

December 7, 2007

Tennessee Requirement for a Stamped VIN on Trailers

Question: Whether Tennessee law required the vehicle identification number (VIN) be permanently stamped on the metal tongue or frame of a boat trailer.

Answer: Tennessee law requires that all *new* trailers made in, intended for sale in, and sold in Tennessee have a full VIN “stamped” on the trailer’s metal tongue or metal frame. Tenn. Code Ann. 55-5-106(f). However, the definition of “trailer” under the Tennessee law is modified to include only vehicles “so constructed that no part of its weight rests upon the towing vehicle.” NMMA sought guidance from the Tennessee Department of Safety to determine which trailers, if any, are exempted by this provision. The State replied that it was the intent of the Legislature to apply this law to all trailers, including boat trailers. In addition, this state law is not preempted by the federal National Highway Traffic Safety Administration (NHTSA) VIN regulation that mandates the VIN, its format, and manner of attachment to a trailer. Thus, trailer manufacturers who sell trailers in Tennessee must comply with both the State and Federal law.

In 2004, Tennessee amended its vehicle identification number (VIN) law to add a new requirement that any *new* trailer manufactured in Tennessee or intended for sale to the general public within Tennessee must have “stamped upon such vehicle’s metal tongue or metal frame a vehicle identification number.” Tenn. Code Ann. 55-5-106(f)(1). The new law, effective on December 31, 2004, applies to trailer manufacturers as well as to those selling directly to the general public (*e.g.*, dealers). The vehicle identification number must “not be the same as the vehicle identification number of any other trailer manufactured by the same manufacturer.” In addition, this applies to trailers “designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.”

Before this amendment was enacted, the Tennessee vehicle identification requirements only applied to motor vehicles, freight vehicles and livestock trailers. In the case of passenger cars, manufacturers continue to be allowed to place a VIN in a permanent manner, which includes using any suitable manufacturing process that will result in the number becoming a permanent part of the passenger car or component. This section also references recommended practices approved by the Society of Automotive Engineers as to material, lettering, manufacturing and installation. Tenn. Code Ann. § 55-5-107. While the Tennessee law gives some flexibility for passenger cars, unfortunately, it is very specific in how the VIN must be placed on a trailer. The VIN must be “stamped” on either the “metal tongue” or “metal frame.” In addition, the definition of “trailer” under the Tennessee law is confusing. Trailer is defined to include only vehicles “so constructed that no part of its weight rests upon the towing vehicle.” Since it would be difficult to tow a trailer without some weight being placed on the towing vehicle, NMMA sought guidance from the Tennessee Department of Safety to determine which trailers, if any, are exempted by this exemption. The State replied to NMMA’s inquiry by stating that it was the intent of the legislature to apply this law all trailers, including boat trailers.

As manufacturers are aware, the federal rule provides more flexibility on the method of VIN attachment. The VIN requirements, formerly a National Highway Traffic Safety Administration (NHTSA) Federal Motor Vehicle Safety Standard (FMVSS) and now one of the NHTSA mandatory federal regulations, specify the format and placement of the 17-character VIN. As stated in the federal regulation at 49 C.F.R. § 565.4, the VIN must be “appear clearly and indelibly” and be placed upon either:

- a. a part of the vehicle that cannot be removed except for repair; or
- b. upon a separate plate or label that is “permanently affixed” to such a part.

The Tennessee law is not likely preempted by federal law. In 1984, the NHTSA Chief Counsel prepared an interpretation on a proposed Ohio law that would have required the VIN to be affixed to specific vehicle component parts. The Chief Counsel determined that the federal law did not preempt the proposed law. According to the Chief Counsel, there was no preemption because “[i]n our view, the numbering of parts and components relates to a different aspect of performance than does the single VIN required by [then] Standard No. 115. The numbering scheme contemplated under [the] draft bill would therefore not be preempted.”

The NHTSA Chief Counsel concluded that in order for this finding of no preemption to apply, the bill provisions “must not interfere with the VIN” required under the Standard No. 115. Since the bill did not specify the VIN content, or duplicate the requirements of the VIN standard, NHTSA found that “it would seem that the manufacturers would not be impeded in their efforts to comply with Standard No. 115. They could use the VIN under [NHTSA’s] standard as the VIN for State purposes, and could continue to place the VIN in the location required by [the NHTSA] Standard.” Thus, there would be “no interference with the scheme of Standard No. 115, and no preemption.” The bottom line is that NHTSA found that the manufacturer was capable of complying with both the Federal standard and the proposed state law.

