AMERICAN AUTOMAKERS
AAPC

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American Automotive Policy Council's comments on the Australian Design Rules Harmonisation Review 2024-25

The American Automotive Policy Council (AAPC) on behalf of its member companies – Ford Motor Company, General Motors Company and Stellantis - are writing to provide our comments on how the Australian Government can align the Australian Design Rules (ADR) with international recognized automotive standards.

U.S. automakers strongly support the Australian Government's interest in updating and harmonizing their road vehicle standards with international standards especially as signatories to the UN 1958 and 1998 Agreements along with other international commitments. We acknowledge and welcome the decision made in 2024 that will allow U.S. EPA Certificates of Conformity to be used to demonstrate compliance with ADR 79/05 light duty emissions standards and see this as a model for how other U.S. EPA and NHTSA FMVSS standards can gain acceptance as alternatives to ADRs. Conversely, we must also point out that while in the midst of conducting a review designed to improve alignment with international standards, DITRDCA is proposing a new and unique Fuel Consumption, CO2, and Labeling standard, ADR 81/03, that will subject certain NB1 vehicles to testing and labeling requirements that are mandated in no other jurisdiction in the world, a move that will undoubtedly reduce alignment with global regulations and increase the burden of compliance. At the present time, all of the current road vehicle standards in the third edition of the ADRs are based on UN ECE standards as a result of Australia beginning a contracting party to the UN 1958 Agreement.

In particular, we believe this harmonization review of the ADRs is an excellent opportunity to redress acceptance of U.S. Federal Motor Vehicle Safety Standards (FMVSS) as equivalent to Australian Design Rules. FMVSS and UN ECE are the two predominate internationally recognized sets of motor vehicle safety standards. There are other automotive safety standards, but these two represent the two major internationally recognized systems that form the basis for most of the other systems around the world. It is important to note that Australia's first ADRs

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were based on FMVSS[1] and some ADRs have long standing acceptance of FMVSS as an alternative standard, such as ADR72/00 since 2005.

Under the U.S. system of FMVSS, they utilize a compliance verification system often misleadingly called "self-certification" governments establish regulations and require manufacturers to test and certify that their products meet or exceed the regulatory requirements.

Government authorities test vehicles sold to the public for compliance and require manufacturers to report promptly possible noncompliance. Governments also closely monitor the performance of vehicles in use and require manufacturers (legal obligation) to report on any safety-relevant issues.

In the U.S., the National Highway Traffic Safety Administration (NHTSA) is the enforcement agency charged with establishing requirements and ensuring that manufacturers meet or exceed the requirements throughout the life of the vehicle.

Manufacturers are responsible for testing their vehicles to ensure compliance and ultimately bear responsibility. The regulator-automaker relationship in the U.S. means that manufacturers are free to innovate in their testing and have an incentive to test including a significant "margin for error" well above the requirements for certainty that the standard will be met. Under the U.S. system, the government does approve a vehicle.

Under the UNECE type approval system, it verify-but-trust and under the U.S. compliance verification system, it is trust-but verify. In fact, many automakers find the FMVSS and the U.S. certification system more stringent to meet. Under the U.S. system, NHTSA can randomly select any new vehicle from any dealer lot anywhere in the U.S. that a customer could purchase and tests it to verify it complies with FMVSS. If an automaker does not comply with FMVSS, they are subject to significant government fines and potential legal action. In fact, automakers build their vehicles to well exceed the safety standards of FMVSS and UNECE and do not want risk of legal action or damage to the reputation of their brand.

As part of FMVSS and the U.S. system, NHTSA has a data collection system without equal. This is accomplished by working closely with law enforcement to train police officers and first responders in crash reporting and to form special units of crash investigators in order to provide safety authorities with critical data that leads to a better understanding of the causes of traffic deaths and injuries. U.S. safety standards are data-driven and justified by extensive research into their costs and expected benefits.

