



Soft Lights
Foundation

Light should guide us, not blind us.

July 25, 2026

VIA EMAIL

Eli Wachtel, Attorney Advisor
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National Highway Traffic Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590
interpretations.nhtsa@dot.gov

Re: Request for Confirmation — Application of FMVSS No. 108's Steady-Burning Requirement for Auxiliary Warning Lamps Following Brake Plus NWA, Inc. v. Department of Transportation

Dear Mr. Wachtel:

I write on behalf of the Soft Lights Foundation to request written confirmation of NHTSA's position regarding the steady-burning requirement for auxiliary warning lamps under 49 C.F.R. § 571.108 (FMVSS No. 108), S6.2.1, following the Eighth Circuit's May 18, 2026 decision in *Brake Plus NWA, Inc. v. Department of Transportation*, No. 24-2951 (8th Cir.).

In *Brake Plus NWA*, the Eighth Circuit held that NHTSA's interpretation letters construing FMVSS No. 108's steady-burning requirement for auxiliary lamps constitute final agency action under the two-part test of *Bennett v. Spear*. That holding followed NHTSA's own consistent position, reaffirmed in interpretation letters dated June 27, 2024 (Interpretation No. NCC-231121-001, to Richard Seoane of Veoneer) and December 13, 2024 (Interpretation No. NCC-241023-001, to the Transportation Safety Equipment Institute and the Truck Trailer Manufacturers Association), that “NHTSA has long interpreted FMVSS No. 108 to require that all auxiliary lamps be ‘steady burning,’ with the sole exception of auxiliary lamps that supplement required lamps that flash, such as turn signals.”

What We Are Asking NHTSA to Confirm

We ask NHTSA to confirm two things in writing.

First, whether any of the following vehicle categories have been exempted from NHTSA's steady-burning requirement for auxiliary warning lamps:

- Ambulances
- Fire trucks and fire apparatus
- Police vehicles

- Tow trucks
- Utility service trucks (electric, gas, water, and telecommunications)
- Garbage and refuse trucks
- Motorcycles (law enforcement and civilian)
- School buses
- Commercial trucks
- Construction and road maintenance vehicles
- Security patrol vehicles (non-sworn, private)
- Snowplows and winter maintenance vehicles
- Trailers
- Passenger vehicles
- Multipurpose passenger vehicles
- Cargo vehicles (e.g., UPS and FedEx)
- USPS vehicles
- Airport ground support vehicles
- Commercial buses
- Off-road vehicles
- Golf carts
- Taxis
- Autonomous vehicles
- Recreational vehicles

Second, whether NHTSA's position is that its interpretation letters construing FMVSS No. 108's steady-burning requirement — now confirmed as final agency action by the Eighth Circuit in *Brake Plus NWA* — occupy the field with respect to the permissible activation pattern of auxiliary vehicle lamps, such that the requirement supersedes any state law or regulation purporting to authorize a different activation pattern for auxiliary lamps on the vehicle categories listed above, consistent with 49 U.S.C. § 30103(b)(1) and, in California, Vehicle Code section 26103(c).

The Scope of This Request

We understand that NHTSA defers enforcement of the auxiliary warning lamp steady-burning requirement to the states, as reflected in NHTSA's letters to Col. W. Gerald Massengill (July 3, 2001), Larry Hughson (July 30, 2001), Lt. Col. Steve Flaherty (May 2, 2003), and Carl E. Peterson (March 29, 2007), and we do not question that deference. This letter seeks only to confirm whether NHTSA has issued exemptions from the steady-burning requirement for any category of vehicle.

We recognize that NHTSA's interpretation letters are guidance documents that do not have the force and effect of law and are not meant to bind the public. We ask for this confirmation nonetheless because numerous state and local governments and private parties have taken the position, without citing any NHTSA authority, that FMVSS No. 108's steady-burning requirement does not apply to specific classes of vehicles, including emergency vehicles. A written response addressing the categories above would assist the public, and us directly in

ongoing safety and civil rights discussions and litigation, in evaluating the accuracy of that position.

If NHTSA does not respond to this request within 30 days, we will treat NHTSA's silence as confirmation that no rule, interpretation letter, or formal exemption exists excusing any of the vehicle categories listed above from FMVSS No. 108's steady-burning requirement for auxiliary lamps, and that NHTSA's position, as confirmed by the Eighth Circuit in *Brake Plus NWA*, is that this requirement is a matter of final federal agency action superseding contrary state law.

Thank you for your attention to this request.

Sincerely,

Mark Baker

President

Soft Lights Foundation

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