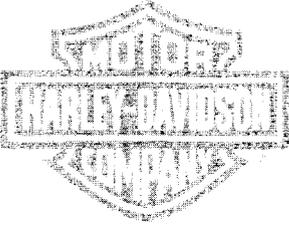


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Harley-Davidson Motor Company, 11800 W. Capitol Drive, Wauwatosa, WI 53222 414/7616-1000

DEPT. OF TRANSPORTATION  
DOCKET'S

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October 30, 2003

Docket Management Facility  
U.S Department of Transportation  
400 Seventh Street, SW  
Nassif Building, Room PL-401  
Washington, DC 20590-001

RE: Federal Register for Thursday, July 17, 2003. Notice for draft interpretations;  
request for comments, Docket No. NHTSA 03-15651- 30

Dear Sir or Madam:

Harley-Davidson Motor Company (Harley-Davidson or HDMC) is very interested in the draft interpretation letters that are the subject of this docket item. A substantial portion of Harley-Davidson business comes from offering accessories and replacement equipment that contains some differences from what might be sold with one of our stock original equipment (OE) motorcycles.

Taken to their conclusions, the interpretation letters could force HDMC to cease offering safe, quality products to our customers merely because they differ from an OE configuration. This is not the intent of Federal Motor Vehicle Safety Standard (FMVSS) 108 or its enabling legislation. Therefore, the draft interpretations should be withdrawn and rewritten consistent with the original intent of the regulation.

Our comments relate how this interpretation would result in an improper de facto amendment to FMVSS 108. They then discuss the practical adverse implications for Harley-Davidson Motor Company in particular. Finally, we present an alternative for the interpretations.

#### **De facto Amendment of FMVSS 108**

So far as we can recall, this mechanism for review of a NHTSA interpretation letter has not been used before. The agency must have recognized that both the subject matter and the interpretation would have been controversial. It was correct.

Perhaps the most controversial results of the interpretations would be to make a substantial de facto change in the regulation without going through the normally required procedure of a notice of a proposed rule making, opportunity to comment and publication in the Federal Register of an actual change.

The changes that would result are not minor. FMVSS 108 would now incorporate design standards within the current performance standard. It would provide for the first time NHTSA regulatory oversight on FMVSS related materials in motorcycle owner's manuals. It would define certain terms that have heretofore been subject to the interpretation of a component designer.

The instant request for comments is not the proper mechanism to make such important changes. It is an arbitrary and capricious format, especially considering that adequate legal alternatives exist as prescribed by the Administrative Procedure Act and are followed in the course of most of NHTSA's business. If the agency believes that this interpretation is essential for operation of the regulation, it should follow the properly prescribed course for such changes.

If the agency is merely seeking to provide a legitimate answer to the component manufacturers making the inquiries, it should seek language that will not impose massive changes and hardship upon an entire industry of long standing.

**Performance versus Design.** FMVSS 108 was written primarily as a performance standard. For the OE vehicle manufacturer, this has been an important consideration. Styling is unarguably a dynamic part of the motorcycle industry. And throughout the term of FMVSS 108, it has been understood that if the manufacturer stays within certain, fairly reasonable parameters (such as minimum and maximum lamp height and lens area), the actual design and placement of equipment is up to the manufacturer, assuming it meets certain performance requirements.

Further, in part due to the performance orientation of regulations such as FMVSS 108, this country has enjoyed a long and delightful tradition of vehicle customization. This is true of motorcycles. And very especially true of Harley-Davidson motorcycles. So long as the after-market component manufacturer was able to meet the reasonable placement and performance standards, a product reflecting more of the individuality of the vehicle owner, without sacrificing the legitimate safety aims of the regulation could be made. Therefore, portions of the interpretation refusing the use of components other than those that are exact duplicates replacing the originally offered equipment should be deleted.

**New Importance of the Owner's Manual.** Vehicle manuals contain much useful information. There are two main variants of vehicle manuals. A "shop" manual contains certain information valuable to a mechanic performing maintenance or repair on a vehicle. A vehicle owner's manual at its essence contains information of use to the consumer of that vehicle. Heretofore, it has existed primarily as a service or courtesy to that consumer and its existence, nonexistence or contents have not been regulated under FMVSS 108. By requiring that any bulb or lamp replacing an item of original equipment

be the same as that found within the owner's manual, the interpretation imputes an unalterable legal status upon that information. This is unreasonable and unrealistic and opens the door to a new status for such manuals and the information they do or do not contain<sup>1</sup>.