In addition, NHTSA collects data on vehicle issues from automotive dealers, auto repair shops, and consumer complaints. With this data, they are able to track trends in vehicle issues which help determine the need for any vehicle recalls. In fact, a majority of all vehicle recalls in the

[1] William Craske, "Australia's program of adopting the UN ECE Regulations", Prime Mover Magazine, Sept. 25,2023, https://primemovermag.com.au/australias-program-of-adopting-the-un-ece-regulations/#:~:text=In%20the%20late%201990s%20the,moving%20freely%20across%20European%20borders.

U.S. have been done voluntarily by the auto manufacturers. Most of the major recalls across the globe have been initiated by NHTSA, such as the Takata airbag and VW "dieselgate."

Although both FMVSS and UNECE were developed independently, their goals, scope, performance and outcomes are remarkably similar or even identical. Both approaches have also proven successful in reducing crashes, injuries, fatalities and adverse environmental consequences. A 2016 study conducted by the EU Commission analyzed Car Safety in the EU and U.S. in relation to U.S. and EU Regulatory Standards on Crash Testing. The study found that both front crash safety and side crash safety of cars in the marketplace in the U.S. and EU today are equivalent in broad terms, based on their real-world safety performance. In fact, the study concluded that that most cars in the EU and U.S. today are already exceeding the regulatory prescriptions by a wide margin.[2]

It is important to note that regulatory barriers like not accepting U.S. derived standards for safety and emissions as alternative to ADRs, can hinder or delay the adoption of the latest technologies, especially burdensome for small producers or in small markets. Some models are not sold in markets where there is demand because sunk costs of adjusting the models to those markets are too high. For example, while the Canadian market adheres to U.S. regulations, demand for subcompact and compact cars is higher in Canada than in the United States (representing 65 and 41 percent of market share, respectively). European manufacturers are unable to take advantage of this demand for smaller cars in Canada, because as Canadian car sales were less than 5 percent of U.S. auto sales in 2014, the sunk cost of adjusting a subcompact European car to U.S. regulations (in order to sell in the Canadian market) is higher than the relative gains in the Canadian market.[3]

Regulatory differences also affect consumers: When there is demand for the same car in both markets, consumers may not be able to take advantage of price differentials across markets due to the cost of recertification in the new market. Furthermore, regulatory differences also impede market integration, preventing companies from selling new products in certain markets.[4]

There are many benefits of Australia accepting FMVSS as equivalent to its ADR in addition to accepting UNECE. These benefits include:

1) Both FMVSS and UNECE are equally robust, effective, long-standing and tested.
2) Both have comparable performance and safety outcomes
3) Accepting both reduces cost and increases in efficiency
4) Accepting both provides consumers in Australia with greater choice in vehicle types, models and different brands.
5) Accepting both allows the latest vehicle technologies that improve vehicle safety to be introduced into the Australian market faster regardless of where it is developed.

[2] "TTIP – Car Safety Analysis in the EU and US in relation to US and EU Regulatory Standards on Crash Testing", EU Commission, July 12, 2016, pages 2-3.
[3] Caroline Freund & Sarah Oliver, Gains from Harmonizing US and EU Auto Regulations under the Transatlantic Trade and Investment Partnership, Peterson Institute for International Economics, p.5
[4] Id.

As a result, there are many countries across the globe in the Asia-Pacific region, Latin America, Middle East and Africa that accept both U.S. FMVSS/EPA and UNECE. Two specific examples to consider are fellow 1958 agreement signatories are South Korea and New Zealand who accepts vehicles meeting either UN ECE or FMVSS standards. Furthermore, there are many misconceptions about accepting FMVSS and the U.S. certification system. Please see Attachment 1, which explains and debunks many of the misconceptions.

We strongly encourage the Australian government to include U.S. FMVSS/EPA as equivalent to the Australia Design Rules in the latest update of the rules. This should be in the form of accepting FMVSS/EPA evidence for individual ADRs as alternatives for those standards. Australia has accepted U.S. derived regulations in the past and there is no reason why they should not accept these standards. It is important for these rules to also incorporate the other leading global automotive standards.

