

excellent opportunity for the international community to develop and establish a GTR in this area. Everyone could benefit from harmonization and new technology based improvements of the head restraint regulation. The benefits to the governments would be the improved safety of the head restraints, leveraging of resources, and the harmonization of requirements. Manufacturers would benefit from reduction of the cost of development, testing, and fabrication process of new models. Finally, the consumer would benefit by having a choice of vehicles built to higher, globally recognized standards, providing a better level of safety at a lower price.

#### B. Description of the Proposed Regulation

The scope of the GTR will specify requirements for head restraints to reduce the frequency and severity of neck injury in rear-end and other collisions. The proposed GTR will combine elements from ECE 17, ECE 25, and newly upgraded U.S. Federal Motor Vehicle Safety Standard (FMVSS) 202. Two of the newly proposed FMVSS 202 requirements are significant and not included in any other published regulation. The first proposes to require that the space between the head restraint and the occupant's head (backset) be limited. The second proposes a new dynamic test, as an optional means of compliance. The U.S. will prepare a table to facilitate comparison of the present standards and submit it as a formal document to the GRSP. The results of additional research and testing conducted by any contracting parties since the existing regulations were promulgated will also be factored into the requirements of the draft GTR and may result in the proposal of new requirements.

Elements of the GTR that cannot be resolved by the Working Party will be identified and dealt with in accordance with protocol established by AC.3 and WP.29. The proposed GTR will be drafted in the format adopted by WP.29 (TRANS/WP.29/882).

#### C. Existing Regulations and Directives

The following regulations and standards will be taken into account during development of the new GTR regarding head restraints.

- UN/ECE Regulation 17—Uniform Provisions Concerning the Approval of Vehicles With Regard to the Seats, Their Anchorages, and any Head Restraints.
- UN/ECE Regulation 25—Uniform Provisions Concerning the Approval of Head Restraints (Head Rests), Whether or not Incorporated in Vehicle Seats.
- EU Directive 74/408, Concerning Interior Fittings of Motor Vehicles.
- EU Directive 96/037, Adapting to Technical Progress Council Directive 74/408/EEC Relating to the Interior Fittings of Motor Vehicles (strength of seats and of their anchorages).
- EU Directive 78/932/EEC, Concerning Head Restraints of Seats of Motor Vehicles.
- U.S. Code of Federal Regulations (CFR) Title 49: Transportation; Part 571.202: Head Restraints.
- Australian Design Rule 3/00, Seats and Seat Anchorages.
- Australian Design Rule 22/00, Head Restraints.

- Japan Safety Regulation for Road Vehicles Article 22—Seat.
- Japan Safety Regulation for Road Vehicles Article 22-4—Head Restraints, etc.
- Canada Motor Vehicle Safety Regulation No. 202—Head Restraints.
- International Voluntary Standards—SAE J211/1 revised March 1995—Instrumentation for Impact Test—Part 1—Electronic.

Issued on October 5, 2004.

**Julie Abraham,**

*Director, Office of International Policy, Fuel Economy and Consumer Programs.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA 03-15651]

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

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of interpretation.

**SUMMARY:** This document provides an interpretation concerning how our standard for lamps, reflective devices, and associated equipment applies to replacement equipment. Our interpretation reflects consideration of the public comments on an earlier draft interpretation.

**FOR FURTHER INFORMATION CONTACT:** Eric Stas, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-2992. Fax: (202) 366-3820.

#### SUPPLEMENTARY INFORMATION:

##### Role of the Chief Counsel

One of the functions performed by NHTSA's Chief Counsel is to issue interpretations of the statutes administered by the agency and regulations issued by the agency under those statutes. *See* 49 CFR 501.8(d)(5). These interpretations are typically issued in the form of a letter responding to a request for interpretation from a manufacturer or other interested person. Our interpretations have always been placed in public viewing files and, more recently, have been available to the public via the Internet.

We believe that, in certain cases involving important, novel issues with potentially broad impacts, it is beneficial to publish draft interpretations in the **Federal Register** to provide an opportunity for public

comment. This helps ensure that the agency has considered all relevant issues prior to publishing a final interpretation.

#### Requests for Interpretation by Calcoast-ITL

On March 6, 2003, NHTSA received two requests for interpretation submitted by Calcoast-ITL (Calcoast), a testing company.<sup>1</sup> Those letters asked a number of questions regarding how Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*, applies to replacement equipment.

The first Calcoast letter asked whether replacement lamps are required to have all the functions of original lamps. The letter also asked whether replacement lamps for the rear of a vehicle may have the rear reflex reflectors in a location that is inboard from that in the original lamps.

The second Calcoast letter asked a series of questions regarding the permissibility of using light sources in aftermarket lamps that are different from those specified by the original equipment (OE) manufacturer.

