



NHTSA

Report No. ST2022009
November 9, 2021

Weaknesses in NHTSA's Training and Guidance Limit Its Ability To Set and Enforce Federal Motor Vehicle Safety Standards



Weaknesses in NHTSA's Training and Guidance Limit Its Ability To Set and Enforce Federal Motor Vehicle Safety Standards

Self-initiated

National Highway Traffic Safety Administration | ST2022009 | November 9, 2021

What We Looked At

As part of its mission to prevent and reduce vehicle crashes, the National Highway Traffic Safety Administration's (NHTSA) Office of Vehicle Safety Compliance (OVSC) sets Federal Motor Vehicle Safety Standards (FMVSS) to improve traffic safety. FMVSS provide performance and regulatory requirements for manufacturers of motor vehicles and vehicle safety components, such as seatbelts. Given the importance to the traveling public that all vehicles and components meet Federal safety standards, we initiated this audit to assess NHTSA's efforts to set and enforce FMVSS.

What We Found

While NHTSA has established policies and procedures for evaluating FMVSS and safety-related motor vehicle standards, the Agency is limited in its ability to update, set, and enforce these standards in a timely manner. First, NHTSA has faced significant delays in processing rulemaking petitions to modify or set new FMVSS, which may put the Agency in noncompliance with Federal regulations. For example, the Agency did not respond within the required 120-day timeline to 87.5 percent of FMVSS petitions submitted between March 2016 and December 2020. Second, NHTSA lacks formal training and clear guidance for enforcing compliance with FMVSS. For example, NHTSA's OVSC lacks documented standard procedures and training for reviewing contractors' compliance test reports and has not implemented guidance for conducting compliance investigations. Third, NHTSA is not meeting requirements for ensuring imported vehicles meet FMVSS. NHTSA's OVSC requires Registered Importers to submit conformity packages detailing safety modifications made to comply with FMVSS. However, NHTSA lacks a standard process for reviewing these packages, increasing the risk of unsafe vehicles operating on U.S. roads.

Our Recommendations

NHTSA concurred with our six recommendations to strengthen its oversight of FMVSS to comply with Federal requirements. We consider recommendations 1 through 6 resolved but open pending completion of planned actions.

Contents


Memorandum	1
Results in Brief	3
Background	4
While NHTSA Has an Established Rulemaking Process for Setting FMVSS, NHTSA Is Not Meeting Requirements To Act on Petitions in a Timely Manner	6
NHTSA Lacks Formal Training and Clear Guidance for Enforcing Compliance With Federal Motor Vehicle Safety Standards	9
NHTSA Is Not Meeting Requirements for Reviewing Conformity Packages for Imported Vehicles	14
Conclusion	19
Recommendations	20
Agency Comments and OIG Response	20
Actions Required	20
Exhibit A. Scope and Methodology	21
Exhibit B. Organizations Visited or Contacted	23
Exhibit C. List of Acronyms	24
Exhibit D. Major Contributors to This Report	25
Appendix. Agency Comments	26



Memorandum

Date: November 9, 2021

Subject: ACTION: Weaknesses in NHTSA's Training and Guidance Limit Its Ability To Set and Enforce Federal Motor Vehicle Safety Standards | Report No. ST2022009

From: Dave Pouliott 
Assistant Inspector General for Surface Transportation Audits

To: National Highway Traffic Safety Administrator

According to preliminary estimates from the National Highway Traffic Safety Administration (NHTSA), more than 36,000 people died in motor vehicle crashes in the United States in 2019.¹ As part of its mission to prevent and reduce these vehicle crashes, NHTSA establishes Federal Motor Vehicle Safety Standards (FMVSS) to improve traffic safety. NHTSA's FMVSS specify the minimum safety performance requirements for new motor vehicles and regulated automobile safety-related components, such as seatbelts.²

NHTSA's Office of Rulemaking initiates, reviews, and revises FMVSS, and NHTSA's Office of Vehicle Safety Compliance (OVSC) is responsible for ensuring that manufacturers comply with FMVSS. This includes testing new vehicles, enforcing regulations, and reviewing and monitoring requirements in a number of areas. Given the importance to the traveling public that all vehicles and components meet Federal safety standards, we reviewed NHTSA's FMVSS rulemaking and enforcement processes. Our objectives of this self-initiated audit were to assess NHTSA's efforts to set and enforce Federal Motor Vehicle Safety Standards. Specifically, we reviewed NHTSA's processes for (1) setting FMVSS, (2) testing and investigating new vehicles and equipment for compliance with FMVSS, and (3) reviewing conformity packages for imported motor vehicles.

We conducted our work in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology, exhibit B lists

¹ NHTSA, U.S. Department of Transportation's 2019 Motor Vehicle Traffic Data, Early Estimates, May 2020. Early projections for 2020 show 28,190 fatalities for January–September 2020.

² These standards are codified as 49 CFR Part 571.

the organizations we visited or contacted, and exhibit C lists the acronyms used in this report.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Wendy Harris, Program Director, at (202) 366-2794.

cc: The Secretary
 DOT Audit Liaison, M-1
 NHTSA Audit Liaison, NPO-330

Results in Brief

While NHTSA has an established rulemaking process for setting FMVSS, NHTSA is not meeting requirements to act on rulemaking petitions in a timely manner.

Federal regulations require NHTSA to review petitions to set, change, or remove FMVSS and communicate its decisions to the petitioner within 120 days of receipt. From March 2016 to December 2020, NHTSA initiated reviews of 24 petitions from industry stakeholders and the public to create a Federal regulation or modify an existing one, some of which would alter or add FMVSS or address other non-standard motor vehicle issues. However, we found that NHTSA did not meet the 120-day required timeline to communicate its decision to the petitioner for 21 of 24 of these petitions (87.5 percent). For example, one petition related to Lamps Reflective Devices and Associated Equipment has been under review for more than 790 days as of April 2021 without a final decision. According to NHTSA, these delays occurred in part due to the complexity of the petitions as well as competing Agency priorities with the resources available. However, NHTSA also lacks an updated written procedure to ensure reviews are conducted within 120 days as required, potentially contributing to the delays. As a result of delays in processing rulemaking petitions, NHTSA may not be in full compliance with Federal regulations and may not be taking timely action on critical vehicle safety issues.

NHTSA lacks formal training and clear guidance for enforcing compliance with Federal Motor Vehicle Safety Standards.