However, owner's manuals often do not remain with the vehicle. Some vehicles do not have sufficient storage for the manual, or the owner chooses to use the provided storage for other purposes. Owner's manuals also often do not accompany the vehicle to ensuing owners. It is then unreasonable to expect that the owner's manual would act as the sole source or authority for replacement parts.

We will grant that any good owner's manual would provide information on replacement bulbs and lamps for the equipment originally provided. However, it is not the only source nor should it be considered the primary source for vehicle safety-related information. The burned out bulb or lamp also contains identifying information. And should that not be available, vehicle parts counter workers are very good at obtaining enough information from the lamp, bulb or the vehicle owner to determine the proper replacement.

NHTSA has stated in the interpretation draft that it would use the bulb mentioned in the owner's manual for that particular vehicle. It should not rely upon such a nebulous source. It should instead rely upon the information provided by the manufacturer of the particular lamp or bulb being tested.

**Interpretation of Language.** There are several terms of art in FMVSS that have heretofore been left up to the vehicle or light source designer relative to FMVSS 108. The interpretation letters give two of these a new status, that of being defined solely by the designers of the OE vehicle.

**Practicable.** The term "practicable" is used several times in FMVSS 108, mostly as it applies to the placement of reflectors. The interpretation letters apparently have chosen this to mean that the only practicable location is that decided upon by the OE designer. However, the interpretation is clearly incorrect. FMVSS itself provides an indication of how to properly interpret the term for placement of reflectors, see S5.3.1.1. The last sentence appears to allow a component manufacturer to determine what is "practicable" under the particular circumstances and does contemplate equipment being provided for a vehicle that would not allow give OE placement of lighting a safety benefit.

**Replacement.** Heretofore, the industry has chosen to interpret the term "replacement" to mean something that replaces what was on the OE vehicle and in the same general location. However, the agency draft interpretation appears to

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<sup>1</sup> Some owner's manuals do contain information that is provided to the consumer under statutory or regulatory provision. However, this is merely because the owner's manual is a convenient venue to present the information. We would not want to see a requirement to provide such specific information exclusively in an owner's manual.

place a greater burden on the term, and it apparently now means “an exact replacement of the item, in the exact same location, duplicating that which was originally on the vehicle when first sold.”

Neither interpretation reflects current industry practice. For example, Harley-Davidson has chosen OE locations for its reflectors based upon the design of the reflector, the available vehicle surface and placement of such items as luggage, if equipped OE. Some after-market accessories or components when installed interfere with the appropriate visual sight lines for these reflectors. Therefore, if such an equipment item is purchased from Harley-Davidson, we will provide a replacement reflector. This reflector might not be the same reflector or general design as the OE item. And due to the nature of the after-market component, it will certainly not be installed in the exact same location. But it will meet the reflectivity requirements of the regulation when installed.

The portions of the interpretations that place such a burden on after-market component design should therefore be eliminated. The agency should recognize that “practicable” placement of after-market components is not defined by the vehicle OE designer. There should be room for subsequent variations based upon the circumstances. Similarly, the agency should recognize that a “replacement” component does not necessarily have to be a duplicate of the original.

#### **Practical Implications for Harley-Davidson.**

**Equipment.** Motorcycles are at their essence basic vehicles and have been for well over a hundred years. For just as long, their owners have been adapting the motorcycle to meet their own needs or pleasures. Harley-Davidson recognizes this just as well as anyone else and has built a substantial portion of its business to comply with this need. Unfortunately, the interpretation letter threatens many of these components or equipment. For example, many after-market saddlebags, backrest mounts and luggage rack mounts will cover up the OE reflectors or require the repositioning of the turn signals.

As earlier stated, when this occurs, we provide a replacement and, if needed, a new wiring harness that will accommodate the changed position of the turn signals. We do certify that the reflector and turn signals themselves remain compliant under FMVSS 108 in the new location.

