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DOCKETS

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Docket Management Facility
National Highway Traffic Safety Administration
U.S. Department of Transportation
Nassif Building, Room PL--401
400 Seventh Street, S.W.
Washington, D.C. 20590-001

Re: Docket No. NHTSA 03-15651 - 29
Request for Comments
Notice of Draft Interpretations
Federal Motor Vehicle Safety Standard No. 108
Lamps, Reflective Devices, and Associated Equipment

Dear Sir or Madam:

The following are the comments and recommendations of the Specialty Equipment Market Association (SEMA) regarding the National Highway Traffic Safety Administration's (NHTSA) request for comments to the draft interpretive letters concerning how the agency's standard on lamps, reflective devices and associated equipment applies to replacement equipment. These draft letters were published in the Federal Register on July 17, 2003. We appreciate the agency's granting of an extension to the original comment deadline to accommodate our attempt to craft a coordinated response on behalf of the many SEMA members that produce aftermarket lighting equipment.

As you may be aware, SEMA is an aftermarket trade association comprised of approximately 5,000 mostly small businesses nationwide that manufacture, rebuild, distribute and retail parts and accessories for motor vehicles. The products manufactured by our member companies include performance, functional, restoration and styling enhancement equipment for use on passenger cars, trucks, recreational and special interest vehicles. Lighting equipment represents a large segment of the products manufactured by SEMA members for sale domestically as well as internationally. Any possible policy changes being considered by National Highway Traffic Safety Administration (NHTSA) pertaining to motor vehicle lighting equipment will affect greatly most of these manufacturing businesses, distributors, retailers and installers.

The broad scope of the draft interpretive letters change dramatically the long-standing policy of NHTSA and are of deep concern and significance to all of the members of SEMA. Further, we are convinced that if the agency is seeking to use these letters to force compliance with existing photometric standards for replacement lamps or

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to address safety concerns relating to fire hazards, the agency can and should take action using its acknowledged authority to force a recall of non-compliant or unsafe products.

Introduction

The market for lighting products is large and diverse. According to the most recent Annual Survey of Manufacturers done by the U.S. Census Bureau (1999), companies manufacturing vehicular lighting equipment employed 17,237 workers, with a payroll of \$682 million. The total value of shipments (manufacturer level sales) was worth \$3.25 billion. For the same time period, the aftermarket generated \$504 million in sales at the retail level, or \$378 million at the manufacturer level. Aftermarket employment was estimated to be 2,000 workers with an \$80 million payroll.

Lighting technology is entering a new dimension. Car lamps can produce light beams that bend around corners, lengthen when the car is going fast and shorten and widen when the car slows down. These beams will be connected to the vehicle steering so the light beam turns with the car. The aftermarket industry is on the cutting edge of these technological advances in new lighting products that promote safety and provide styling alternatives. Innovative aftermarket lighting products for cars, trucks and SUVs provide greater road illumination and create increased visibility. SEMA recognizes that Federal regulators are working to keep current with these advances and are examining new products for compliance with existing regulations. In an effort to help the aftermarket industry stay current as well, SEMA has issued detailed information to its membership, including advisories, articles and fax and e-mail broadcasts to provide an overview of federal and state regulations and a discussion of issues concerning new products. On its website, SEMA also maintains guidance to the Federal Motor Vehicle Safety Standards (FMVSS), including the full text of Standard No. 108 pertaining to lamps, reflective devices and associated equipment. SEMA is making great strides in maintaining and encouraging aftermarket compliance with existing NHTSA standards.

SEMA is also working with the American Association of Motor Vehicle Administrators (AAMVA), an influential association of state-level regulators, in its review of lighting products for compliance with state and federal regulations. With NHTSA's guidance, AAMVA's efforts are focused on distinguishing lamps that meet the FMVSS from those that do not, and assisting law enforcement officers in finding practical ways to tell the difference. We are encouraged by these efforts and will continue to work with AAMVA to develop a consistent and street-enforceable means to test lamps for compliance.