Our review of NHTSA's FMVSS testing and investigations for test program years 2016 through 2020 found that NHTSA has taken over 200 investigative actions to enforce compliance, but relies heavily on engineers who learn the investigation process through on-the-job training and mentoring. As a result, NHTSA has less assurance its reviews are consistent, effective, or timely, nor does it provide for continuity if key individuals leave the Agency. For example, in the area of timeliness, 7 (28 percent) of the 25 compliance investigations we reviewed in our sample were not completed within 365 days, a target OVSC established in its 2014 draft Control Plan guidelines. This occurred in part because OVSC has not established formal guidance or training for its Safety Compliance Engineers, who are responsible for reviewing test reports compiled by independent laboratories contracted to assess whether vehicles and vehicle components comply with FMVSS. In addition, while OVSC created a draft Control Plan in 2014 that documents the process and timeframes for investigating test failures or apparent noncompliances, OVSC has not formally approved the plan. Further, several OVSC staff stated that they are unaware of the draft guidance or do not use it to

complete compliance investigations. The lack of standard review procedures and training limits OVSC's ability to reasonably ensure that its Safety Compliance Engineers are performing their activities consistently, effectively, and in a timely manner.

NHTSA is not fully meeting requirements for reviewing conformity packages for imported vehicles.

NHTSA's OVSC also oversees vehicles imported to the United States that were not originally manufactured to meet FMVSS. For example, Federal regulations require that Registered Importers (RI) submit a conformity package when importing applicable vehicles that details the modifications made to the vehicle or vehicle component to comply with FMVSS. OVSC must review and approve conformity packages within 30 days, or the vehicle is released and allowed to operate in the United States. However, our review found that OVSC did not meet the 30-day regulatory review period in 55 (81 percent) of the 68 conformity packages in our sample.³ OVSC also approved 18 conformity packages that did not meet all requirements. For example, NHTSA approved 12 conformity packages in which the RI did not include the required statement regarding whether the package was their initial certification of a certain make, model, and model year (MY) of a vehicle. These issues occurred in part due to the lack of a standard process for prioritizing and reviewing conformity packages and, according to OVSC, insufficient resources to manage the significant increase in imported vehicles from Canada. According to OVSC, resource constraints also limit its ability to conduct other oversight and enforcement tasks, including investigating RIs suspected of circumventing regulations and identifying when vehicles have been imported without a required conformity package. As a result of these oversight gaps, there may be an increased risk of noncompliant or unsafe vehicles operating on U.S. roads without NHTSA's knowledge.

We are making recommendations to strengthen NHTSA's oversight of FMVSS to comply with Federal requirements.

Background

The basis for NHTSA's Office of Rulemaking to create, modify, or remove a regulation or FMVSS can either be initiated by NHTSA, directed by Congress, or requested by the public by submitting a petition for rulemaking. When NHTSA receives a petition, the Agency conducts a technical review,⁴ including an internal

³ We statistically sampled 68 packages from the 170,698 conformity packages received from March 2020 to December 2020.

⁴ 49 CFR Part 552.

safety analysis, to determine whether the proposed standard or requested amendment meets a safety need, is stated in objective terms, and is practicable.⁵

In contrast to NHTSA's Office of Rulemaking, OVSC is responsible for enforcing compliance with FMVSS. OVSC's mission includes testing new vehicles and regulated equipment items for compliance with applicable FMVSS, enforcing importation and certification regulations, maintaining vehicle identification number (VIN)-deciphering information submitted by motor vehicle and equipment manufacturers, and monitoring light and heavy vehicle fuel economy requirements for credits and monetary penalties. OVSC carries out its mission through a variety of steps, such as conducting random compliance testing and inspections and analyzing import data from U.S. Customs and Border Protection (CBP) agency and fuel economy data from the Environmental Protection Agency. Through its activities, OVSC verifies that manufacturers of regulated motor vehicles and/or items of motor vehicle equipment—who self-certify that their products meet all applicable FMVSS—are in compliance with Federal laws, standards, and regulations pertinent to vehicle safety, fuel economy, damageability, and consumer information.

To test FMVSS compliance, OVSC uses independent testing laboratories (contractors) to conduct compliance tests based on OVSC's detailed description of the various requirements, Laboratory Test Procedures for obtaining compliance test data, and a uniform testing and data recording format. The data is used to indicate if a specific vehicle or item of motor vehicle equipment meets the labeling and performance requirements of the applicable FMVSS. In addition, test procedures provide a detailed description to manufacturers of how OVSC intends to verify that the affected products meet the labeling and minimum performance requirements of applicable FMVSS. According to OVSC, manufacturers can use the FMVSS, which represent the minimum safety requirements, and the OVSC Laboratory Test Procedures as a guide in conducting their own certification and product surveillance tests, or preferably testing more stringently to ensure an adequate margin of safety.

If a compliance test results in a potential noncompliance or an apparent test failure, OVSC will begin an investigation into the vehicle or equipment item that was tested. The investigative process seeks to identify, resolve, and remedy any potential deviations from the FMVSS revealed by compliance tests. Some potential outcomes of OVSC's investigations may be recalls or production changes remedying the noncompliant vehicles or equipment.

NHTSA's OVSC also operates a division that oversees the importation and certification of motor vehicles not originally manufactured to comply with FMVSS.

⁵ 49 U.S.C. § 30111(a).

The Import and Certification Division is responsible for registering importers to bring vehicles into the United States and reviewing eligibility petitions to determine if new makes and models of vehicles are eligible for importation. Additionally, this Division is responsible for reviewing conformity packages—which detail modifications made to the vehicle or vehicle component by the RI—to determine whether an imported vehicle complies with FMVSS.

While NHTSA Has an Established Rulemaking Process for Setting FMVSS, NHTSA Is Not Meeting Requirements To Act on Petitions in a Timely Manner

NHTSA's Office of Rulemaking is responsible for initiating a rulemaking process to establish, change, or remove a FMVSS. As of September 2020, NHTSA is monitoring 63 motor vehicle safety standards in Federal regulations.⁶ These standards cover areas such as seatbelts, vehicle dashboard displays, school bus seating and crash protection, brake hoses, windshields, vehicle weight, and more. Per Federal regulations,⁷ the NHTSA Administrator can initiate the process to add an FMVSS either on their motion or on a petition by any interested party (e.g., stakeholders and individual members of the public) in accordance with regulations for petitions for rulemaking, defect, and noncompliance orders. According to a NHTSA official, the Agency actively tries to balance whom it listens to, including seeking comments on proposed test procedures from industry, Congress, and the public before moving forward with a rulemaking. NHTSA must communicate its decision to the petitioner within 120 days of the petitioner's submission to NHTSA.