#### NHTSA's Notice of Draft Interpretation; Request for Comments

Because the questions raised in the Calcoast letters raised significant issues concerning how FMVSS No. 108 applies to replacement lighting equipment, the agency decided to seek public comment regarding the agency's proposed response to Calcoast's interpretation requests. Accordingly, we published a notice of draft interpretation in the **Federal Register** on July 17, 2003.<sup>2</sup>

By way of background, FMVSS No. 108 specifies requirements for original and replacement lamps, reflective devices, and associated equipment (*see* S1). The standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles (*see* S3(a)). Under the standard, vehicle manufacturers are required to certify that a new vehicle meets, among other things, FMVSS No. 108's requirements with respect to lamps, reflective devices, and associated equipment. In addition, FMVSS No. 108 also applies to lamps, reflective devices, and associated equipment for replacement of like equipment on vehicles to which this standard applies (*see* S3(c)). Thus,

<sup>1</sup> Docket No. NHTSA-2003-15651-1.

<sup>2</sup> 68 FR 42454. Initially, the comment period was scheduled to end on September 2, 2003, but that period was twice extended, ultimately to October 31, 2003 (*see* notices extending comment period at 68 FR 51635 (August 27, 2003); 68 FR 56041 (September 29, 2003)).

FMVSS No. 108 is both a vehicle standard and an equipment standard.

Paragraph S5.8.1 of the standard provides, "Except as provided below, each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies shall be designed to conform to this standard." Interpretation of this provision is at the heart of all the questions raised by Calcoast.

In preparing our draft response to Calcoast, two relatively recent interpretation letters provided relevant precedent in construing paragraph S5.8.1 of FMVSS No. 108.

In a February 4, 2002 letter to Daniel Watt,<sup>3</sup> NHTSA responded to a question regarding the permissibility of replacing an original, incandescent bulb in a truck's tail lamp with a red light emitting diode (LED). In that interpretation, we cited the requirements of S5.8.1 and stated that a replacement item must be designed to conform to the standard in the same manner as the original equipment installed on the vehicle. Our letter concluded that in the case presented, a replacement lamp equipped with LEDs would not be designed to conform to the standard in the same manner as the original equipment, and, therefore, would not comply with S5.8.1.

In a March 13, 2003 letter to Galen Chen,<sup>4</sup> we were asked whether a replacement lamp (the "Maxzone headlamp") could be sold for model year (MY)1998–2001 Honda Accord passenger cars that incorporates a different headlamp light source than that originally installed on the vehicle. (Honda Accords of that range of model years were equipped with headlamps meeting the requirements of S7.5, *Replaceable bulb headlamp systems*.) In that interpretation, we interpreted S5.8.1 and S7.5(b) of the standard to require each replacement headlamp to conform to the standard's specified photometry requirements when using the type of replaceable light sources specified by the vehicle manufacturer.

In discussing the other features incorporated in the Maxzone headlamp, our letter to Mr. Chen further provided that we interpret S5.8.1 as requiring replacement lighting equipment designed for specific motor vehicles to incorporate, at a minimum, the same required functionality as included on the OE lamp it is intended to replace.

With this background in mind, we turn to our draft interpretations responding to Calcoast. In our draft interpretations, we stated, as a general principle, that under S5.8.1, whenever a manufacturer designs a lamp to replace a lamp on a vehicle to which the standard applies, the manufacturer must design that lamp to ensure that the vehicle will continue to comply with FMVSS No. 108 when the replacement lamp is installed. This statement is a logical corollary to the language of S5.8.1, in that if an item of lighting equipment is certified under the standard, when incorporated in a vehicle, it must permit the entire vehicle to continue to comply with all relevant Federal motor vehicle safety standards.

The draft interpretations stated that the specific requirements of FMVSS No. 108 that apply to an item of replacement equipment are determined by reference to the original equipment being replaced and the vehicle for which it was designed. The letters to Mr. Watt and Mr. Chen were cited in support of the proposition that replacement items must conform to the standard in the same manner as the original equipment for which the vehicle manufacturer certified compliance.

We now turn to our response to the specific questions raised by Calcoast. The first draft interpretation letter responded to Calcoast's questions about replacement lamps that are modifications of rear OE lamps for various Honda Civics. Those lamps were paired lamps with a fender mount and deck lid mount, but in each case, the replacement lamp manufacturer moved the location of the reflex reflector from the fender mount replacement lamp to the deck lid mount replacement lamp (a change from the OE lighting system). Calcoast asked whether an individual replacement lamp must have all the functions of the original lamp and noted that a consumer could purchase or install only the outboard lamps, thereby losing the reflex reflector function. Calcoast also questioned whether moving the reflex reflector inboard violated the requirement in Table IV of FMVSS No. 108 that the reflex reflectors be "as far apart as practicable."

Our draft interpretation letter stated that the replacement lamp in question would not conform to FMVSS No. 108 because it does not include all of the functions provided in the original lamp. The draft letter stated that it is immaterial that the aftermarket manufacturer provides a reflex reflector in another lamp. We stated that under S5.8.1, "each lamp" manufactured to

replace any lamp on any vehicle to which the standard applies must be designed to conform to the standard. As Calcoast had noted, a consumer might replace only a single lamp, and the reflex reflector function could be lost.

Regarding the placement of the reflex reflector closer inboard than the reflectors on the OE lighting system, the draft interpretation concluded that this was impermissible under the standard. Specifically, because FMVSS No. 108 requires rear reflex reflectors to be "as far apart as practicable," an aftermarket product that moves the reflex reflectors closer together would not conform to the requirements of the standard, since the OE equipment's placement was clearly practicable to achieve.