Overview of NHTSA's Mission

It may be useful to review the legal hurdles that NHTSA must face when considering the promulgation of regulations, as a means of gaining insight on the parameters that are in place to prevent improper enforcement. The purpose of the FMVSS is to reduce traffic accidents, and related deaths and injuries [*See* 49 U.S.C. 30101]. "Motor vehicle safety" means protecting the public against unreasonable risk of

accidents occurring because of the design, construction or performance of a motor vehicle or equipment [49 U.S.C. 30102(8), paraphrased]. Among other duties, the National Traffic and Motor Vehicle Safety Act requires NHTSA to consider relevant available motor vehicle safety information, and consider whether a proposed standard is reasonable, practicable, and appropriate [See 49 USC 30111(a) and (b)]. In order to regulate motor vehicle lamps, NHTSA must provide objective information upon which such regulation would be based.

To its credit, NHTSA attempts to limit the scope of its regulatory initiatives. Furthermore, once issued, NHTSA periodically reviews the regulations to determine if a rule is still necessary and, if so, whether it can be revised to impose the least amount of burden possible. Such reviews are required by the National Traffic and Motor Vehicle Safety Act [See 49 USC 30111(e)]. In addition to the regular reviews, NHTSA responded to President Clinton's March 4, 1995 directive to all Federal departments and agencies to rescind unnecessary regulations. NHTSA removed at least two regulations as a result (FMVSS No. 107 regarding reflective material and FMVSS No. 211 covering wheel nuts). Thus, in the past NHTSA has demonstrated its commitment to regulatory restraint. We hope that the same degree of restraint will be shown in this instance.

Draft Letters of Interpretation

1. Design v. Performance Standard

We believe that the draft letters of interpretation overstep the statutory authority of NHTSA to enforce FMVSS No. 108. While, the letters allude to specific concerns regarding the manufacture, sale and use of non-compliant replacement lighting equipment, the agency seems to overlook legitimate enforcement authority already in place.

In the draft letters of interpretation, NHTSA argues that replacement items must conform to FMVSS No. 108 in the same manner as the original equipment as certified by the manufacturer. Further, NHTSA argues that the replacement lamps must comply with FMVSS No. 108 using the same light sources as the original equipment.

SEMA agrees that when a manufacturer designs a lamp to which the FMVSS No. 108 applies, the manufacturer must design the lamp to ensure that the vehicle will continue to comply with the standard. We do not agree, however, that the requirements of the standard as applied to replacement equipment are determined by reference to the original equipment being replaced. The statement that "...the replacement item must conform to the standard in the same manner as the original equipment for which the vehicle manufacturer certified compliance..." is a statement inconsistent with the stated policy of NHTSA and is grossly beyond the authority of the agency. The effective result of the proposed policy would be to prevent the manufacture and sale of aftermarket equipment that is subject to the FMVSS unless that equipment is identical to the original equipment. The policy and its consequences are without authority and are unacceptable and detrimental to the automotive aftermarket.

The agency's claim that "a lamp manufactured to replace the lamp must meet the standard's requirements with that light source, in order to be designed to conform to the standard," is similarly without basis. Granted, it is the responsibility of the aftermarket manufacturer to design replacement lighting equipment that will allow the lamps to comply with FMVSS No. 108 on the range of vehicles for which it has been designed to fit. Design consideration should and must include analyses of a vehicle's electrical systems to take into account electrical consumption to prevent against overloads and the risk of on-board fire. Replacement lighting equipment manufacturers must devote adequate testing and research to ensure that any light source changes are accounted for in the design and installation of the system so as to ensure compatibility as well as compliance.

From the enactment of the enabling legislation providing the authority for the creation of the FMVSS, Congress clearly intended that NHTSA's standards be used to establish levels of performance for motor vehicles and motor vehicle equipment rather than establish standards and/or specifications for the design of motor vehicle equipment.

Accordingly, NHTSA must continue to draw a distinction between complying and non-complying products, not erroneously differentiate between original equipment manufacturers (OEM) and aftermarket products, since many aftermarket products upgrade or enhance OEM lights.