Our review found that NHTSA has received, reviewed, and taken action on petitions related to FMVSS. From fiscal years 2016 to 2020, NHTSA received 24 petitions from industry stakeholders and the public to create or modify a regulation or safety standard. NHTSA has not made any changes to a standard as

⁶ These safety standards are included in 49 CFR Part 571.

⁷ 49 CFR § 553.11 ("The Administrator may initiate rule-making either on his own motion or on petition by any interested person after a determination in accordance with Part 552 of this title that grant of the petition is advisable. The Administrator may, in his discretion, also consider the recommendations of other agencies of the United States.").

a result of these petitions to date but stated that 3 were denied and 20 are under review or in process.⁸ One petition became a final rule unrelated to a standard.⁹

However, NHTSA did not meet the required timeframes to communicate decisions to the petitioner for these petitions. Our review of the 24 petitions found that 21 (87.5 percent) did not meet the 120-day timeline required by Federal regulations.¹⁰ For example, NHTSA did not make a decision to grant or deny a petition regarding lamps and reflective devices for at least 792 days, as the petition was still in process at the time of our review. For the other 20 delayed petitions, the review timeline ranged from 30 to 1,863 days. NHTSA officials did not give a specific reason for their delay in responding to the petitions. However, they did explain that the timing for a decision to grant or deny a rulemaking petition is affected by several factors, including the complexity of the request, the research for data, information that the petition lacked, and Agency resources and priorities. These delays may also have occurred in part because NHTSA lacks an updated written procedure for reviewing petitions within the 120-day timeline. By not acting on rulemaking petitions within 120 days, NHTSA is not in compliance with Federal regulations, is not providing timely responses to stakeholders, and may not be taking timely action on critical vehicle safety issues.

According to NHTSA, it does not grant all rulemaking petitions to set or amend a new FMVSS. For example, in February 2017, NHTSA received a petition from an industry stakeholder requesting to amend FMVSS 213 – Child Restraint Systems (CRS). The petitioner requested that NHTSA either remove a requirement related to the use of a top tether or exclude from the requirement a hybrid CRS that the petitioners wanted to manufacture. In March 2021, 1,497 days after receiving the petition, NHTSA denied the request. NHTSA stated that the request was denied because the amendment would unreasonably reduce the child occupant protection provided by FMVSS 213.

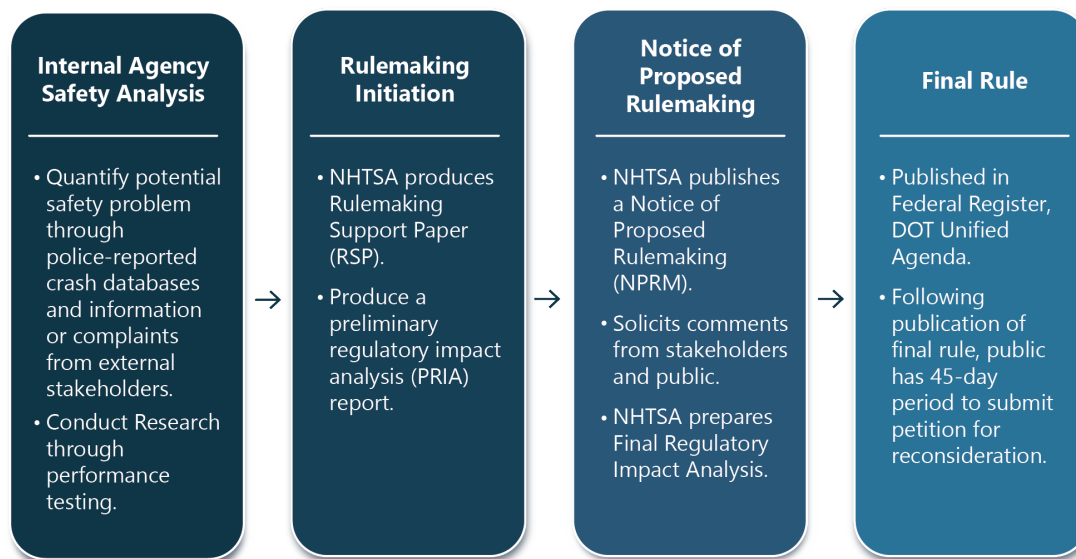
After the internal safety analysis and NHTSA notifies the petitioner it will grant a petition, the Agency initiates the rulemaking process. This includes producing a Rulemaking Support Paper, conducting a preliminary regulatory impact analysis, publishing a Notice of Proposed Rulemaking, and soliciting comments from stakeholders and the public. (See figure 1 for a flowchart describing the FMVSS rulemaking process.)

⁸ This information was provided to OIG with a status date as of April 15, 2021.

⁹ This final rule makes a change to 49 CFR Part 578 in response to a petition for rulemaking from the Alliance for Automotive Innovation regarding when to apply an increase to the civil penalty rate applicable to automobile manufacturers that fail to meet applicable corporate average fuel economy standards and are unable to offset such a deficit with compliance credits.

¹⁰ 49 CFR § 552.8 (“NHTSA will notify the petitioner of the decision to grant or deny the petition within 120 days after its receipt of the petition”).

Figure 1. FMVSS Rulemaking Process



Source: OIG analysis

The rulemaking process that NHTSA has established is common across all Federal agencies, as defined by Federal laws and regulations.¹¹ DOT's Regulatory Reform Task Force was responsible for approving rules once a rulemaking process is initiated, and then published these rules in DOT's Unified Agenda.¹²

In addition to receiving and reviewing petitions from stakeholders, NHTSA has established a process that follows a Federal process for reviewing and reevaluating existing FMVSS to determine if they are still adequate and still meet a safety need. The 610 Review¹³ requires NHTSA to retroactively review its standards on a periodic basis. Additionally, according to the Agency, a separate economic analysis team evaluates the effectiveness of the standards in segments. The 610 Review requires all Agency rules to be reviewed at least once every 10 years, and the Agency must publish an annual list of which rules will be reviewed in a given year.

¹¹ 49 CFR Part 552 – Petitions for Rulemaking, Defects, and Noncompliance Orders; 49 CFR Part 553 – Rulemaking Procedures; 5 U.S.C. § 553 – Administrative Procedure Act.

¹² DOT's Unified Agenda is an agenda of all regulations under development or review. The description of each regulatory action contains a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official.

¹³ 5 U.S.C. § 610 – Periodic Review of Rules.