The second draft interpretation responded to Calcoast's questions about allowable light source modifications of aftermarket lamps. The lamps in question included both front and rear combination lamps. In some cases, these replacement lamps utilized the OE wiring harness and sockets, and in other cases, the aftermarket manufacturer supplied a modified wiring harness and sockets along with the replacement lamp. Specifically, Calcoast asked whether it is permissible for an aftermarket manufacturer to design a lamp to use a different wattage bulb than the OE lamp contained. It also asked whether a replacement lamp could use a different color bulb from the OE system (e.g., switch from a clear bulb behind a red lens to a red bulb behind a clear lens). Calcoast stated that some lamp manufacturers are completely changing the bulbs used (including wattage, color, and base type) by providing a replacement wiring harness and sockets. Calcoast also asked whether it is permissible for an aftermarket manufacturer to change a replacement lamp's light source from incandescent to sealed LED. Finally, to the extent these changes are allowed, Calcoast asked how consumers should be informed of the changes.

Our draft interpretation stated that replacement lamps must comply with FMVSS No. 108 using the same light sources as the original equipment. It further stated that each vehicle is certified to FMVSS No. 108 using a particular light source for a particular lamp, and the lamp's ability to meet the standard's requirements with that light source is an inherent part of the vehicle's certification. Thus, in order to conform to the standard, a replacement lamp must meet the standard's requirements using the same light source as in the original equipment.

We stated that the lighting systems and overall electrical systems of

<sup>3</sup> See <http://www.nhtsa.dot.gov/cars/rules/interps/files/23532.ztv.html>.

<sup>4</sup> See <http://www.nhtsa.dot.gov/cars/rules/interps/files/maxzonenew.html>.

vehicles are designed with specific light sources in mind, to ensure proper beam patterns, levels of brightness and electrical performance, and to avoid overloads and risk of fire. In the owner's manual, vehicle manufacturers advise owners what replacement bulbs to use. We stated that if a replacement lamp were designed to use a different light source from that used in the original equipment lamp, it might not work properly, or at all, with the original equipment bulb or with the replacement bulbs specified by the vehicle manufacturer. Moreover, use of a different light source might adversely affect the performance of the vehicle's overall lighting and electrical systems, and possibly cause overloads and risk of fire.

### Public Comments

Comments on the draft interpretations were submitted by 25 interested parties, representing automobile manufacturers, trailer manufacturers, motorcycle manufacturers, lighting manufacturers (both OE and aftermarket), manufacturers of other motor vehicle equipment, the trucking industry, associations of vehicle owners, and individuals.<sup>5</sup>

In overview, there was general consensus among the commenters that replacement lighting equipment must meet the requirements of FMVSS No. 108 and that all required functions of the OE lamp(s) must be retained. Clearly, the installation of replacement equipment should not take a vehicle out of compliance with the standard.

However, none of the commenters supported the aspects of NHTSA's proposed interpretations that would require the replacement equipment to conform to the standard in the same manner as the original equipment. Instead, commenters argued that aftermarket manufacturers should be

allowed to certify replacement lighting equipment under FMVSS No. 108 in any manner that would have been available to an OE manufacturer.

Osram Sylvania, for example, cited the language of paragraph S5.8.1 requiring replacement lighting equipment to be designed to conform to FMVSS No. 108 and argued that a customer may put an entirely different lamp system on a vehicle as long as it is designed to conform to that standard. It also argued that equipment manufacturers should have the same design freedom as vehicle manufacturers and should be held to the same safety performance standards. Valeo Sylvania stated that it believes that aftermarket replacement kits that change the style or appearance of the OE lamp are permitted according to FMVSS No. 108 as long as these lamps comply with FMVSS No. 108 and the vehicle continues to comply with FMVSS No. 108 after installation of the lamps.

The Alliance cited the language of S5.8.1 requiring replacement lighting equipment to be designed to conform to FMVSS No. 108 and stated that the provision says nothing about also conforming to the design, materials or styling choices made by the original vehicle manufacturer and should not be interpreted to add those requirements.

TSEI stated that in responding to questions such as whether lamp manufacturers may design replacement lamps that use different wattage bulbs, different color bulbs, different light sources, and modified wiring harnesses, the agency's response should be that these things are allowed only if the vehicle complies with FMVSS No. 108 after the replacement item is installed.

Specific comments and issues are discussed below.

#### 1. Retention of Required Functions

The overwhelming majority of commenters agreed with NHTSA's position, as expressed in the proposed interpretation letters, that replacement lighting should be required to provide all of the same required functions that are present in the OE lighting equipment that it replaces. This view was expressed by Maxzone, Douglas Dynamics, Valeo Lighting Systems, the Motor Vehicle Lighting Council, Truck-Lite, Grote Industries, Hella, Candlepower, Peterson, Harley-Davidson, APC, and the Alliance.

#### 2. Flexibility in Replacement Lamp Configuration

The Alliance, Harley-Davidson, and APC suggested that manufacturers should be permitted flexibility to vary the configuration of functions in a given

lamp set (*i.e.*, through relocation, regrouping, separation, or reconfiguration) and should not be tied to the placement decision of the OE manufacturer. In contrast to the proposed interpretations that focus on an individual lamp, the Alliance and APC encouraged the agency to evaluate a set of lamps for compliance with FMVSS No. 108, provided that such lamps are sold to consumers in sets.

