

## Where Are the New Old Cars Congress Promised?

*This article follows the history of the recent push to legalize the sale of turnkey replicas of classic cars in the United States. It overviews the legislation authorizing the production of and setting the general standards for these replicas before then describing the slow process of turning that legislation into fully developed regulations. As of the time of this article, the final rule needed to begin manufacturing has not been published, but its proponents, the replica enthusiasts, are still waiting eagerly for the day when they can roll down the road in their new old cars.*

Modern cars are equipped with a myriad of features designed to make driving easier and more enjoyable. However, not everyone prefers these features and there are still some in automotive community who prefer cars that come thundering out of the past rather than racing towards the future. For these classic car enthusiasts, turnkey replicas represent an opportunity to drive a piece of automotive history. Congress set out to help these enthusiasts by creating a distinct regulatory structure for classic car replicas in 2015.<sup>1</sup> Unfortunately for the enthusiasts supporting the law, the road since its passage has not been smooth.

In 2015, Congress passed the Low Volume Motor Vehicle Manufacturers Act.<sup>2</sup> Under the Act, low-volume vehicle manufacturers, those whose annual global motor vehicle production is 5,000 or fewer units, can produce and sell 325 replicas of classic cars in the U.S. annually.<sup>3</sup> Replicas must resemble a motor vehicle that was manufactured at least 25 years ago and must comply with current motor vehicle equipment and emissions standards.<sup>4</sup> However, replicas are exempt from current safety standards applicable to motor vehicles themselves.<sup>5</sup>

The task of administering the Act was delegated to the National Highway Traffic Safety Administration (NHTSA) and Environmental Protection Agency (EPA).<sup>6</sup> Developing regulations to implement the Act took multiple years. The EPA published its guidance regarding replicas in 2019.<sup>7</sup> That same year, the Specialty Equipment Manufacturers Association (SEMA), a motor vehicle aftermarket trade group which led the charge for a replica car law, filed suit in the Ninth Circuit against NHTSA for failing to promulgate regulations to implement the Act.<sup>8</sup> Following this, NHTSA published a notice of proposed rulemaking on January 7, 2020, and SEMA's case

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<sup>1</sup> <https://www.sema.org/news-media/magazine/2021/04/golden-age-replica-cars-upon-us>.

<sup>2</sup> <https://www.motortrend.com/news/low-volume-motor-vehicle-manufacturers-act/>. The Low Volume Vehicle Manufacturers Act was incorporated into the Fixing America's Surface Transportation Act. *See* Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94, 129 Stat. 1312.

<sup>3</sup> <https://www.motortrend.com/news/low-volume-motor-vehicle-manufacturers-act/>.

<sup>4</sup> *Id.*; FAST Act, *supra* note 2, at 1721.

<sup>5</sup> FAST Act, *supra* note 2, at 1721.

<sup>6</sup> <https://www.caranddriver.com/news/a35297574/replica-delorean-nhtsa-rules/>; <https://www.sema.org/news-media/magazine/2021/04/golden-age-replica-cars-upon-us>. Manufacturers that wish to sell vehicles in California must also comply with California Air Resources Board (CARB) standards. <https://www.caranddriver.com/news/a35297574/replica-delorean-nhtsa-rules/>.

<sup>7</sup> <https://www.sema.org/news-media/magazine/2021/04/golden-age-replica-cars-upon-us>.

<sup>8</sup> <https://www.sema.org/news-media/magazine/2021/04/golden-age-replica-cars-upon-us>; *In re* Specialty Equip. Mkt. Ass'n, 804 F. App'x 734 (9th Cir. 2020).

was mooted.<sup>9</sup> After the notice and comment period and an ongoing dialogue with interested parties, NHTSA completed work on its final rule for replica cars on January 15, 2021.<sup>10</sup>

Upon publication in the Federal Register, manufacture and sale of the long-awaited replica cars could finally begin.<sup>11</sup> Unfortunately, that day of publication has yet to come.<sup>12</sup> Shortly after President Biden's inauguration, a regulatory freeze was enacted which has prevented NHTSA from publishing the rule.<sup>13</sup> When the freeze was issued, there was hope that it would only cause a short delay of a few days or weeks.<sup>14</sup> However, it has now been roughly eight months since the freeze, and NHTSA still has not published its final rule.<sup>15</sup> Admittedly, it may be difficult to justify prioritizing a regulation allowing for replica cars during a global pandemic coupled with domestic strife and the withdrawal of forces from a two-decade conflict. But then again, perhaps in a time defined by stress and worry the thing to do is bring a little joy to Americans in the form of some beautiful new old cars. Here's to hoping that NHTSA will be able to publish its final rule soon.

--Paul J. Schwarzentraub

*Paul J. Schwarzentraub is a 2L from Knoxville, Tennessee who will graduate in May 2023. In his free time, Paul enjoys hiking, woodturning, and baking desserts for his friends.*

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<sup>9</sup> <https://www.sema.org/news-media/magazine/2021/04/golden-age-replica-cars-upon-us>;  
<https://www.federalregister.gov/documents/2020/01/07/2019-27211/replica-motor-vehicles-vehicle-identification-number-vin-requirements-manufacturer-identification>; Specialty Equip. Mkt. Ass'n v. Chao, 804 Fed. App'x 734, 735 (9th Cir. 2020).

<sup>10</sup> <https://www.sema.org/news-media/magazine/2021/04/golden-age-replica-cars-upon-us>;  
<https://www.caranddriver.com/news/a35297574/replica-delorean-nhtsa-rules/>.

<sup>11</sup> <https://www.caranddriver.com/news/a35297574/replica-delorean-nhtsa-rules/>.

<sup>12</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2127-AL77>.

<sup>13</sup> <https://www.caranddriver.com/news/a35297574/replica-delorean-nhtsa-rules/>;

<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>.

<sup>14</sup> <https://www.caranddriver.com/news/a35297574/replica-delorean-nhtsa-rules/>.

<sup>15</sup> <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=2127-AL77>.