NHTSA stated that from 2016 to 2020, the Agency revised 12 rules based on internal analysis that made changes to FMVSS involving vehicle features such as electric vehicle batteries, heavy vehicle electronic stability control, and theft prevention. Additionally, NHTSA stated that during this time period, the Agency initiated several advance notices of proposed rulemakings and completed several cost teardown studies—some of which included assessing tire-related FMVSS to determine if they needed updating based on new technology—and completing a study to improve roof crush resistance for light duty vehicles.

However, when we asked NHTSA whether it had processes to ensure all FMVSS are reviewed every 10 years as required, NHTSA stated that it has developed a 5-year plan (dated 2019–2023) for conducting internal reviews of FMVSS. Yet, the plan has yet to be implemented. As such, we were unable to verify that NHTSA has fully met the requirement.

NHTSA Lacks Formal Training and Clear Guidance for Enforcing Compliance With Federal Motor Vehicle Safety Standards

NHTSA has completed FMVSS testing and investigations for assessing and enforcing compliance with FMVSS. However, NHTSA's OVSC lacks documented standard procedures and training for reviewing contractors' compliance test reports and has not implemented guidance for conducting compliance investigations.

OVSC Does Not Have Documented Procedures or Standardized Training for Reviewing Compliance Test Reports

One of OVSC's primary responsibilities is overseeing whether manufactured vehicles and vehicle components comply with FMVSS, including working with independent testing laboratories (contractors) to conduct compliance testing. After completing compliance testing, contractors must prepare and submit testing reports to OVSC that describe the testing process and results, including whether the tested vehicle or vehicle component met all the requirements of the applicable FMVSS. OVSC's Safety Compliance Engineers are responsible for reviewing these test reports to verify that the contractors followed the correct procedures and to decide whether further action is needed, such as when a test report identifies a potential noncompliance or apparent test failure.

While OVSC's Safety Compliance Engineers review testing reports, OVSC has not established or documented standard procedures for the reviews. In addition, OVSC has not established standardized training for Safety Compliance Engineers. While Safety Compliance Engineers do receive mandated Contracting Officer's Representative training, there is no specific training for their daily job functions, such as reviewing test reports, coordinating with testing laboratories, and conducting investigations. Instead, the engineers rely on on-the-job training and mentoring to gain an understanding and knowledge of how to review test reports. NHTSA staff told us that prior to joining NHTSA OVSC, Safety Compliance Engineers come in with a level of expertise appropriate for reviewing FMVSS.

Safety Compliance Engineers further informed us that when they begin their jobs, they receive a mentor who teaches them their job functions. Through this mentorship and on-the-job learning, the engineers develop their own strategies and procedures for completing their work, according to NHTSA officials. Limiting training to mentorships and on-the-job training could be inadequate, even though NHTSA officials feel their engineers' backgrounds and mentors give them sufficient training to complete their work. However, there is no formal training structure or strategy for these tasks, contrary to guidelines set forth by GAO's Standards for Internal Control, which specify that training should be tailored based on the needs of the individual's role.¹⁴ Relying solely on on-the-job training could result in a loss of expertise in the event of staff turnover or employees performing procedures inconsistently or incorrectly, which may limit OVSC's ability to reasonably ensure that its Safety Compliance Engineers are performing their activities consistently, effectively, and in a timely manner.

The lack of standard review procedures and training limits OVSC's ability to reasonably ensure that its Safety Compliance Engineers are performing their activities consistently, effectively, and in a timely manner. According to GAO's Standards for Internal Control, policy and procedure documentation is an important internal control.¹⁵ For example, documented procedures may include the timing of when a control activity (e.g., reviewing a compliance test report) should occur and any follow-up corrective actions that should be performed if deficiencies are identified.

The absence of documented procedures may also result in inconsistent communication between OVSC and the independent testing laboratories. For example, a testing laboratory official stated that if a standard does not encompass a new technology, the laboratory would seek clarification from OVSC.

¹⁴ GAO 14-704G, Standards for Internal Control in the Federal Government, [pg. 37, section 4.05] (September 2014).

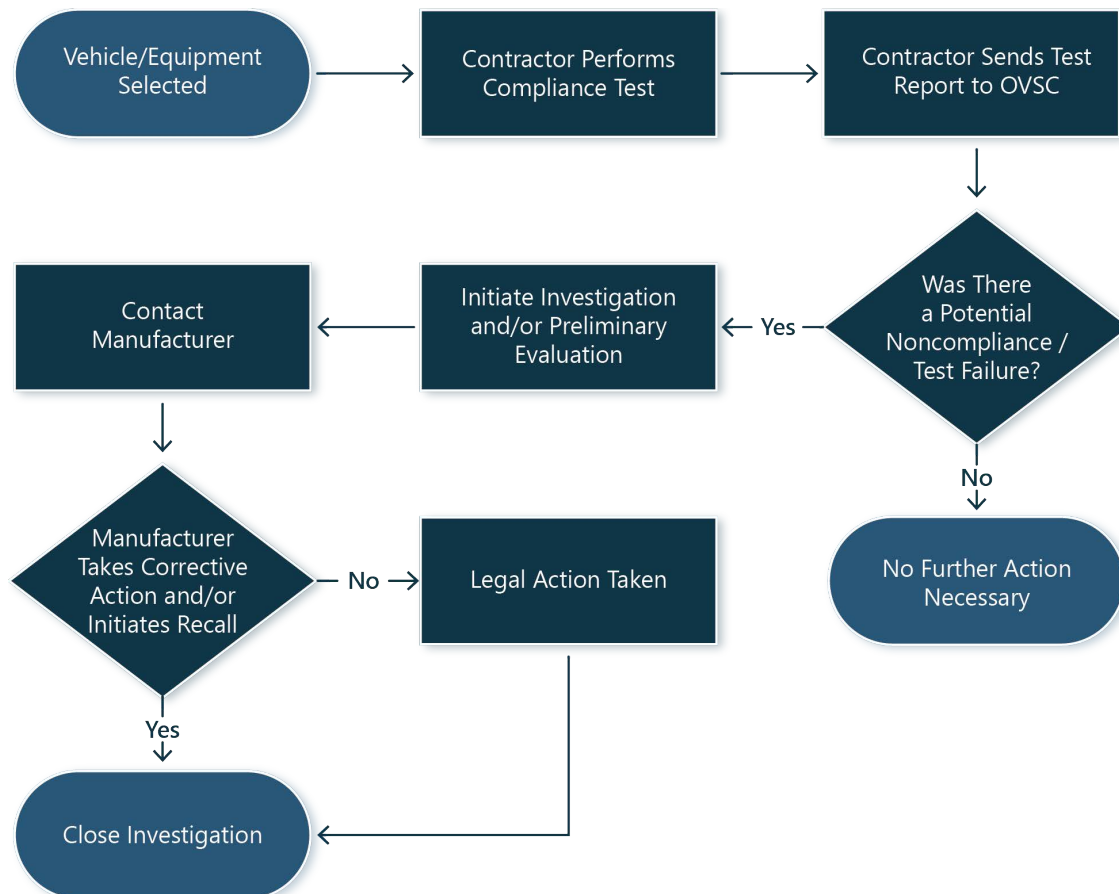
¹⁵ GAO 14-704G, Standards for Internal Control in the Federal Government, [pg. 62, section 12.02-12.04] (September 2014).