Thank you for your consideration of our comments. Please let us know if you have any questions or need any further information, do not hesitate to contact [redacted]
[redacted]

Regards,

[redacted]

Matt Blunt
President

Attachment 1

U.S. FMVSS and Certification System

Widespread Misconceptions & Corrections/Clarifications

When it comes to motor vehicle certification systems, there are especially wide gaps in understanding how the two principal international systems function - U.S. automotive safety standards (FMVSS) and its certification system and the UNECE standards (UN Regulations) and its certification system (Type Approval). The preponderance of misunderstanding surrounds the U.S. Conformity Compliance Verification system (also commonly but misleadingly referred to as "self-certification".

The following clarifies and corrects the ten most common misunderstandings about global motor vehicle regulations and certification systems.

1. <u>Misconception</u>: That the regulations coming out of the UN ECE WP.29 1958 Agreement – now called "UN Regulations" are the definitive global or United Nation sanctioned automotive standard.

This is NOT accurate. In fact, according to the WTO definition of what an international standard is, FMVSS is equal to UN ECE in its status as an internationally accepted standard. The fact that Europe's automotive regulations are conducted under the United Nations does not by itself make it an international standard and is primarily an "accident of history" that Europe utilized a UN post WWII economic forum to facilitate the harmonization of its own motor vehicle safety system.

Compounding the misperception that the UN ECE 1958 Agreement regulations have a special status, and all the others are regional or national is the more recent decision to rename the standards set by the UNECE as "UN Regulations." To be clear, this was more a branding exercise than a reflection of reality.

U.S. FMVSS and its Conformity Compliance Verification system is equally "international" to the UN ECE. In fact, more than half the world's automotive production and population centers are not signatories to the 1958 Agreement, including the U.S., China, and India. These nations instead are signatories to the UN WP.29 1998 Agreement that includes the EU, U.S., China, India Japan, Korea, Canada, and many others.

The 1998 Global Agreement provides a pathway for the harmonization of international vehicle regulations. However, much work remains to develop a comprehensive regime of truly harmonized international regulations. In the meantime, economies need not replicate problems faced elsewhere due to the current lack of harmonization, but instead can maintain

flexible standards and conformity assessment systems allowing for different but robust requirements while maintaining safety performance and emissions outcomes for consumers.

2. <u>Misconception</u>: That the U.S. certification system, with its reliance on automaker testing, is more venerable to automaker manipulation than the type-approval certification system.

The evidence is that type-approval system may in fact be inherently more vulnerable to manipulation.

There was the diesel emissions scandal, where an automaker successfully and purposefully defeated diesel emissions tests and verification by third parties. Importantly, the U.S. system was instrumental in discovering and addressing that failure.

Most recently (only a few months ago), a large and important market announced that it had uncovered serious abuse in its vehicle testing and certification process, which spanned decades and covered more than 60 different models.[5] This is possible because under the type approval system where by automakers are required to provide test vehicles to the authorities to test (or hire private firms to test on their behalf). This allows the possibility to manipulate the test vehicles to ensure they will pass the tests, but not selling the same vehicles meeting the same standards/regulations to consumers.

This would not be possible under the U.S. system. When a vehicle is tested by the U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA) to verify compliance, the automakers do not provide the vehicle to the government; rather, the vehicle model is randomly selected from a dealership lot, purchased and tested by NHTSA (or through independent, private firms that test on NHTSA's behalf). This ensures that the vehicle being tested is the same one being sold to the public and also ensures conformity of production- given the randomness of its selection.

3. <u>Misconception</u>: The FMVSS certification system, misleadingly labelled "Self-Certification," is easier to meet and weaker than that of the UN ECE 1958 – evidenced by the lack of up-front government approval and an explicit CoP requirement.