Based on our review of this interpretation, it would appear that NHTSA would come to a similar interpretation of the Tennessee law because a trailer manufacturer could comply with both standards however duplicative. In contrast, NHTSA Federal Motor Vehicle Standards enjoy a much stronger type of preemption, which is why a state can only adopt provisions that are identical to the FMVSS standards. Unfortunately, In 1996 NHTSA moved the VIN requirements from being FMVSS No. 115 to be a mandatory regulation. Therefore, because the VIN requirement was changed from being a safety standard to a regulation it is likely that NHTSA would not be able to rely upon this provision and would not find preemption.¹

NMMA urges members to be aware of the requirements under Tennessee law. For additional information please contact Cindy Squires, Esq. NMMA’s Chief Counsel for Public Affairs and Director of Regulatory Affairs (202-737-9766; csquires@nmma.org). Attached for your information are the two relevant sections of the Tennessee Code and a description of the Federal VIN requirements.

¹ Under federal law, 49 U.S.C. § 30103(b), when NHTSA adopts a federal safety standard it preempts any state law that is not identical to the federal safety standard.

“(b) **Preemption.**—(1) When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.....”

“(2) A State may enforce a standard that is identical to a standard prescribed under this chapter.”

Tennessee Code -- Title 55. Motor and Other Vehicles ; Ch. 5. Anti-Theft Provisions; Part 1. Violations of Title and Registration Law

§ 55-5-106. Identification numbers; definitions

(a) NEW MOTOR VEHICLES, FREIGHT VEHICLES AND LIVESTOCK TRAILERS AND COMPONENTS MANUFACTURED WITHIN THIS STATE. After July 1, 1993, all new motor vehicles, new motor vehicle engines and transmissions, new freight vehicles, and new livestock trailers, as specified herein, and manufactured in this state and intended for sale to the general public within this state, shall be required to have **placed upon** them a vehicle identification number. The required vehicle identification number shall not be the same as the vehicle identification number of any other motor vehicle, freight vehicle or livestock trailer manufactured by the same manufacturer. The vehicle component identification number shall not be the same number as the component identification number for any other like component manufactured by the same manufacturer, but may be the same as the vehicle identification number if the components are installed as original equipment.

(b) NEW MOTOR VEHICLES, FREIGHT VEHICLES AND LIVESTOCK TRAILERS SOLD WITHIN THIS STATE. After July 1, 1993, no new motor vehicle, new freight vehicle or new livestock trailer shall be sold to the general public in this state unless such motor vehicle, freight vehicle or livestock trailer shall bear a vehicle identification number which shall not be the same as the vehicle identification number of any other motor vehicle, freight vehicle or livestock trailer made by the same manufacturer.

(c) NEW COMPONENTS SOLD WITHIN THE STATE. After July 1, 1993, no new motor vehicle component shall be sold to the general public in this state unless the same shall bear an identification number which shall not be the same as the identification number of any other like vehicle component made by the same manufacturer, except that such number may be the same number as the vehicle identification number, if the particular component has been installed as original equipment in the motor vehicle prior to its sale to the general public.

(d) ATTACHMENT. The vehicle identification number required in subsections (a) and (b) shall be easily accessible for inspection.

(e) DEFINITIONS. As used in this section and [§ § 55-5-107--55-5-110](#):

(1) "Component." Each of the following passenger car components shall be considered a part for the purpose of requiring a component identification number: engines and transmissions;

(2) "Freight vehicle" means any vehicle designed to be used on public highways for the purpose of transporting property;

(3) "Livestock trailer" means any vehicle, with or without motor power, designed for carrying livestock, including, but not limited to, horses, and for being drawn by a motor vehicle and so constructed that any part of its weight rests upon the towing vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle;

(4) "Motor vehicle" means any vehicle which is self-propelled and designed to be used on public highways;

(5) "New passenger cars" means any passenger car which has never been the subject of a sale at retail to the general public;

(6) "Passenger car" means every self-propelled motor vehicle designed for carrying ten (10) passengers or less except trackless trolleys, devices moved by human power or used exclusively upon streetcar rails or tracks or overhead trolley wires;

(7) "Person" means any natural or artificial person, firm, corporation, partnership or other association or business relations; and

(8) "Used passenger car" means any passenger car which has been the subject of a sale at retail to the general public.