However, OVSC lacks a standard process for providing this clarification or documenting it. One Safety Compliance Engineer stated that when it is necessary to clarify or update test procedures, they make revisions in a Microsoft Word file using the Track Changes feature and send the file to the testing laboratory. Yet, since this process is not documented or communicated Agencywide, OVSC's lack of a standard for communication in test procedure changes may result in inconsistent testing of vehicles and/or equipment for the same standards.

OVSC Has Not Fully Implemented Its Guidance for Conducting Compliance Investigations

OVSC responds through a number of steps when a compliance test suggests that a vehicle or vehicle component has a potential noncompliance or test failure. According to OVSC officials, after the Safety Compliance Engineer reviews the test report, OVSC may communicate with the manufacturer by sending an information request letter. Additionally, the manufacturer is given the opportunity to review the test procedure, test instrument calibration, and detailed test results. OVSC may also examine the failed vehicle or equipment item and question the laboratory personnel. If OVSC determines more information is needed, OVSC initiates a Preliminary Evaluation to collect data from the manufacturer and laboratory, and an OVSC Safety Compliance Engineer further analyzes the data. (See figure 2.)

Figure 2. OVSC Testing and Compliance Investigation Process



Source: OIG analysis of NHTSA's 2014 OVSC Control Plan

After the analysis, the OVSC Division Chief decides, based on their experience, whether there is a strong indication of noncompliance with FMVSS requirements and whether to close the Preliminary Evaluation file or upgrade it to a Compliance Investigation. If OVSC decides to move forward with the investigation, then the manufacturer is notified. Based on the results of the investigation, OVSC can request that the manufacturer take corrective action or initiate a recall campaign. If the manufacturer does not comply with OVSC's request, the NHTSA Associate Administrator for Enforcement may make an initial decision of noncompliance and forward the case to the Chief Counsel's office for appropriate legal action. For example, one OVSC investigation led to a manufacturer recall. OVSC investigated the display controls for all MY 2019 Nissan vehicles. OVSC's compliance investigation found that adjusting the dashboard display settings to the lowest (darkest) setting created a rearview image that did not, as required, revert to providing a visible image when the vehicle was put in reverse, posing a safety risk. In response, Nissan submitted a

Part 573 Defect and Noncompliance Report (19V-654 dated Sept 12, 2019). Nissan ultimately identified 1,230,000 MY 2018 and 2019 noncompliant vehicles, including 24 Nissan and Infiniti model vehicles, and subsequently conducted a recall to fix the rear visibility system on these vehicles.

While OVSC is conducting investigations following this process, NHTSA has not yet fully documented the process or effectively communicated its overarching guidance regarding the compliance investigation process for its staff. Specifically, OVSC has created a draft 2014 Control Plan that gives a broad overall view of what an investigation is and outlines the various steps of the investigative process related to FMVSS test failures or apparent noncompliances. However, OVSC has not formally approved the plan, and several OVSC staff stated that they are unaware of the guidance or do not use the Control Plan to complete compliance investigations.

As a result of this lack of communication, OVSC staff are not all following the guidance contained within the draft 2014 Control Plan. This lessens the Agency's ability to conduct consistent, more effective, and timely investigations. For example, in the area of timeliness, the Control Plan specifies that an Office Activity (OA) Level I investigation¹⁶ should be completed within 120 days, with an interim assessment after 30 days. Further, the plan's suggested timeline is that all investigations should be completed within 12 months.¹⁷

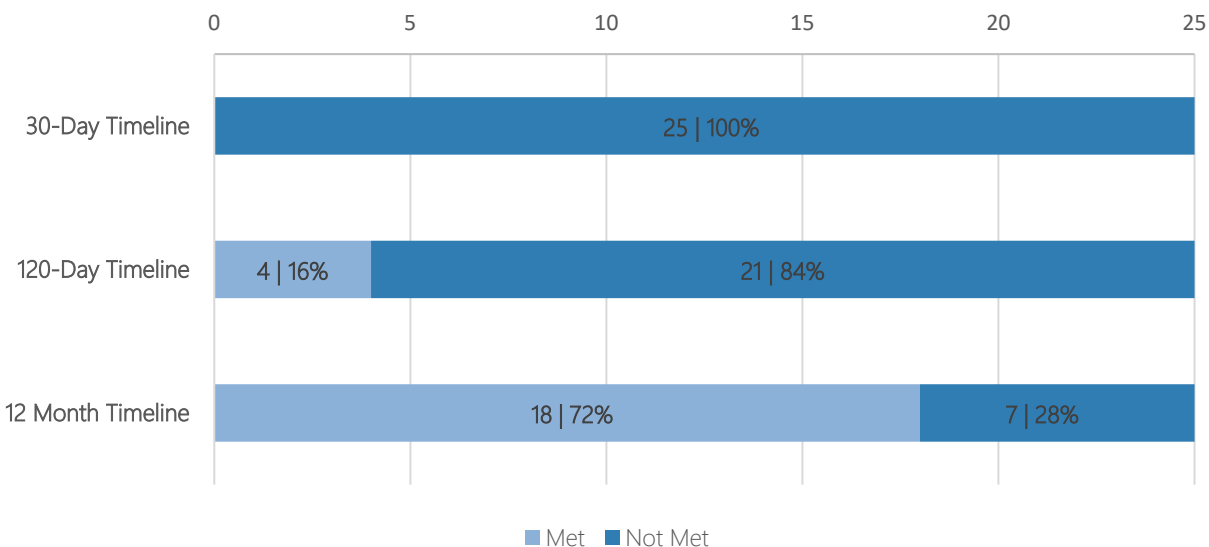
However, out of the universe of 213¹⁸ investigations conducted from 2016 through 2020, most of the 25 we reviewed did not meet the timeframes specified in the draft 2014 Control Plan. For example, 25 investigations (100 percent) of the OVSC compliance investigations did not conduct an interim assessment after the 30-day timeframe. Additionally, 21 (84 percent) of the OVSC compliance investigations did not complete an OA Level I investigation within 120 days. Moreover, 7 investigations (28 percent) were not completed within the 12-month timeframe (see figure 3).