This is a flawed assumption, and in fact most global automakers would say the opposite is true – FMVSS and the U.S. certification system is considerably more difficult to meet. A vehicle under the U.S. certification system is closely tracked throughout its life and failure

[5] https://money.usnews.com/investing/news/articles/2023-12-19/toyotas-daihatsu-will-expand-production-halt-oversafety-scandal-nikkei https://edition.cnn.com/2023/12/27/business/daihatsu-japan-production-halt-safety-tests-intlhnk/

to comply exposes automakers to more punitive penalties than under the Type Approval certification system.

Under a Type Approval process there is the explicit requirement for Conformity of Production (CoP). The content of the CoP varies between the subject matter and differing issuing authorities. For a substantial number of UN ECE 1958 regulations, the CoP is often a review or audit of the manufacturers ISO 9000 series certification with little or no retesting to insure it meets the requirements.

Although there is no explicit "COP" legislated under the certification system used in the U.S., it is therefore often assumed, that conformity of production is not necessary under the U.S. system. This is <u>not</u> a correct assessment. Instead, NHTSA's enforcement system compels automakers to have the highest level of CoP - given that any new vehicle model at any time could be randomly selected and purchased from a dealership lot by NHTSA for testing to compliance with FMVSS.

In the U.S. there were 34 new models offered in the U.S. in 2021. That same year, 46 vehicles were purchased by NHTSA for testing, with a heavy focus on the new models offered. In addition, 19 vehicle models were tested for advanced crash avoidance technology systems.

NHTSA also announced that they will be testing 32 models for the agency's 5-star safety ratings program. This, as well as the quite severe costs and reputational harm of not meeting requirements – necessitates an unparalleled level of testing and verification – ensuring Conformity of Production.

3. **<u>Misconception</u>: A Contracting Party to the 1958 Agreement cannot accept vehicles certified under the U.S. Conformity Compliance Verification or "Self-Certification" process.**

   In general, a Contracting Party to the 1958 Agreement must accept products approved under the UN Regulations that the other Contracting Parties to the agreement apply. The 1958 Agreement, however, does not prevent any other Contracting Party from accepting products certified under another certification regime (i.e., not type approval). In fact, a Contracting Party does not even have to use type approval domestically.

   For example, if a government authority plans to apply UN R13 (heavy duty braking), Under the 1958 agreement, that government is obliged to accept vehicles from other 1958 agreement contracting parties approved under UN R13 as compliant with that braking regulation. Nonetheless, nothing prevents that government from also accepting vehicles certified to FMVSS 105 and/or 121 (braking) as also being compliant with its local laws.

   However, it is important to note that Contracting Parties to the 1958 Agreement may opt out of this obligation. Thailand, for example, is a contracting party to the 1958 agreement, does not accept or issue any type approvals. Korea, also a 1958 agreement contracting party, also

runs a self-certification system similar to the United States and therefore does not accept or issue type approvals.

For more details and specifics on this subject, see *Attachment 1* - Can a Contracting Party to the 1958 Agreement Accept Motor Vehicles from a Country Applying a Conformity Compliance Verification "Self-Certification" System?

4. **Misconception: Under Type Approval, the government issuing approvals conducts tests at its government facilities to verify compliance. In contrast the U.S. system relies entirely on tests conducted by private sector entities such as automakers and suppliers, not by the government.**

   Both certification systems, including Type Approval, must trust and rely heavily on private sector entities such as automakers, suppliers, and test facilities to function effectively. Contrary to common perceptions, the vast majority of the EU's members countries' national Type A

   Approval authorities (TAAs) do not have in-house government testing facilities capable of conducting many of the necessary tests to confirm compliance with UN ECE 1958. So, instead governments provide automakers/suppliers with a list of testing companies that they can select for their vehicle to be tested for compliance. In the case of vehicles, automakers then provide a dozen or more pre-production cars, built specifically for the UN ECE 1958 Agreement testing, to one of those sanctioned technical service providers. This practice relies on automakers/suppliers hiring the private sector test facilities and providing a representative vehicle/component for testing. Consequently, this system relies heavily on the automaker providing a truly representative vehicle for testing, the varying quality levels of the third-party testing laboratories, and an honest, unbiased relationship between the automakers and the test facilities.