(f)(1) After December 31, 2004, any new trailer manufactured in this state and intended for sale to the general public within this state shall be required to have stamped upon such vehicle's metal tongue or metal frame a vehicle identification number. The required vehicle identification number shall not be the same as the vehicle identification number of any other trailer manufactured by the same manufacturer.

(2) After December 31, 2004, no new trailer shall be sold to the general public in this state unless such trailer shall bear a vehicle identification number stamped upon such vehicle's metal tongue or metal frame, which shall not be the same as the vehicle identification number of any other trailer made by the same manufacturer.

(3) As used in this subsection (f), "trailer" means every vehicle with or without motive power, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

§ 55-5-107. Identification numbers; placement and form

(a) The identification numbers required by § 55-5-106 shall be placed upon the **passenger car** and components required to be numbered in a permanent manner so that any attempt to remove, alter, deface, obliterate or destroy them will be ascertainable.

(b) The permanent manner required by § § 55-5-106--55-5-110 may be by any suitable manufacturing process that will result in such number becoming a permanent part of the **passenger car** or component. They shall be of a height and width easily readable by the naked eye. They may consist of letters, numbers, digits or any combination of them.

(c) The identification numbers required by [§ 55-5-106](#) may be in accordance with recommended practices approved by the society of automotive engineers as to material, lettering, manufacturing and installation.

(d) The identification numbers required by [§ 55-5-106](#) shall be placed upon the **passenger car** and required component parts by the manufacturer.

Federal Vehicle Identification Requirements for Trailers

The federal National Highway Traffic Safety Administration (NHTSA) regulations for VINs are fairly straight forward and have three major components:

2. The **format** for the VIN is **specified**

3. The VIN must be “appear **clearly** and **indelibly**”
4. The VIN must be placed upon either
 - a. a **part of the vehicle that cannot be removed** except for repair or
 - b. upon a **separate plate or label that is “permanently affixed”** to such a part.

A search of the NHTSA interpretation letter database did not reveal anything that expanded on the language in the regulation about how long the VIN must be visible. You will note below that the word indelible does provide a good indication of what NHTSA’s response, if asked, is likely to be. The text of the regulation follows.

49 C.F.R. § 565.4
CODE OF FEDERAL REGULATIONS
PART 565--VEHICLE IDENTIFICATION NUMBER REQUIREMENTS
Current through November 10, 2005; 70 FR 69032

§ 565.4 General requirements.

- (a) Each vehicle manufactured in one stage shall have a VIN that is assigned by the manufacturer. Each vehicle manufactured in more than one stage shall have a VIN assigned by the incomplete vehicle manufacturer. Vehicle alterers, as specified in [49 CFR 567.7](#), shall utilize the VIN assigned by the original manufacturer of the vehicle.
- (b) Each VIN shall consist of seventeen (17) characters.
- (c) A check digit shall be part of each VIN. The check digit shall appear in position nine (9) of the VIN, on the vehicle and on any transfer documents containing the VIN prepared by the manufacturer to be given to the first owner for purposes other than resale.
- (d) The VINs of any two vehicles manufactured within a 30-year period shall not be identical.
- (e) The VIN of each vehicle shall appear clearly and indelibly upon either a part of the vehicle, other than the glazing, that is not designed to be removed except for repair **or upon a separate plate or label that is permanently affixed to such a part.**
- (f) The VIN for passenger cars, multipurpose passenger vehicles and trucks of 4536 kg or less GVWR shall be located inside the passenger compartment. It shall be readable, without moving any part of the vehicle, through the vehicle glazing under daylight lighting conditions by an observer having 20/20 vision (Snellen) whose eye-point is located outside the vehicle adjacent to the left windshield pillar. Each character in the VIN subject to this paragraph shall have a minimum height of 4 mm.
- (g) Each character in each VIN shall be one of the letters in the set: [ABCDEFGHJKLMNPRSTUVWXYZ] or a numeral in the set: [0123456789] assigned according to the method given in § 565.5.
- (h) All spaces provided for in the VIN must be occupied by a character specified in paragraph (g) of this section.
- (i) The type face utilized for each VIN shall consist of capital, sanserif characters.