¹⁶ A Level 1 investigation is an investigation initialized by OVSC. During this investigation, OVSC completes several key steps, including Collection of Data, Identifying Type of Resolution, and Determination of Resolved Corrective Action.

¹⁷ In this phase, OVSC gathers and enters data in the database. This process is used to determine if there is an issue, and the database will include all documents related to the issue. OVSC target to complete OA Level I is 120 days with an interim assessment of 30 days. Additionally, within OVSC, the suggested timeline completion is less than 12 months.

¹⁸ To assess OVSC's efforts to enforce FMVSS through compliance investigations between test program years 2016 and 2020, we received a list of 213 investigations completed within this time period. OVSC provided 30 investigations; however, OVSC provided 3 duplicate investigations and 2 were not within the scope of this audit.

Figure 3. OVSC Investigations: Adherence to Timelines



Source: OIG analysis of OVSC investigations

For example, one investigation into a potential noncompliance with motorcycle helmets took as long as 973 days to complete before determining their helmet models were not labeled correctly, but the helmets did not pose a safety risk. As a result of these lengthy investigations, vehicles with potential noncompliances continue to drive on public roads for as long as the investigation goes on, presenting a safety risk to the traveling public.

NHTSA Is Not Meeting Requirements for Reviewing Conformity Packages for Imported Vehicles

In addition to overseeing compliance testing for vehicles and vehicle components in the United States, NHTSA's OVSC operates a division that oversees the importation and certification of motor vehicles not originally manufactured to comply with FMVSS. However, NHTSA lacks a process for prioritizing and reviewing conformity packages within required timeframes. Additionally, OVSC's investigation and monitoring of imported vehicles is limited by lack of guidance and resources.

NHTSA Lacks a Process for Prioritizing and Reviewing Conformity Packages Within Required Timeframes

When a Registered Importer (RI) imports vehicles or vehicle components to the United States, Federal regulations¹⁹ require that if the vehicle they are importing has not been previously determined as eligible²⁰ for importation, then the RI must submit an eligibility petition to OVSC to determine eligibility. If OVSC deems the vehicle eligible, then the RI must furnish a compliance bond for 150 percent of the value of the vehicle to ensure that when imported, the RI will make the necessary modifications to the vehicle to conform to FMVSS. RIs have 120 days to make those modifications, at which time they submit a conformity package to OVSC documenting that the vehicle is now in compliance. When a conformity package is accepted by OVSC with no issue, OVSC generates a bond release letter, and the RI is free to sell or operate the vehicle on U.S. roads.

NHTSA's OVSC is responsible for reviewing conformity packages to verify that RIs have modified the vehicles to conform with FMVSS. According to Federal regulations, NHTSA has a regulatory 30-day review period for conformity packages.²¹ Specifically, regulations state that if the RI has received no written confirmation from the NHTSA Administrator 30 days after submitting certification of compliance, the RI may release the vehicle from custody to sell, title, license, and register the vehicle for use on the public roads.²²

However, OVSC is not meeting its required review timeframes. We conducted an analysis of a simple random sample of 68 out of 170,698 conformity packages received from March 2020 to December 2020.²³ Out of these 68 packages, 55 (81 percent) were not reviewed within the 30-day timeframe, based on the dates the bonds were released.²⁴ For example, one conformity package was not accepted until 125 days after its submission.

¹⁹ 49 CFR § 593.5.

²⁰ 49 CFR Part 593.

²¹ 49 CFR Part 592.

²² Id. at § 592.8(e).

²³ Before the COVID-19 pandemic forced OVSC to work remotely, all conformity packages were received either in person or via mail. OIG requested a sample of 68 conformity packages from each year of the scope of this audit, but was informed that it would take 6 to 9 months to retrieve the documents because they were stored at the National Archives and Records Administration. Because of this, OIG conducted an analysis of a simple random sample of 68 conformity packages received from March 2020 to December 2020, which is when NHTSA started receiving conformity packages electronically. The sample was based on a 90% confidence level and +/- 10% margin of error.

²⁴ 49 CFR § 592.8(g) states that release of the performance bond constitutes acceptance of the vehicle certification.

In addition, OVSC approved conformity packages that did not meet all requirements, as established in Federal regulations.²⁵ Out of our sample of 68 conformity packages, OVSC approved 18 packages (26 percent) that did not meet all requirements. For example, NHTSA accepted two conformity packages even though they were not signed by the RI to certify that the compliance requirement had been met by the deadline. These issues may have occurred in part because OVSC lacks standard procedures and guidance for reviewing conformity packages or for measuring success in meeting the 30-day timeline.²⁶

According to NHTSA, OVSC did not meet its timeliness requirements due to an increase in the number of conformity packages requiring review and a lack of resources. NHTSA officials stated that when these regulations were written, they were meant to enforce a small number of gray market vehicles, which are vehicles manufactured overseas not originally intended to comply with FMVSS. This market has since grown to over 200,000 vehicle importations per year, each of which has a conformity package that must be reviewed. Officials attributed the rise in importations to the differences in currency at the U.S. northern and southern borders. There is a financial incentive to import a Canadian or Mexican vehicle into the United States because they can be bought cheaper there with foreign currency than with the U.S. dollar. OVSC stated that the increase in imported vehicles has exacerbated the office's resource constraints. The Import and Certification Division is an office of 9 employees, only 2 of which are assigned to review the more than 200,000 yearly conformity packages for Canadian vehicle imports.

Missing the 30-day deadline may pose safety concerns. As stated above, per Federal regulations, vehicles not reviewed within 30 days of NHTSA receiving a conformity package are automatically approved and can be sold and used on public roads. This means that uninspected, noncompliant vehicles may be regularly operating on U.S. roads when NHTSA misses its 30-day deadline. While NHTSA has the ability to subsequently decide that a vehicle fails to conform to any FMVSS,²⁷ NHTSA did not make this decision in any of the conformity packages we analyzed. A NHTSA official informed us that missing the 30-day deadline also hinders their ability to leverage the compliance bond with the RI to compel compliance, further inhibiting their ability to oversee these vehicles. Missing the deadline is especially a concern because, according to a NHTSA official, noncompliant vehicles can have potentially life-threatening safety

²⁵ We found that for 55 out of 68 conformity packages, the NHTSA Administrator failed to meet the 30-day deadline to review the packages.