   FMVSS and the U.S. Conformity Compliance Verification does initially rely on the automakers/suppliers to conduct their own internal testing and due diligence to ensure that the vehicle/component meets the requirements (with the specter of severe penalties if not compliant). However, soon after entering the marketplace, NHTSA purchases vehicle models to be tested from randomly selected dealership lots. Each year, those vehicles and components, with a heavy emphasis on new vehicle models, and new parts/components, are then tested at NHTSA facilities and by independent testing facilities hired directly by NHTSA to confirm compliance. Initial compliance is assured through the power of recall, large financial fines, and the reputational loss of being called out for noncompliance. So, while the U.S. system initially relies on automakers/suppliers testing, NHTSA quickly conducts third-party conformity compliance verification after vehicles and regulated components enter the marketplace

5. Misconception: Automakers can enter the U.S. market and under the Conformity Compliance Verification "Self-Certification" system can sell vehicles with no or minimal documentation or U.S. federal government oversight.

This is NOT an accurate assumption. In fact, extensive pre-market documentation is required before selling a vehicle in the United States. To further underscore that NHTSA has strong oversight over all vehicles sold in the U.S. and beyond, NHTSA issues a handbook for motor vehicle and motor vehicle equipment manufacturers that outlines the extensive
documentation requirements automakers must undertake before they enter the market: The Vehicle Safety Act requires that motor vehicles and regulated items of motor vehicle equipment manufactured for sale in the United States be certified to comply with all applicable FMVSS and that "reasonable care" is taken in issuing a certification of compliance with safety standards. Before offering a motor vehicle or motor vehicle equipment item for sale in the United States, the fabricating manufacturer must submit to NHTSA identifying information on itself and on the products, it manufactures to the FMVSS. NHTSA's maintains a: Centralized Vehicle Identification Number (VIN) database, a Manufacturer Information Database (MID), Manufacturer Equipment Plant Identification and associated data.

Basic Documentation and information Manufacturers Submit to NHTSA

- NHTSA New Manufacturers Handbook (PDF)
- 49 CFR Part 551, Subpart D (Foreign manufacturers and importers – designation of an agent for service of process)
- 49 CFR Part 565 (Vehicle Identification Number Guidance)
- 49 CFR Part 566 (Manufacturer Identification – Reporting Requirements)
- 49 CFR Part 574 (Tire Identification Number (TIN) Guidance)
- 49 CFR Part 571.106 (Brake Hose Manufacturer Identification)
- 49 CFR Part 571.205 (Glazing Material Manufacturer Identification)
- 49 CFR Part 595.6 (Identification for Vehicle Modifier to Enable a Person with Disability to Operate or Ride as a Passenger)

Manufacturer Information Required

- VIN Requirements (49 CFR Part 565)
- Manufacturer Identification (49 CFR Part 566; Routine Identification Data)
- Designation of U.S. Agent of Service of Process (49 CFR Part 551, Subpart D)
- Brake Hose Manufacturer Identification (49 CFR Part 571.106)
- Glazing Material Manufacturer Identification (49 CFR Part 571.205)

- New Tire Manufacturer Identification (49 CFR Part 574)
- Retread Tire Manufacturer Identification (49 CFR Part 574)
- Adapted Vehicle Modifier (49 CFR Part 595)

6. <u>Misconception:</u> The U.S. motor vehicle safety standards and certification enforcement are limited to the United States.

This is NOT the case. The Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act, passed in 2000, provides NHTSA with extraordinary and far-reaching authority to ensure automotive safety. This broad authority covers all aspects of vehicle safety and is not limited to the scope of FMVSS or limited to the United States. In addition to vehicle manufacturers reporting to the NHTSA all safety-related concern in the U.S., automakers are explicitly committed to report when it encounters safety concerns in other countries and/or conducts a safety recall or other safety campaign in a foreign country.

7. <u>Misconception</u>: The U.S. auto safety standards and certification system are not widely accepted outside the United States.