To the extent that the draft interpretations called for replacement equipment to comply with the standard "in the same manner" as the original equipment being replaced, APC objected, if such interpretation means that the exact location of the reflex reflector must be maintained on the replacement lamp or the reflex reflector must remain in a combination lamp, rather than providing a separate reflex reflector. APC stated that requiring aftermarket manufacturers to "clone" the design of OE manufacturers not only imposes unnecessary design restrictions for replacement lamps but also prevents vehicle owners from ever upgrading to new, improved lighting technology.

Harley-Davidson stated that styling is an extremely important consideration, and aftermarket lighting helps the vehicle owner express that person's unique individuality. It argues that such benefits can be achieved without sacrificing legitimate safety concerns, provided that the manufacturer "stays within certain, fairly reasonable parameters (such as minimum and maximum lamp height and lens area)." Harley-Davidson urged NHTSA to leave the decision of actual design and placement of equipment to the manufacturer, provided it meets certain performance requirements, rather than requiring exact duplication of the original equipment.

The Alliance stated that a replacement lamp set should not be required to distribute and locate all required functions in the same manner as in the OE lamp. The Alliance argued, "If manufacturers could not separate functions in replacement lamp sets and configure those sets differently for different world markets, manufacturers would be required to develop a 'U.S.-only' replacement lamp, increasing consumer costs and depriving manufacturers of the benefits of a 'performance' standard."

A number of commenters addressed the issue raised by Calcoast related to the specific requirements for placement of rear reflex reflectors, and whether such required functions can be moved inboard of their position on the original equipment. Specifically, Table IV of FMVSS No. 108 requires that such

<sup>5</sup> Commenters included: (1) the Alliance of Automobile Manufacturers (Alliance), (2) the Truck Trailer Manufacturers Association (TTMA), (3) the Harley-Davidson Motor Company (Harley-Davidson), (4) Automotive Lighting, (5) Maxzone, (6) Osram Sylvania Products, Inc., (7) the Motor Vehicle Lighting Council, (8) Truck-Lite Co., Inc., (9) American Products Company (APC), (10) Grote Industries, LLC, (11) Hella KG Hueck & Co. (Hella), (12) Valeo Sylvania, (13) Candlepower, Inc., (14) Valeo Lighting Systems, (15) Douglas Dynamics, L.L.C., (16) the Transportation Safety Equipment Institute (TSEI), (17) Sound Off, Inc., (18) Sierra Products, Inc., (19) the National Truck Equipment Association (NTEA), (20) the Automotive Aftermarket Industry Association (AAIA), (21) Peterson Manufacturing Company (Peterson), (22) Trainon, Snowdon, & Deane, P.C., (Trainon), (23) the Specialty Equipment Market Association (SEMA), (24) the American Trucking Associations (ATA), and (25) the Sport Utility Vehicle Owners of America (SUVOA). There were also two anonymous comments from individuals.

reflectors be spaced "as far apart as practicable." The comments submitted by the Alliance are illustrative. The Alliance argues that the standard permits such design flexibility and that the agency has never enforced such requirement literally. In support of its point, the Alliance quotes from our May 6, 1997 letter of interpretation to Marcin A. Gorzkowski, which states, "all front and rear lighting equipment required to be provided in pairs must be located 'as far apart as practicable.'" Literal compliance with this requirement could mean that lamps and reflectors would have to be stacked vertically at the extreme edges of a vehicle. But we have never sought to enforce the location requirements of Standard 108 in that manner." The Alliance stated that NHTSA should continue to provide vehicle and lighting manufacturers discretion regarding the placement of required functions, or alternatively, the Alliance stated that the agency should undertake rulemaking if there is a need to more objectively specify the location of reflex reflectors or any other paired lighting equipment.

Candlepower recommended "adopting dimensionally-explicit specifications for the allowable mounting locations of devices and functions" in order to resolve the issue of relocation/regrouping of functions. Specifically, Candlepower referenced the draft United Nations Economic Commission for Europe (ECE) Proposed Draft Amendment for a Global Technical Regulation (GTR) for the installation of lighting and light-signaling devices (ECE-R48H).

### 3. Discouragement of New Technologies

Several commenters stated that by interpreting S5.8.1 as requiring replacement lighting to comply with the standard in the same manner as the original equipment, NHTSA would retard or prevent the emergence of new technologies that may be both more economical and have better performance (e.g., improve vehicle conspicuity and driver night vision). Such arguments were raised by Automotive Lighting, SUVOA, TTMA, Grote Industries, Candlepower, Sound Off, Inc., AAIA, Peterson, and the Alliance.

The Alliance argued that aftermarket manufacturers should be permitted to offer replacement headlamps for a vehicle that use a different type of light source than that used by the OE manufacturer. For example, the Alliance argued that it should be possible to replace a vehicle's original high intensity discharge (HID) head lamps with less expensive halogen lamps, as long as the vehicle continues to meet

the photometric and other requirements of FMVSS No. 108 for those replacement lamps.