²⁶ GAO 14-704G, Standards for Internal Control in the Federal Government, [pg. 41, section 6.02 – 6.04] (September 2014).

²⁷ 49 CFR § 592.8(g) states that "Release of the performance bond shall constitute acceptance of certification or completion of inspection of the vehicle concerned, but shall not preclude a subsequent decision by the Administrator pursuant to 49 U.S.C. 30118 that the vehicle fails to conform to any applicable Federal motor vehicle safety standard."

impacts. For example, Canadian and Mexican vehicles use the metric system on their controls and displays, which an official stated could cause American consumers to not realize that their vehicle is overheating until it has caused extreme damage to their engine or caused them to crash (see figure 4). In addition, NHTSA recently discovered that there are 1 million Takata airbags in Canada that the office is attempting to intercept before they potentially endanger the lives of American consumers. By not completing its conformity package reviews in a timely manner, NHTSA may increase the risk that unsafe vehicles are traveling on American roads, endangering the traveling public.

Figure 4. Example of Metric System Dashboard



Source: OVSC Conformity Package

Despite these concerns, NHTSA's OVSC lacks a process for prioritizing its reviews of conformity packages, especially given the large number of conformity packages that NHTSA receives. This limits NHTSA's ability to reduce the risk of potentially unsafe vehicles operating on U.S. roadways when the 30-day deadline is missed. According to GAO's Standards for Internal Control in the Federal Government, management should identify, analyze, and respond to risks related to achieving program objectives.²⁸ Although NHTSA officials state that all

²⁸ GAO 14-704G, Standards for Internal Control in the Federal Government (September 2014).

conformity packages must be reviewed, NHTSA has not established a targeted review process to ensure that conformity packages are reviewed more timely.

OVSC's Investigation and Monitoring of Imported Vehicles Is Limited by a Lack of Guidance and Resources

OVSC's Import and Certification Division lacks formal documented guidance for conducting its oversight and enforcement work, including conducting importation investigations. GAO's Standards for Internal Control in the Federal Government state that internal controls should include documenting the policies necessary for the responsibilities of the organization in the appropriate level of detail for management to effectively monitor the control activity. Contrary to these standards, OVSC also lacks procedures to monitor that RIs are submitting conformity packages for vehicle importations when required.

For example, the office conducts investigations on RIs that are believed to have been engaging in suspicious activity. According to NHTSA officials, RIs have been known to attempt to circumvent the process and get away with not making imported vehicles fully compliant with FMVSS. Yet, OVSC has not yet fully implemented its guidance for conducting these investigations. NHTSA officials stated that the Import and Certification Division experienced a leadership change in February 2020, and the new Division Chief inherited an office with no guidance. The office has since issued interim instructions for importation investigations but has not yet finalized or fully implemented them. The lack of internal guidance limits OVSC employees' ability to effectively monitor the activity of RIs.

Furthermore, a NHTSA OVSC official told us that the office is currently not conducting investigations into suspicious RIs due to staffing shortages. Instead, OVSC staff are instructed to write a Suspicious Activity report and collect as much evidence as possible to substantiate the complaint, allegation, or discovery involving RIs. The official stated that suspicious activity reports are filed for future review and that OVSC will launch an investigation to follow up on the suspicious activity when resources are available.

In addition, NHTSA officials confirmed that they have no guidance or standard procedures for monitoring vehicle imports and reviewing conformity packages, including vehicles from Canada, which make up the majority of all vehicle importations in the United States. Although Canadian Motor Vehicle Safety Standards are similar to those of the United States, key features such as controls and displays differ, which if not properly adjusted could confuse American drivers and pose a safety risk. As a result, employees in the OVSC Import and Certification Division must review more than 200,000 conformity packages per

year for which they have no guidance. The lack of an internal control process requires employees to rely on their judgment to determine whether documentation provided by an RI is sufficient, meaning that the process is slowed down and not all decisions will be made based on the same criteria.

OVSC also has a limited ability to verify that all RIs submit conformity packages as required. For example, an OVSC official stated that the office currently is not aware of the number of conformity packages to anticipate based on vehicles entering the country. As a result, OVSC has no way to track and oversee that RIs are submitting conformity packages when required. The official stated that in some cases, OVSC has learned about RIs who circumvented the conformity review process via State Departments of Motor Vehicles or occasionally when CBP catches an RI falsifying entry documents.

The OVSC official stated that NHTSA typically does not learn about RIs evading the conformity package process until after the fact due to resource limitations. The official noted that resource limitations also prevent NHTSA from inspecting vehicles at the border. While OVSC coordinates with CBP and CBP will inform OVSC (and send photographs) when an issue is suspected, CBP may not have the expertise necessary to identify all potential noncompliance. As a result of these oversight gaps, there may be noncompliant or unsafe vehicles operating on U.S. roads without NHTSA's knowledge.

Conclusion

Ensuring that all vehicles meet established Federal safety standards is a critical part of NHTSA's safety mission. NHTSA has established a rulemaking process for setting new FMVSS, but OVSC's oversight and enforcement of FMVSS is limited by a lack of standardized procedures and training for its staff. OVSC also faces challenges ensuring that the growing number of vehicles imported into the United States conform with FMVSS as required. Establishing standard procedures and implementing guidance and training will be critical to help NHTSA reduce the risk of unsafe vehicles traveling on American roads and endangering the traveling public.

Recommendations

To enhance NHTSA's ability to enforce compliance with FMVSS, we recommend that the National Highway Traffic Safety Administrator:

1. Update the existing written procedure for acting on rulemaking petitions to meet the required 120-day timeline.
2. Develop and implement a written process for reviewing compliance test reports.
3. Develop and implement a training curriculum process for Safety Compliance Engineers.
4. Implement and communicate guidance on conducting compliance investigations.
5. Develop and implement a targeted process for reviewing and prioritizing conformity packages to meet the required 30-day timeframe.
6. Finalize and implement the Import and Certification Division's process to monitor and investigate Registered Importers' compliance with Federal regulations.

Agency Comments and OIG Response

We provided NHTSA with our draft report on September 21, 2021, and received its formal response on October 20, 2021. NHTSA's response is included in its entirety as an appendix to this report.

NHTSA concurred with our six recommendations and provided appropriate actions and completion dates. Accordingly, we consider all recommendations resolved but open pending completion of the planned actions.

Actions Required

We consider recommendations 1 through 6 resolved but open pending completion of planned actions.