Actually, FMVSS is accepted in dozens of other countries- across the globe -in the Asia-Pacific region, Latin America, Middle East, Europe and Africa. This includes both LHD as well as RHD markets such as New Zealand and Singapore, demonstrating the interoperability of FMVSS Safety & EPA Emissions rules with many different National and ECE-based regulation systems. Governments in the following countries are examples of just some that accept US vehicle standards as an alternative means of demonstrating compliance with local regulations:

South Korea	Morocco
Saudi Arabia	Much of Sub-Sahara Africa
United Arab Emirates	Honduras
Oman	Costa Rica
Kuwait	Guatemala
Bahrain	El Salvador
Qatar	Panama
Iraq	Dominican Republic
New Zealand	Mexico
Argentina	Canada
Philippines	Ecuador
Singapore	

8. Misconception: FMVSS is a laggard in advancing new automotive safety regulations.

This is highly misleading. While the U.S. system may take more time to establish new regulations, it is equally effective, and after being established there are far fewer needs to amend its regulations- thus it is much less disruptive to the industry and market.

NHTSA is NOT limited to regulatory tools for ensuring safety. In 1978, NHTSA invented the New Car Assessment Program (NCAP), which has inspired similar programs around the world, to encourage adoption of new safety technologies and methods. This program was established to encourage manufacturers to build safer vehicles and consumers to buy them. Over time, the agency improved the program by adding rating programs, facilitating access to test results, and revising the format of the information to make it easier for consumers to understand. NHTSA's NCAP program has influenced manufacturers to build vehicles that consistently achieve high ratings in the tests conducted under NCAP and greatly exceed minimum regulatory requirements. Often, automakers in the U.S. market to consumers the fact that their vehicles achieve high ratings for safety. Nearly all other major auto markets have developed/adopted similar programs based on NHTSA's U.S. NCAP program. The development of NCAP in the U.S. has successfully incentivized automakers to achieve an even higher level of safety beyond the FMVSS minimum thresholds and the significant margins generally built into those thresholds to ensure compliance.

9. Misconception: The UN ECE 1958 Type Approval system is more effective than the U.S. certification system at making the world's roadways safer.

This is NOT accurate as evidenced by the fact that the U.S. has first identified nearly all the major global auto recalls which is a result of NHTSA's superior data collection. NHTSA's robust and unparalleled data collection is a powerful tool that has enabled the U.S. to identify safety issues – well before other authorities. Examples include the Takata airbag defects, and seatbelt malfunctions, Toyota floormat entrapment, and Firestone tire recall. EPA has similar market monitoring procedures which led to the uncovering of VWs diesel emissions scandal, and diesel emissions recalls. Indeed, U.S. market monitoring systems have successfully identified virtually every major motor vehicle recall made in the last 30 years.

Data Collection: Comprehensive national auto data is collected by NHTSA based on traffic authority reports on fatality and injury, dealership / warranty repair patterns, and consumer complaints. This is by far the largest and most effective auto data collection system employed anywhere. In comparison, only six of the 27 EU countries collect somewhat comparable data, and those six data collection efforts are not fully coordinated.

Recalls: Each year, hundreds of passenger car and auto parts recall campaigns are initiated in the U.S. on vehicles sourced from the U.S., Europe, Japan, Korea, etc. The majority of these recalls were self-initiated by automakers (compelled by the punitive legal and financial repercussions). The vast majority of recalls are for product defects and not for

issues related to compliance with FMVSS specifications. During the same timeframe, the EU, with a nearly identically sized motor vehicle market and industry had far fewer recalls and they have not identified any of the major automotive safety problems – even from European automakers located in the EU. No other regulatory system can compare to the effectiveness and performance of the U.S. automotive regulatory system's data collection and recall record. Consequently, NHTSA's corrective actions following the identification of automotive safety compliance concerns are often replicated in other countries/regions, including the EU. The bottom line is that the world's roadways are safer as a result of NHTSA's certification and data collection system.