In contrast to such situations where the entire lamp is replaced, the Alliance acknowledged that it would be impermissible to sell and install light sources or light source/socket combinations different from those designed for the original lamp. More specifically, the Alliance stated that it does not support modification kits that would override designs intended to ensure noninterchangeability of incompatible bulbs (per 49 CFR part 564, *Replaceable Light Source Information*); however, it suggested that NHTSA should deal with such cases through enforcement actions or a narrowly focused interpretation.

Hella sought to make a distinction in the requirements for "replacement lamps" which are designed solely for repair purposes (for which Hella would support the proposed interpretations) and "aftermarket lamps" which are designed to improve lighting performance (for which Hella would oppose the proposed interpretations).

### 4. Discontinued Parts

Harley-Davidson commented that sometimes OE parts used on vehicles are discontinued by the parts manufacturer. When this occurs, consumers must find an equivalent and compliant substitute. Harley-Davidson argues that under NHTSA's proposed interpretation, vehicle owners may be faced with a choice of replacing a lighting component with a non-compliant part or prematurely removing the vehicle from service.

### 5. Recommended Exclusion for Heavy Vehicles

The ATA requested that heavy vehicles be excluded from the requirement that replacement lighting be certified in the same manner as the original equipment, because commercial vehicles are designed with a high degree of commonality and standardization. According to ATA, such vehicles have electrical and lighting systems that follow proven industry guidelines, standards, and recommended practices established by the Society of Automotive Engineers<sup>6</sup> (SAE), The Maintenance Council (TMC), and the

<sup>6</sup> ATA referenced the following SAE standards related to lighting: J163 (Low Tension Wiring and Cable Terminals and Splice Clips); J2202 (Heavy-Duty Wiring Systems for On-Highway Trucks); J2174 (Heavy-Duty Wiring Systems for Trailers); J1128 (Low Tension Primary Cable); J2030 (Heavy-Duty Electrical Connector Performance Standard), and J2139 (Tests for Signal and Marking Devices Use on Vehicles 2032 mm or More in Overall Width).

Commercial Vehicle Safety Alliance (CVSA). As a result, ATA stated that commercial vehicles are designed to accept replacement lighting designed for a variety of vehicles.

TTMA, making the same arguments about trailers, recommended excluding vehicles with a gross axle weight rating (GAWR) of more than 10,000 pounds or with an overall width of 80 inches or wider. Truck-Lite and Peterson also stated that heavy vehicles are distinguishable from passenger vehicles, in that heavy vehicles are compatible with a various types of replacement lighting.

NTEA expressed concern about trucks that are converted to snow plows, which because of their purpose, require vehicle lighting to be relocated using aftermarket equipment.

SEMA, by contrast, argued that treatment of light and heavy vehicles under FMVSS No. 108 should remain unified. SEMA recommended that replacement lighting for all weight classes be required to conform to the standard, but without a requirement for that equipment to be certified in the same manner as the OE lighting.

### 6. Other Issues

Several commenters (Osram Sylvania, APC, Peterson, TSEI, Trainum, Harley-Davidson, and the Alliance) argued that the proposed interpretations are inconsistent with the current regulatory requirements, and that the agency would need to conduct rulemaking under the Administrative Procedure Act<sup>7</sup> (APA) in order to impose such requirements, rather than rely on the interpretive process. Trainum stated that adoption of the proposed interpretation letters, which tie the design of aftermarket lighting equipment to that of the original equipment, would result in an unconstitutional delegation of agency authority to vehicle manufacturers; according to Trainum, even if such delegation were permissible, the manner in which NHTSA proceeded (*i.e.*, through the interpretive process) denies affected parties due process under the APA.

Trainum and SEMA suggested that, presuming NHTSA's intent is to limit the proliferation of replacement lighting equipment that does not comply with FMVSS No. 108, the agency should pursue that objective through vigorous enforcement (*e.g.*, use of recalls), rather than a restrictive interpretation of S5.8.1. The Alliance also argued that enforcement action is the appropriate mechanism for the agency to deal with

<sup>7</sup> 5 U.S.C. 551 *et seq.*

noncompliant lighting equipment, and, furthermore, the Alliance stated that it does not know of any safety need to prevent new technologies from entering the replacement lighting marketplace. SEMA stated that a design-based system would require local and State law enforcement officials to know the details of approved designs.

The Alliance commented that the risk of overloading the vehicle's electrical system or causing a fire "is not inherent to whether the light source matches the one selected by the vehicle manufacturer but rather is a function of proper circuit design and protection and robust lamp design." It did caution, however, that light sources that impose a larger electrical load than the original, or that modify the original electrical architecture may present a risk of overloading the vehicle electrical system. It also indicated that a smaller electrical load than the OE light sources could render inoperative the vehicle's compliance to S5.5.6 of the standard regarding turn signal lamp outage indication. The Alliance stated that any such compatibility problems should be treated as a safety defect.

Several commenters (*e.g.*, Osram Sylvania, APC, the Alliance) argued that the proposed interpretations would impose unnecessary design restrictions on aftermarket lighting manufacturers in contravention of the Safety Act's requirement that NHTSA promulgate performance standards. Some of these commenters stated that NHTSA lacks authority to impose such restrictions. SEMA stated that a design-based standard requirement could discriminate against certain technologies and companies, particularly those with fewer resources. Others argued that the approach taken in the proposed interpretations would stifle innovation in the lighting industry and reduce competition.

