

CLIENT ALERT

NHTSA Issues Notice of Proposed Rulemaking to Expand Regulation of Accelerator Control Systems

April 25, 2012

On April 16, 2012, the National Highway Traffic Safety Administration ("NHTSA") issued a [notice of proposed rulemaking](#) that will affect automobile manufacturers and certain component part manufacturers. NHTSA's proposed rule seeks to modify and expand current [Federal Motor Vehicle Safety Standard No. 124](#) ("FMVSS No. 124"), the standard that regulates Accelerator Control Systems ("ACS"). This widely-applicable proposal covers passenger cars, multipurpose passenger vehicles, trucks and buses, though application of one component of the rule is currently limited by vehicle weight. NHTSA hopes that the proposed rule will "reduce deaths and injuries resulting from uncontrolled vehicle propulsion caused by malfunctions or disconnections in accelerator control systems and from conflicting inputs to the brake and accelerator controls in a vehicle."

A) Modification of Existing FMVSS No. 124: An Update to Throttle Disconnection Test Procedures.

The proposed amendment to FMVSS No. 124 is primarily designed to ensure that current standards comport with current technologies in ACS. In the proposed rule, NHTSA specifically seeks to regulate the failure modes of electronic throttle control ("ETC") systems, and to incorporate test procedures¹ that will apply to specific categories of vehicles, such as hybrid vehicles. In addition to specifying testing procedures, this proposed rule obligates manufacturers to select from an enumerated list of criteria to certify compliance with normal and fail-safe operation requirements.

Despite its expansion, the proposal intends to leave undisturbed the current provisions of FMVSS No. 124 designed to ensure that disconnections, separations and severances do not result in an open throttle. The proposed rule is similarly designed not to affect FMVSS No. 124's prohibition against an ACS returning to idle state too slowly. As a result, the scope of the proposed rule is limited to NHTSA's interpretation of the current scope of FMVSS No. 124: to prevent a vehicle's powertrain from creating excessive drive force in the absence of input to the accelerator. Further, the proposed rule applies only to disconnections of ETC components and wiring that result in open or short circuits. The proposal does not address throttles failing to close after the accelerator pedal releases, or throttles that open unexpectedly without accelerator pedal input – NHTSA does not yet have sufficient test data to regulate these failure modes.²

This notice of proposed rulemaking was not the first in NHTSA's efforts to expand FMVSS No. 124. Most recently, in [July 2002](#) (modified in [September 2002](#)) NHTSA also issued a notice of proposed rulemaking to modernize its regulation of ACS. The proposed rule was, however, withdrawn in [November 2004](#), after NHTSA determined that its test procedures were insufficiently developed to finalize the regulation. In drafting the new notice of proposed rulemaking, NHTSA considered comments that it received on the 2002 proposal. As it did in 2002, NHTSA is now requesting comment on many components of the proposed rule, including a number of requests regarding appropriate compliance testing conditions and procedures.³

If finalized, this rule will not allow phased-in compliance, but will require full compliance by the first September 1 after the rule is published.

B) Expansion of FMVSS No. 124: Requiring a Brake-Throttle Override.

In this proposed expansion of FMVSS No. 124, NHTSA hopes to mandate installation of a brake-throttle override ("BTO") in all vehicles in the covered categories that have a GVWR less than 10,000 pounds and have an ETC.⁴ NHTSA does not define BTO, but characterizes it as an electronic function of the engine control system that generally works by making continuous, targeted checks of the brake system. In contrast to the performance-only requirements of the modification to FMVSS No. 124, this aspect of the notice includes both performance *and* equipment requirements.

At bottom, this proposed regulation is aimed at reducing or eliminating the dangers of ACS disconnection and accelerator pedal sticking and entrapment. NHTSA finds that to function safely, a brake pedal must be capable of overriding input from an accelerator when both pedals are pressed at the same time. The performance requirements of the proposed rule would thus require a BTO to engage if the powertrain controller determines that there are conflicting inputs to the brake and accelerator pedals. In contrast, it would prohibit the BTO system from engaging at less than ten (10) miles per hour. This amendment would also impose testing requirements to ensure compliance with the standard, such as an open-throttle stopping distance test.

If finalized, all manufacturers would need to comply with the rule's requirements by the first September 1 within two years of the rule being published. According to NHTSA, manufacturers should not have difficulty complying with this proposed rule, as most manufacturers have already incorporated BTO systems. NHTSA believes that those systems either meet the proposed requirements or would need only minimal modification to meet the requirements.

NHTSA is also seeking comment on many aspects of the BTO requirement.⁵

The deadline for submitting comments on any of these proposals is June 15, 2012. If you have any questions regarding NHTSA's proposed rule or how to submit comments on the rule, please contact the professionals listed below, or your regular Crowell & Moring contact for more information.

¹ In particular, the proposed amendment adds an intake airflow rate criterion, and an optional powertrain output test that specifies "creep speed" as the appropriate measuring parameter.

² NHTSA suggested that it may seek to incorporate regulations addressing these failure modes once it completes further testing and analysis.

³ Some of the issues on which NHTSA specifically requested industry input include: the appropriateness of air intake rate as a measurement criterion for diesel engines; appropriate testing criteria for electric vehicles; appropriate conditions on creep and coastdown speed tests; the best way to define "throttle position" so it corresponds with drivetrain output, among other things.

⁴ This component of the proposed rule would therefore not apply to mechanically-throttled vehicles.

⁵ The issues on which NHTSA specifically requested comment include: whether BTO activation should be accompanied by a warning signal; whether a BTO-off function should be permitted, and if so, how it would operate; whether the proposal is appropriately limited to vehicles with GVWRs less than 10,000 pounds; whether there is an appropriate basis for excluding manual transmissions from these requirements, among other things.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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