As previously discussed, the concept of compliance with OEM design specifications faces significant legal issues. A performance standard is preferable to a design standard for several reasons. First, a design standard would have the effect of allowing some technologies marketed by certain companies while excluding those of others. Second, it could favor those with more resources over those with less. Third, a performance standard requires that the problem be defined in detail before determining an acceptable level for each performance related parameter or metric. For example, to the extent that headlight glare issue is more one of perception than reality, a performance standard requires a series of studies to determine the levels, locations and colors, etc. of glare that are present and/or acceptable before the levels which dictate compliance can be defined. A design standard does not require the same level of diligence since it deals with the cause more than the effect. Fourth, a performance standard is more enforceable in use than a design standard as a design based enforcement mechanism is much more susceptible to fraud than a performance based method because there would be little, if any, actual testing in the field. It would be easier for a lighting manufacturer to submit documents claiming they meet the necessary design criteria even when that is not the case. The parts could be labeled as compliant, thus avoiding in-use enforcement concerns, even though the products were, in actuality, non-compliant. A performance based enforcement mechanism, however, would still require the product to demonstrate compliance in the field and would thus identify noncompliance products even if they carried the proper markings in compliance with FMVSS No. 108. Under the performance standard, product marking would be secondary to the performance.

Finally, a design-based system would require state and local law enforcement to know the details of all approved designs. Not only would this be difficult from the standpoint of the sheer numbers of variations, but one would also have to allow for any running changes, updates, etc., by the manufacturer. A performance-based system wouldn't have concern for these variables. The agency enforces a standardized test protocol and the lighting equipment either meets it or it doesn't, regardless of the design.

2. Technical and Practical Considerations

a. Vehicle Certification

Vehicles are certified by the vehicle manufacturer with a certain set of equipment, or possible equipment available as options. However, it is now common for certain makes and models to be certified by the vehicle manufacturer with two different headlamps and headlamp technologies, and for the wiring in these vehicles with respect to these headlamps to be completely different. Under NHTSA's draft letters of interpretation, an aftermarket lighting product still would be subject to recall based solely on the fact that the product could not have been ordered on the vehicle. This inequitable and overreaching result would occur despite the aftermarket company performing the proper research, testing the product, covering the product with product liability insurance, confirming that it also conforms to FMVSS No. 108, and providing all the necessary connectors and interfaces so that the product is installed safely and correctly.

b. Lighting Parts - FMVSS No. 108 Only Specifies a Standard to be Met, not a Particular Application

FMVSS No. 108 does not specify how a passenger car headlamp or tail lamp assembly must be installed or used in a certain way, other than the implied usage through the design (high beam, low beam, reflex reflector, etc.). The standard makes provision for various Society of Automotive Engineer (SAE) tests, and the main photometric test points and procedures. When a lighting company tests a new headlamp, it is not tested to a particular application, but rather to a general standard, in this case the SAE standards referenced in FMVSS No. 108. Aftermarket lighting manufacturers certify that regulated lamps meet the standard, not the intended application. In many cases, the headlamp is designed for new model vehicles well before the vehicle actually enters the marketplace. Nowhere in FMVSS No. 108 is the aftermarket manufacturer required to certify the product only for specific applications.

c. Use of Passenger Car Headlamps by Small-Volume Vehicle Manufacturers

Many of the small-volume production vehicles (motor homes, heavy trucks, buses, etc.) frequently use headlamps designed for passenger cars under FMVSS No. 108. To create specific headlamp assemblies for these small production vehicles simply is not cost-effective. NHTSA's draft interpretation most definitely will cause economic hardship to small-volume vehicle manufacturers. Worse, the draft interpretation would hold that any motor home, bus, or heavy truck using a headlamp not originally designed

for that vehicle is deemed illegal for that application. Many, if not most, major aftermarket lighting companies service these special original equipment manufacturers as a part of their routine activities.

In the example above, since the headlamp was not designed for their vehicle, the small-volume vehicle manufacturer relies on the lighting company's confirmation that their headlamp meets FMVSS No. 108. The aftermarket manufacturer is not required to confirm that it meets standards specific to a particular vehicle environment (unless the customer requests some specific test). The testing and certification is based on the requirements set forth in FMVSS No. 108. So, if the vehicle certification of the small-volume manufacturer, based on the lighting company's testing to FMVSS No. 108 satisfies NHTSA's requirements in the first instance, why then isn't the same test from the same lighting company to the same standard also good enough for NHTSA in the second instance, namely as aftermarket replacement equipment?

d. Universal Headlamps & Tail Lamps

One of the ways to hold down costs to small-volume vehicle manufacturers is for lighting manufacturers to offer universal headlamp assemblies that comply with FMVSS No. 108 and can be used in a variety of mounting situations. A number of manufacturers offer such headlamps. They are not designed for a particular vehicle, but rather for any vehicle. If the aftermarket were forced to limit bus manufacturers, for example, access to these products, or to cease offering upgrades to their existing lighting, bus manufacturers would simply revert back to the lowest cost option, which will dramatically decrease safety for these vehicles. An unfair burden would be placed on the lighting companies who would be forced to offer the exact same product as "legal for this application, but not legal for any other." This perpetuates the very market situation NHTSA says it is trying to prevent.