The Alliance and Trainum argued that NHTSA's recent interpretations to Mr. Watt and Mr. Chen and its proposed interpretations to Calcoast are inconsistent with prior agency interpretations stating that replacement lighting is permissible so long as it meets the requirements of FMVSS No. 108 (*see* letters of interpretation to Shlomo Zadok<sup>8</sup> (August 20, 1996), Eric Williamson<sup>9</sup> (April 8, 1998), and the Department of California Highway Patrol<sup>10</sup> (February 2, 1977)).

The Alliance also stated that the proposed interpretations responding to Calcoast are ambiguous in requiring replacement lighting to comply with the standard "in the same manner" as the original equipment. The Alliance stated, "Even if a replacement lamp was designed with the same light source, the same styling and the same materials as the original lamp, it is likely to comply 'in a different manner' than the original lamp, due to variations in bulbs, lenses and other components. If the proposed interpretations would require the replacement lamps to have identical photometric output as the original lamps, that is an impossible compliance burden."

According to numerous commenters (Valeo Lighting Systems, APC, Sound Off, Inc., AAIA, Peterson, TSEI, Trainum, SEMA, Harley-Davidson, and the Alliance), implementation of the proposed interpretation letters would cause severe economic harm to manufacturers of aftermarket lighting equipment and could drive many such manufacturers out of business. In addition, it was argued that a requirement that replacement lighting equipment be certified in the same manner as the original equipment would allow vehicle manufacturers to monopolize the design of light sources. In addition, TSEI stated that the proposed interpretations may cause aftermarket lighting manufacturers to encounter patent infringement problems *vis-à-vis* the OE manufacturers. Commenters further stated that the above could result in decreased competition and increased prices for consumers.

Some commenters (SUVOA, APC, Valeo Sylvania, and the Alliance) stated that consumer choice would be diminished as a result of the draft interpretations, as car enthusiasts would have fewer options for customizing their vehicles with replacement lighting.

The Alliance also commented that the draft interpretations, if adopted, would set an unfavorable precedent for other types of replacement equipment (*e.g.*, replacement tires, glazing, brake hoses, and brake fluid), which are currently required to simply meet the requirements of the relevant FMVSS.

In lieu of the approach presented in the proposed interpretations, TSEI suggested that NHTSA should consider: (1) requiring that lamps be marked to indicate all of their included functions, and (2) requiring lamps using replaceable bulbs to be marked with the bulb type designation. TSEI stated that such marking requirements would enable installers (and State inspectors) to identify which functions are included

as part of the original and replacement equipment.

### Our Interpretation

After consideration of the public comments, we have decided to make some modifications in our interpretation of S5.8.1, dealing with replacement lighting equipment, as articulated in the draft interpretations to Calcoast.

We note that in stating in our draft interpretation that replacement equipment must comply with FMVSS No. 108 "in the same manner" as OE equipment, we were not intending to imply that replacement equipment must be exactly the same in every aspect of design as the OE equipment. We used that language as part of explaining our tentative view that S5.8.1 requires replacement lamps to use the same type of light source, meet the same applicable photometry requirements, be of the same color, and have all the same required functions as the original lamp. We agree with the commenters that the language "in the same manner" could be considered ambiguous and will not use that phrase further.

As indicated earlier, paragraph S5.8.1 of FMVSS No. 108 provides that, "Except as provided below, each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies shall be designed to conform to this standard."

Given S5.8.1's language applying its requirements to "each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment," under the existing language this requirement applies to each individual replacement lamp or other item of replacement equipment and not to sets of equipment. However, as explained below, we believe that it would be appropriate to consider the compliance of pairs of replacement lamps in certain circumstances and plan to conduct rulemaking during 2005 that will propose to amend FMVSS No. 108 to that effect.

### Discussion

#### 1. Retention of Required Functions

In designing an item of replacement lighting equipment to conform to FMVSS No. 108, one important consideration is that the item of equipment must incorporate all required functions of the original equipment it is designed to replace. Otherwise, installation of the item of equipment, as designed, would take the vehicle out of compliance with the standard.

<sup>8</sup> See <http://www.nhtsa.dot.gov/cars/rules/interps/files/12247.ztv.html>.

<sup>9</sup> See <http://www.nhtsa.dot.gov/cars/rules/interps/files/17258.ztv.html>.

<sup>10</sup> See <http://www.nhtsa.dot.gov/cars/rules/interps/gm/77/77-1.15.html>.

Moreover, we do not believe it can reasonably be argued that a lamp or other item of replacement lighting equipment that takes a vehicle out of compliance with FMVSS No. 108 can be said to have been "designed to conform to" the standard.

If the item of equipment being replaced also includes other non-required features, it would be left to the discretion of the lighting manufacturer as to whether to include these additional functions in the item of replacement equipment. The same reasoning would apply to an aftermarket manufacturer that wishes to provide additional optional functions in an item of replacement equipment that were not present in the OE equipment.

### 2. Location of Required Functions

Another issue raised by Calcoast's letter is how compliance of replacement equipment with FMVSS No. 108 is assessed with respect to location requirements. In our draft interpretation, we stated that because FMVSS No. 108 requires rear reflex reflectors to be "as far apart as practicable," an aftermarket product that moves the reflex reflectors closer together would not conform to the requirements of the standard, since the OE equipment's placement was clearly practicable to achieve.