As earlier mentioned, section S5.3.1.1 might allow for a more liberal interpretation, but the list of equipment accompanying this definition all appears to incorporate equipment that is itself work related (mirrors, snow plows). The NHTSA draft interpretation could force us to rely upon a further agency or judicial interpretation as to whether the list is too complete to be able to accommodate dissimilar equipment such as windshields or luggage.

**Lighting.** Harley-Davidson offers an entire line of required lighting replacements to allow the vehicle owner further opportunities for customization. We certify each of these items to be compliant for the vehicle for which it is designed. Unfortunately, these would

not be allowed under the NHTSA draft interpretation since they often incorporate different lamps, reflectors, lenses or bulbs from what was offered on the OE vehicle.

Harley-Davidson has been in this business for many years. We have committed to sell compliant product. NHTSA should not be in the business of forcing companies like ours out of a business that has heretofore been legitimate.

**Replacement Parts.** Parts originally used on vehicles are often discontinued by the part manufacturer. When that occurs, and the part is one that is still demanded by customers (especially for consumables such as lights) HDMC works hard to ensure that an equivalent and compliant replacement is available. Every so often, a regular duty item (like a light bulb) may be found under consumer use to be appropriately replaced by a heavy-duty equivalent. Harley-Davidson will generally try to make exact replacements available for parts for a reasonable period of time, usually seven to ten years from the date the vehicle was sold. But we try to accommodate our customers for a longer period than that. Sometimes, equivalents or a newer component are the only replacements available. The language of the interpretation letter requires that these practices cease. That is unfortunate and potentially unsafe for the consumer who can no longer obtain an equivalent or superior replacement part. If it stands, the vehicle owner would then be faced with a choice to attempt replacement with a non-compliant part, or be forced to prematurely remove the vehicle from service.

#### **An Alternative Interpretation.**

**Determining Component Compliance.** The earlier interpretation letter (in the additional docket materials) made to the prospective supplier of the LED bulbs for an existing lamp was unfortunate. The agency did not make it clear that when a light is certified, it is not just the bulb, or the reflector or the lens that is certified under FMVSS 108, but all of these components acting in concert as a light source. If a manufacturer can certify that each such light source otherwise meets the lighting requirements for the application for which it is intended, it should be allowed into the marketplace. This will cover situations using different bulbs, lenses and reflectors.

**Relocating Required Lighting Components.** Again, if a manufacturer can certify that the relocated component also meets FMVSS lighting requirements in the new location, it should be allowed into the marketplace.

**Modified Wiring Harnesses.** FMVSS contains no specific section related to wiring harnesses. However, if a manufacturer can certify that a lamp as installed meets the requirements of FMVSS 108, we see no reason why such items cannot be sold with the new lamp. Part of responsible lighting design is to avoid the consequences that NHTSA fears in its interpretation letters. We are unaware of the dangers cited happening in any harness component Harley-Davidson has sold for replacement lighting. We are equally unaware of any legitimate manufacturer who would overlook consideration of such events during design.

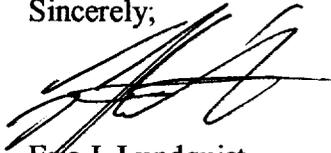
NHTSA already disallows lighting components that interfere with other required lighting, and has a system of defects, recall and early warning programs in place to handle problem motor vehicle equipment. These do work and we see no reason why the agency should have taken the view expressed by the interpretation letters.

**Conclusion:**

As related above, we have shown how the interpretations would amount to an improper amendment of FMVSS 108 through further imposition of design standards, regulation of owners manual contents, and definition of terms which have heretofore been considered general. We have also shown how this action could affect legitimate products offered by Harley-Davidson Motor Company, and perhaps force the early withdrawal of some vehicles from service. Finally, we have made reasonable suggestions as to how the agency could have interpreted the same sections in response to the questions asked.

Thank you for the opportunity to present these comments. If there are any questions, please direct them to the undersigned. If NHTSA is interested in developing a replacement for FMVSS 108 that relates to motorcycle lighting issues, we would appreciate the opportunity to take part.

Sincerely,



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