Exhibit A. Scope and Methodology

We conducted our work from August 2020 through September 2021 in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our objective for this self-initiated audit was to assess NHTSA's efforts to set and enforce Federal Motor Vehicle Safety Standards (FMVSS). Specifically, we reviewed NHTSA's processes for (1) setting FMVSS, (2) testing and investigating new vehicles and equipment for compliance with FMVSS, and (3) reviewing conformity packages for imported motor vehicles.

To assess NHTSA's efforts to set FMVSS, we obtained a list of the universe of 24 rulemaking petitions received between March 2016 and December 2020. These petitions were submitted to NHTSA by stakeholders requesting a change to an existing Federal regulation or the creation of a new regulation. We reviewed the petitions to determine the status of each petition, including how many were granted, denied, or in process. For petitions that had been published in the Federal Register, we confirmed their status. Additionally, using the petition received date on NHTSA's tracking document, we determined how many petitions NHTSA made a decision to grant or deny within the 120-day timeline prescribed in the Code of Federal Regulations (CFR).

To assess OVSC's efforts to enforce FMVSS through compliance investigations between test program years 2016 and 2020, we received a list of 213 investigations completed within this time period. We selected a statistical sample of 30 investigations, for which we received the investigation document detailing the potential noncompliance involved, communication between OVSC and the manufacturer, and the decision on the investigation. OVSC provided 30 investigations; however, OVSC provided 3 duplicate investigations and 2 were not within the scope of this audit. These investigations were analyzed using an OIG internal checklist developed to reflect OVSC's internal guidance.

To assess OVSC's efforts to enforce FMVSS through adherence to Federal regulations for conformity packages, we received a list of 1,237,799 conformity packages, which represented the universe of conformity packages OVSC received from years 2016 to 2020. We requested a statistical sample of 68 conformity packages for each year within this timeframe, representing a confidence interval of 90 percent with a +/-10 percent margin of error for each year. However, NHTSA informed us that retrieving these documents could take up to 9 months to retrieve due to them being physically located at the National Archive and

Records Administration in Philadelphia, in addition to the limitations presented by the COVID-19 pandemic. Therefore, we requested a statistical sample of 68 conformity packages from a universe of 170,698 that were received electronically from March 2020 to December 2020, representing a 90 percent confidence interval with +/-10 percent margin of error during that timeframe. To assess these documents, we analyzed their compliance with the regulations for vehicle certification as outlined in Title 49 § Part 592.6 using an internal checklist reflecting that criteria.

Exhibit B. Organizations Visited or Contacted

NHTSA Facilities

NHTSA Headquarters; Office of Vehicle Safety Compliance in Washington, DC

NHTSA Headquarters; Office of Rulemaking in Washington, DC

OST Facilities

Office of Secretary of Transportation; Office of Audit Relations

Other Organizations

APPLUS + Idiada KARCO Engineering

MGA Research

Exhibit C. List of Acronyms

CBP	Customs and Border Protection
CFR	Code of Federal Regulations
DOT	Department of Transportation
FMVSS	Federal Motor Vehicle Safety Standards
GAO	Government Accountability Office
MY	Model Year
NHTSA	National Highway Traffic Safety Administration
NPRM	Notice of Proposed Rulemaking
OIG	Office of Inspector General
OVSC	Office of Vehicle Safety Compliance
RI	Registered Importer
USC	United States Code
VIN	Vehicle Identification Number

Exhibit D. Major Contributors to This Report

WENDY HARRIS	PROGRAM DIRECTOR
RYAN SANDERS	PROJECT MANAGER
SHARLENA DELANEY	SENIOR ANALYST
JAMUAL FORREST	ANALYST
KAISEE RIDDELL	ANALYST
AUDRE AZUOLAS	SENIOR TECHNICAL WRITER
SEETHA SRINIVASAN	ASSOCIATE COUNSEL
GEORGE ZIPF	SUPERVISORY MATHEMATICAL STATISTICIAN
MAKESI ORMOND	SENIOR STATISTICIAN

Appendix. Agency Comments




U.S. Department
of Transportation

National Highway
Traffic Safety
Administration

Memorandum

Subject: INFORMATION: Management Response to Office of Inspector General (OIG) Draft Report on NHTSA's Oversight of Federal Motor Vehicle Safety Standards Date: October 20, 2021

From: Steven S. Cliff, Ph.D. 
Acting Administrator
National Highway Traffic Safety Administration

To: David Pouliott
Assistant Inspector General for Surface Transportation Audits

The National Highway Traffic Safety Administration's (NHTSA) top priority is safety. The Agency is committed to its mission of saving lives, preventing injuries, and reducing the costs of roadway crashes. NHTSA's Federal Motor Vehicle Safety Standards (FMVSS) have saved over 600,000 lives,¹ and NHTSA has a robust enforcement program to oversee compliance with those standards. In 2020, NHTSA conducted over 900 compliance tests, nearly 90 compliance investigations, and processed over 212,000 conformity packages for imported vehicles. A key component of NHTSA's oversight of its FMVSS is the continuous improvement of the processes addressing the setting and enforcement of these standards.

NHTSA has recently updated and improved some processes to enhance oversight of compliance with FMVSS, including issuing a new comprehensive compliance investigation manual in September of 2021. In addition, NHTSA has actions underway to improve the timeliness of processing rulemaking petitions, and to enhance compliance enforcement and monitoring of registered importers, including the following:

- Training staff to implement the new compliance investigation manual,
- Developing a prototype import enforcement management software system, and
- Deploying an electronic conformity package submission system this calendar year

Upon review of the OIG draft report, we concur with recommendations 1 – 6, as written and will complete related actions as noted below:

Recommendation	Target Completion Date
1	April 30, 2022
2	March 31, 2022
3	May 31, 2022
4	January 31, 2023
5	February 28, 2022
6	September 30, 2022

¹ Lives Saved by Vehicle Safety Technologies and Associated Federal Motor Vehicle Safety Standards, 1960 to 2012 (Jan. 2015), NHTSA, <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812069>.

NHTSA appreciates the opportunity to respond to the OIG draft report. Please contact Anne Collins, Associate Administrator for Enforcement, at 202-493-0013, if you have any questions or require additional information.

U.S. Department of Transportation
Office of Inspector General

Fraud & Safety Hotline

<https://www.oig.dot.gov/hotline>

hotline@oig.dot.gov

(800) 424-9071

OUR MISSION

OIG enhances DOT's programs and operations by conducting objective investigations and audits on behalf of the American public.



1200 New Jersey Ave SE
Washington, DC 20590
www.oig.dot.gov