We have considered the argument made by some commenters, including the Alliance, that replacement lamp manufacturers should have flexibility in this area. However, given the language of the standard, we do not believe it would be appropriate to change our interpretation in this area.

In particular, while there may be questions of fact in some situations as to what constitutes "as far apart as practicable" in the context of OE lighting, such questions are narrower for aftermarket lighting manufacturers. This is because the placement of the OE lighting sets a baseline for what is practicable. Again, an aftermarket product that moves the reflex reflectors closer together would not conform to the requirements of the standard, since the OE equipment's placement was clearly practicable to achieve.<sup>11</sup>

### 3. Use of Alternative Light Sources

Under our revised interpretation, replacement lighting (other than headlamps) may utilize a different type of light source than that of the original equipment lighting, provided that the replacement lighting equipment meets

the requirements of the standard and does not take the vehicle out of compliance. This interpretation supersedes our February 4, 2002 interpretation to Mr. Daniel Watt. With respect to replacement headlamps, however, we adhere to our March 13, 2003 interpretation to Mr. Galen Chen, *i.e.*, headlamps manufactured to replace OE headlamps must comply with all applicable photometry requirements using the replaceable light sources intended for use in the headlighting system on the vehicle for which the replacement headlamp is intended. Unlike other lamps, FMVSS No. 108 specifically regulates headlamp systems including their light sources.<sup>12</sup>

We note that we had been concerned that certain different light sources could be incompatible with a vehicle's electrical system, and could lead to fires or other safety problems. Information provided by the commenters, especially the Alliance, leads us to believe that vehicles' electrical systems may not always safely accommodate different types of light sources in replacement signal lamps that meet the performance requirements of FMVSS No. 108. We expect, of course, that replacement lighting manufacturers would keep in mind the potential limitations of a recipient vehicle's electrical system when designing replacement lighting to be used on that vehicle.

We also recognize that there is a possibility of consumer confusion related to replacement bulbs for replacement lamps that differ from those originally installed on the vehicle. We note, in this regard, that Calcoast asked how consumers should be informed of such changes. We anticipate that manufacturers of replacement equipment would provide all necessary adapters, light sources, and instructions that would enable consumers to properly use the equipment. To the extent that they did not do so, we would evaluate compliance with the light source(s) that were provided with the OE lamps that the replacement lamps are designed to replace.

### 4. Determination of Compliance for Replacement Lamp Sets

Calcoast raised the issue of how compliance with FMVSS No. 108 is assessed when a required function is moved from one lamp to another lamp and the lamps are sold in sets. In the Calcoast example, a required reflex reflector migrated from the fender mount lamp (the location in the OE lamp) to the decklid mount lamp. If compliance is determined based on

individual lamps, this type of change is obviously not permitted, since replacement of the fender mount lamp alone would result in the loss of a required function.

The issue of whether compliance is determined based on individual lamps versus sets of lamps has implications well beyond situations where a required function is moved from one lamp to another. FMVSS No. 108 requires most front and rear mounted lighting equipment to be "at the same height" when more than one item is required, and to be of the same color. If compliance is determined based on individual lamps, this has the practical effect of preventing manufacturers of replacement equipment from making any changes in the height or color<sup>13</sup> of these items, even if the OE manufacturer could have done so.

We note that the agency adopted S5.8.1 at a time when replacement lighting equipment was very similar to OE equipment and expected to remain so, *i.e.*, the purpose of replacement equipment was to replace broken or worn-out equipment. Now, however, a market has developed where manufacturers produce "restyled" lamps to enable consumers to customize the appearance of their vehicles.

As indicated above, we have concluded that S5.8.1's language that "each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies shall be designed to conform to this standard" requires compliance to be determined based solely on the properties and characteristics of the individual lamp or combination lamp and not of sets of lamps. Moreover, it is possible that a consumer might replace only a single lamp, even if the lamps are only sold in pairs.<sup>14</sup>

However, after careful consideration of this issue, we have decided to initiate rulemaking to amend FMVSS No. 108 to address issues related to restyled replacement equipment. In particular, we plan to propose to amend the

<sup>13</sup> We note that OE manufacturers can choose amber or white color for parking lamps, and red or amber color for rear turn signals.

<sup>14</sup> We note that the agency has never sought to enforce the location and color requirements for restyled lamps sold in pairs where each lamp contains all of the functions of the lamp it replaces and a vehicle would meet the location and color requirements with the pair of lamps installed. We have also never enforced the "as far apart as practicable" requirement literally against vehicle manufacturers and would not be inclined to do so against manufacturers of replacement equipment as long as the result was one that we would have permitted the vehicle manufacturer to utilize.

<sup>11</sup> Since each lamp must comply, moving a required function inboard would also cause the spacing to be different if only one replacement lamp were installed.

<sup>12</sup> See S7.1, S7.5, and S7.7.

standard so that for lamps (other than headlamps) sold in pairs where each lamp contains all of the functions it replaces, compliance with location and color requirements would be determined based on the pair of lamps rather than the individual lamp, as long as the instructions to the purchaser make it clear that both lamps must be installed together.

