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GENERAL COUNSEL'S CORNER

by Kim Mann, NATM General Counsel

I. NHTSA Creates Light At the End of the Tunnel for "Rear Lights."

Dick Klein's "Engineer's Corner" article in the December 2005/January 2006 *TRACKS* discusses the dilemma many trailer manufacturers of small utility trailers, particularly landscape-type trailers, face when installing lamps on the "rear" of their trailers. As he points out, while NHTSA's FMVSS No. 108 literally requires these stop, turn, and tail lamps be located "on the rear" of the trailer, he doubts whether NHTSA truly insists they be placed on the rear and not on the sides of the trailer near the rear and facing the rear.

Apparently, the folks at NHTSA have been reading Dick's mind. As a New Year's present to Dick and NATM, NHTSA, in a *Federal Register* notice of December 30, 2005, proposes to revise its FMVSS No. 108 to make clear that "rear" lamps do not literally have to be installed on the rear as long as they meet all applicable performance requirements for photometry, luminosity, and visibility. NHTSA's proposed revision includes a new paragraph, S6.1.3 *Mounting Location and Height*, stating that each lamp and reflective device must be mounted ". . . in a location where it complies with all applicable photometric requirements, effective projected luminous lens area requirements, and visibility requirements with all obstructions considered." The translation of this "legalese" appears to be that "rear" lamps legally may be installed on the sides of trailers as long as they meet all applicable performance-based requirements of photometry, luminosity, and visibility. Dick's article in the last issue discusses in detail the visibility requirements.

Even though new S6.1.3 represents only a proposed change and is not final, I would argue that NHTSA's position stated there represents NHTSA's current interpretation of No. 108. According to the *Federal Register* notice, the proposed amendment to FMVSS No. 108 makes no substantive change in the lighting standard, neither diminishing nor expanding current lighting requirements. In other words, it is intended only as a clarification of existing requirements.

To the extent Virginia or any other state has on the books a state law addressing where "rear" lamps may be installed on trailers and that state law is different from the new NHTSA interpretation, that state law is of no force and effect. The federal standard, FMVSS No. 108, as interpreted by NHTSA, preempts all inconsistent state laws even if they are more stringent than the federal standard.

II. Surge Brake Opposition

On December 6, 2005, the Surge Brake Coalition submitted its 18-page Comments to the Federal Motor Carrier Safety Administration ("FMCSA") in support of the proposed rule-change the Coalition had requested FMCSA to initiate. This change, if adopted, will revise FMCSA's safety regulation, 49 CFR § 393.48, to permit the use of surge brakes on trailers with GVWRs over 10,000 lbs. operated in interstate commerce when used in certain trailer-tow vehicle combinations. NATM, along with the American Rental Association, the National Marine Manufacturing Association, and some 15 other organizations and companies, joined together to form the Coalition to petition

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