The same situation applies to universal tail lamps, plentiful in the market, and again not designed for any specific vehicle. Under NHTSA's draft letters of interpretation, if a lighting company designs a universal tail lamp and sells it to one small vehicle manufacturer, it then would be legal only as a replacement part for that one vehicle manufacturer and thus kill any incentive to design, manufacture and sell higher quality lighting in the aftermarket. The market will simply sink to the lowest common denominator and the result will be that overall vehicle safety will be compromised.

e. Sealed Beams & Halogen Sealed Beams

Under NHTSA's draft letters of interpretation, it would be illegal to remove a standard sealed beam and replace it with a halogen sealed beam, directly contradicting the agency's long-standing insistence on interchangeability and accessibility in the field. It also would be illegal to remove a halogen sealed beam and replace it with a dimensionally identical halogen unit from another manufacturer that happens to use a different light source. Some of these conform to FMVSS No. 108 and some do not. Both kinds exist in the market and they are legally used in any number of off-road applications.

It would be virtually impossible for NHTSA to prevent dimensionally identical units from being used in vehicles where they are not original equipment.

f. Heavy Truck Lighting

Most heavy trucks are equipped with incandescent tail lamps, but there is a pronounced trend towards upgrading the lighting to light-emitting diodes (LED) in the aftermarket. The incandescent truck tail lamps and LED lamps are dimensionally identical and NHTSA has not only allowed this modification in the past, but encouraged it. These products do not use the same technologies or light sources. Many of these trucks and trailers were not equipped originally with LED tail lamps, nor were they offered as optional equipment. If NHTSA proceeds with these draft letters of interpretation, the unintended but costly consequence is that the agency would be forced to recall large numbers (perhaps millions) of trucks and trailers that have been upgraded to federally-compliant LED lighting.

It would be inconsistent for NHTSA to have one set of rules for truck lighting and another for passenger car lighting. These vehicles are using the same public highway system and their lighting must be compatible as these vehicles are in direct proximity to each other. It would be illogical for NHTSA to argue that a tail lamp legally designed and accepted in making a truck visible is somehow compromised in safety if it is installed on a passenger car.

h. Tractors

For farmers that must drive a tractor from field to field on public roads at night, it is in their best interest to have the most rearward visibility possible. Most tractors are equipped with incandescent lighting. Under NHTSA's draft letters of interpretation, these farmers would be prevented from exercising their option to improve safety and increase visibility by upgrading to LED tail lamps on these vehicles.

Conclusion

SEMA understands the concern of the agency with the sale and use of products that fail to meet the requirements of the standard. We also see the potential of products being manufactured and sold that comply with the standard, but may contain latent or patent deficiencies that could lead to safety problems. As we have stated, the agency has sufficient authority to deal with such concerns. As we have made clear, replacement motor vehicle equipment may be manufactured and sold only if it is in compliance with the standards and is so certified by the manufacturer. Enforcement actions against manufacturers of non-complying products would deal effectively with the concern about non-complying products. Similarly, products that comply with the standards, but may contain safety-related defects, are also subject to enforcement action under well-established legislative authority. However, SEMA strongly disagrees with the idea that a design based policy which references the equipment that was offered as standard or optional equipment on the vehicle is a legal or viable means of enforcement. Not only

does this concept introduce the many issues described above but it may also amount to unconstitutional restraint of trade.

Accordingly, we respectfully request that NHTSA withdraw the proposed interpretive letters, in addition to the Feb. 4, 2002 letter to Mr. Daniel Watt and the Mar. 13, 2003 letter to Mr. Galen Chen, and reaffirm the long-standing policy of the agency that the FMVSS apply equally to both motor vehicles and motor vehicle equipment. Please feel free to contact me immediately if I may be of assistance in addressing any additional concerns that you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen B. McDonald". The signature is fluid and cursive, with a large, sweeping initial "S" and "M".

Stephen B. McDonald
Senior Director, Government Affairs
Specialty Equipment Market Association