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RE: Docket No. NHTSA-03-15651

*Federal Motor Vehicle Safety Standards; Lamps,
Reflective Devices and Associated Equipment*

OVERVIEW

The motor vehicle aftermarket encompasses virtually all products and services provided to motorists once their vehicles leave the new car dealer's lot. The Automotive Aftermarket Industry Association (AAIA) consists of approximately 2,600 member companies involved in the manufacture, distribution, retail sale and installation of high quality motor vehicle parts, fluids and accessories. Combined, these companies represent a significant portion of an industry that employs well over 2 million people and generates annual sales in excess of \$260 billion.

A number of AAIA member companies manufacture lighting products and a large number distribute and/or sell such products at retail. The National Highway Traffic Safety Administration's (NHTSA's) interpretation of Standard No. 108 would have direct and far-reaching consequences for these companies.

NHTSA's draft interpretations appear to mandate that replacement lighting products must not only perform like the original equipment (OE) products they are replacing, but must actually be *designed and look like those products*.

Implementation of these interpretations risks eliminating thousands of aftermarket companies and the high-quality, performance-compliant products they manufacture and sell. Indeed, the preference for design over performance runs counter to NHTSA's own characterization of the FMVSS as presented on the Agency's website, "*These Federal safety standards are regulations written in terms of minimum safety performance requirements for motor vehicles or items of motor vehicle equipment.*" No mention is made of design standards.

From a broader perspective, NHTSA's draft interpretations also set a potentially devastating regulatory precedent that could extend far beyond lighting to cover aftermarket brake systems, windshield wipers, seats, mirrors or the hundreds of non-FMVSS covered systems present in today's motor vehicles.

The possibility of this scenario coming to pass is not acceptable to AAIA and its member companies. We therefore strongly urge NHTSA to reconsider the draft interpretations published in the Federal Register notice dated July 17, 2003.

DRAFT INTERPRETATION NO. 1 - DESIGN VS. PERFORMANCE

At its core, the issue being decided by NHTSA's draft interpretation No. 1 is whether replacement lighting products (and potentially other safety-related equipment), will be held to standards that specify performance or design. AAIA believes strongly that performance remains the primary, if not the only, measure of a part's applicability for a given function.

Product performance is quantifiable and measurable. Using performance standards, NHTSA and others can assess various products to determine if those products satisfactorily meet the functions they are called upon to perform. This is why performance is used by NHTSA to assess the intensity, visible range and other photometric criteria for OE lighting equipment. Based on that assessment, the Agency can determine if a certain lighting product may be used on a particular vehicle. The same concept can apply for a wide range of automotive equipment.

A design standard is much more subjective. NHTSA's interpretation implies that only aftermarket designs that are essentially identical to the OE product would be acceptable. While performance will often dictate certain aspects of design, NHTSA appears not to give any credit to products that meet or even exceed all photometric or other performance standards, unless those products mirror the original. This policy puts aftermarket manufacturers at a distinct disadvantage. While OEMs need only manufacture to a performance standard, aftermarket companies must manufacture to both performance *and* design standards, with the design standard apparently taking precedent.

By adopting the draft interpretation, NHTSA would effectively force aftermarket lighting suppliers to produce designs that are identical in every way to OE. This in turn could result in the potential for increased manufacturing costs and the discontinuation of product lines. It would stifle innovation, as there would no longer be a market for products that differ in any way from OE. There could even be legal implications from manufacturing exact copies of OE products, unless or until manufacturing licenses are granted -- at a cost to be determined by the OEMs.

Design, as opposed to performance standards would also prove a burden for NHTSA. Unless the standard specified, "identical to original equipment in every way," NHTSA would be put in a position of either endorsing or rejecting competing designs, regardless of performance.