We believe that a complete prohibition of any change in location or color is unnecessarily design-restrictive. We also recognize that, in the case of restyled lamps sold in pairs, consumers generally purchase the lamps to customize their vehicles. Consumers are unlikely to replace only one of a pair of lamps in this situation, since it would give their vehicles an odd, unbalanced appearance.

Pending completion of this rulemaking action, we will not enforce the location and color requirements for replacement lamps sold in pairs where each lamp or combination lamp contains all of the functions of the lamp it replaces and a vehicle would meet the location and color requirements with the pair of lamps installed.

We do not intend to propose to permit required functions to be moved from one lamp to another lamp, as in the Calcoast example, even if the lamps are sold in sets. Therefore, we may take enforcement action, as appropriate, with respect to such equipment.

This situation is not comparable to the one discussed earlier. There is a greater chance that a consumer may not use all of the lamps in such a replacement set, since the use of only some of the lamps would not necessarily give the vehicle an odd, unbalanced appearance. For example, if a replacement lamp set consisted of four lamps across the rear of a vehicle, a consumer might replace only the outer lamps.

In addition, the safety consequences of a consumer not using all of the lamps would be much greater. In the case for which we intend to initiate rulemaking, the failure of a consumer to install both lamps could result in required functions being at different heights or having different colors on opposite sides of the vehicle. In this other case, however, a required safety function would be lost altogether.

##### 5. Large Vehicles

Our interpretation of S5.8.1 applies to all covered vehicles, regardless of vehicle size. Because that section does not make a distinction based upon vehicle size, we believe it would be inappropriate to have different

interpretations of that provision based upon vehicle size.

We recognize, however, that the part of our interpretation about replacement lighting equipment not taking a vehicle out of compliance with FMVSS No. 108 is likely to have a more limited application to aftermarket lighting equipment for large vehicles (those whose width is 2032 mm (80 inches) or more) than to small vehicles. The specific context of the questions asked by Calcoast was aftermarket combination lamps for small vehicles, such as passenger cars. These lamps are typically designed for specific models and can only be installed on those models in the same location as the lamps they replace. In this type of situation, the issue of whether installation of the lamp will take a vehicle out of compliance with FMVSS No. 108 (e.g., by not including a required function that was present on the lamp being replaced) is relatively straightforward.

However, for large vehicles, lighting equipment is often generic and not designed for specific models. Truck-Lite, for example, commented that it sells many kinds of lighting devices through catalog sales to hundreds of vehicle manufacturers whose equipment it has no way of knowing about. Our interpretation was not intended to suggest that the manufacturer of generic lighting equipment has the responsibility for ensuring correct selection and installation of its equipment. On the other hand, under our interpretation, a manufacturer of aftermarket lighting equipment could not design or recommend lighting equipment for a specific vehicle if installation of the equipment (assuming it was done correctly) took a vehicle out of compliance with FMVSS No. 108.

Issued on October 1, 2004.

**Jacqueline Glassman,**  
*Chief Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. MC-F-21007]

#### **CUSA RAZ, LLC d/b/a Raz Transportation Company—Acquisition of Assets and Business Operations—Raz Transportation Company**

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice tentatively approving finance transaction.

**SUMMARY:** CUSA RAZ, LLC d/b/a Raz Transportation Company (CUSA RAZ or Applicant), a noncarrier, has filed an application under 49 U.S.C. 14303 to acquire the assets and business operations of Raz Transportation Company (MC-153581) (Raz or Seller). Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

**DATES:** Comments must be filed by November 22, 2004. Applicant may file a reply by December 7, 2004. If no comments are filed by November 22, 2004, this notice is effective on that date.

**ADDRESSES:** Send an original and 10 copies of any comments referring to STB Docket No. MC-F-21007 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, send one copy of any comments to applicant's representative: Stephen Flott, Flott & Co. PC, P.O. Box 17655, Arlington, VA 22216-7655.

**FOR FURTHER INFORMATION CONTACT:** Eric S. Davis, (202) 565-1600. (Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.)

**SUPPLEMENTARY INFORMATION:** CUSA RAZ is a new company wholly owned and created by CUSA, LLC (CUSA) to undertake this transaction. CUSA is a noncarrier which controls over 20 Federal Motor Carrier Safety Administration (FMCSA) registered motor passenger carriers, and, in turn, is wholly owned by KBUS Holdings, LLC (KBUS), a noncarrier. KBUS acquired control of over 30 motor passenger carriers formerly owned by Coach USA, Inc., and then consolidated those entities into the motor passenger carriers now controlled by CUSA.<sup>1</sup> These carriers operate more than 1,000 coaches and 600 other revenue vehicles in 35 states. Annual revenues for the companies controlled by CUSA for 2004 are forecast to be \$220 million.

Applicant has entered into an agreement with Raz to buy Raz's assets, including vehicles, and its business operations. CUSA RAZ has an application pending with FMCSA to obtain contract and common carrier operating rights. Once this transaction is consummated, the Federal operating authority currently held by Seller will be surrendered.

<sup>1</sup> See *KBUS Holdings, LLC—Acquisition of Assets and Business Operations—All West Coachlines, Inc., et al.*, STB Docket No. MC-F-21000 (STB served July 23, 2003).