is at each contracting party's discretion, however, based on its determination that the GTR meets or does not meet its safety needs.”[29] Furthermore, pursuant to Executive Order 12866, NHSTA has already established that the regulation is deemed significant due to its annual economic impact exceeding \$100 million.[30]

NHSTA should have given greater weight to the already operating European and Japanese guidelines because the regulation has been established as significant, the US has a regulatory cooperation agreement as established by the 1998 Global Agreement, and Executive Order 13609 is eminent.[31] Adversely, NHSTA has decided to implement stricter regulations.[32] These regulations not only hinder harmonization between foreign counterparts, they also decrease the economic market and consumer attractiveness of hybrid and electric

vehicles in the US. Due to the delays in compliance and the existence of less stringent guidelines followed elsewhere, the current regulatory scheme in the US is set up to be at a disadvantage.

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[1] National Federation of the Blind, Resolution 2003-05, August/September 2003, available at <http://www.nfb.org/Images/nfb/Publications/bm/bm03/bm0309/bm030910.htm>.

[2] Deborah Kent Stein, *Belling the Cat: The Long Road to the Passage of the Pedestrian Safety Enhancement Act*, NFB (June 2011), <https://nfb.org/sites/default/files/images/nfb/publications/bm/bm11/bm1106/bm110602.htm>; see generally Barbara Pierce, *Quiet Cars and Blind Pedestrians: Problems and Progress*, NFB, <https://nfb.org/images/nfb/publications/fr/fr27/2/fr270222.htm> (last visited Sept. 24, 2021).

[3] Deborah Kent Stein, *Belling the Cat: The Long Road to the Passage of the Pedestrian Safety Enhancement Act*, NFB (June 2011), <https://nfb.org/sites/default/files/images/nfb/publications/bm/bm11/bm1106/bm110602.htm>.

[4] Pedestrian Safety Enhancement Act of 2010, 1 Auto. Design Liability § 3:31 (3d ed.).

[5] *Id.*

[6] Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles, 85 Fed. Reg. 54273-01 (Aug. 28, 2020).

[7] *Id.*

[8] *Id.*

[9] Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles, 81 Fed. Reg. 90416-01 (Dec. 14, 2016).

[10] Federal Motor Vehicle Safety Standards No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles, 83 Fed. Reg. 8182 (Apr. 27, 2018).

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles, 85 Fed. Reg. 54273 (Aug. 28, 2020).

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] Promoting International Regulatory Cooperation, 77 Fed. Reg. 26413 (May 1, 2012).

[20] *Id.*

[21] Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles, 81 Fed. Reg. 90416-01 (Dec. 14, 2016).

[22] *Id.*

[23] Federal Motor Vehicle Safety Standards No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles, 83 Fed. Reg. 8182 (Apr. 27, 2018).

[24] *Id.*

[25] Promoting International Regulatory Cooperation, 77 Fed. Reg. 26413 (May 1, 2012).

[26] Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles, 78 Fed. Reg. 2797 (Jan. 14, 2013).

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.* See Regulatory Planning and Review, 58 Fed. Reg. 51735 (Oct. 4, 1993).

[31] Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles, 78 Fed. Reg. 2797 (Jan. 14, 2013); Reg. 51735 (Oct. 4, 1993); Promoting International Regulatory Cooperation, 77 Fed. Reg. 26413 (May 1, 2012).

[32] Federal Motor Vehicle Safety Standards No. 141, Minimum Sound Requirements for Hybrid and Electric Vehicles, 83 Fed. Reg. 8182 (Apr. 27, 2018).