When comparing an OE part to one designed and manufactured by an aftermarket company (assuming both parts perform in similar fashion) why should one be deemed acceptable, while the other is disallowed? Turning the argument around, what happens in a situation where the aftermarket part actually outperforms the OE part, as many do? Should not the OE manufacturers then be required to duplicate and install a copy of the aftermarket part? If not, then NHTSA would in essence be rejecting, or even making illegal, a part that provides for greater safety and utility.

Clearly, performance, not design, should be the standard upon which all products are judged.

CERTIFICATION OF PROPER USE

Draft Interpretation No. 1 also makes reference to the certification of replacement lamps. AAIA agrees with NHTSA that lamps, “manufactured to replace any lamp on any vehicle to which the standard applies must be designed to conform to the standard.” (Again, this assumes the use of a performance-based standard.)

On the other hand, manufacturers of replacement lamps (aftermarket or OE) have no way of knowing if the lamps are installed properly. These companies cannot reasonably be held accountable for installation. Responsibility for installation must rest solely with the installer, be it the vehicle owner or a professional mechanic.

DRAFT INTERPRETATION NO. 2

AAIA is also concerned about the implications of Draft Interpretation No. 2. By requiring the use of light sources that are identical to OE, NHTSA has again eliminated the possibility of performance enhancement and product innovation.

A case in point is the advent of LED light sources. The pace of technological change virtually guarantees that such products will continue to improve vehicular lighting, with a resulting increase in safety. However, if NHTSA's draft interpretation stands, such products will only be allowed in vehicles that come equipped with them from the factory. Aftermarket upgrades of OE light sources would be forbidden. Motorists who drive older vehicles will be effectively prevented from improving the safety of their vehicles. This would seem a direct contradiction of NHTSA's mission.

The elimination of aftermarket upgrades and alternatives also puts vehicle manufactures in a position to monopolize the design of light sources. Should OE design become the sole standard for applicability; control and manipulation of the design would be a simple matter. It is unlikely that NHTSA could guarantee that aftermarket production of new light source designs would not be barred via patent protection. Indeed, what would prevent OEMs from designing and patenting new, slightly different light sources each year? Few aftermarket companies would have the resources to follow suit, even assuming they would be granted manufacturing licenses by the OEMs.

It should be noted that the aftermarket industry has a long history of fighting OEM efforts to prevent the manufacture, sale and service of replacement parts and vehicle systems. A common strategy OEM is to control accessibility to design and/or information pertaining to the parts or systems.

Once again, the motoring public would be best served by a reliance on performance standards that promote, rather than stifle, competition and product innovation. If a light source meets or exceeds the performance as spelled out in Standard No. 108, it should be deemed acceptable for use.

PRECEDENT & UNINTENDED CONSEQUENCES

As stated at the outset, AAIA and its members are concerned about the specific impact of NHTSA's draft interpretations on lighting products. However, the implications of these policies go far beyond lights. Indeed, AAIA is even more deeply concerned about the precedent these interpretations set for a vast array of other automotive products, safety-related or not.

Should NHTSA adopt the positions laid out in these interpretations, the replacement parts industry could well be relegated to the role of parts duplicators. All product enhancements would have to originate with the OEMs. There would no longer be room for innovation and product improvement by the aftermarket. The interchangeability of parts would be greatly reduced and the likelihood of patented or "designer" parts increased manifold. The cost to the aftermarket and ultimately, to the motoring public would be enormous.

CONCLUSION

AAIA fully understands and supports NHTSA's desire to ensure that replacement parts perform at least well as the OE parts they are intended to replace. We also believe strongly that a policy advocating a standardized design and look, above all else, will undermine this goal.

Therefore, AAIA urges NHTSA to rescind the draft interpretations and reiterate the Agency's commitment to issue and enforce *standards of performance* in all safety-related products, while leaving design features to the respective manufacturers. In this way, you will serve the best interests of the motoring public as well as the hundreds of thousands of aftermarket companies that manufacture, distribute and sell high-quality automotive replacement parts.

AAIA welcomes the opportunity to provide NHTSA with additional information as you further investigate this matter.

Sincerely,



Larry Northup
Director, Government Affairs