Instructions to complete the "Daily Nurse Staffing Form:"

1) Add your facility's name above the title "Facility Name."
2) Add today's date above the title "Today's Date" (for example, Tuesday, June 24, 2003).
3) Add your facility's current resident census above the title "Today's Resident Census."
4) Include your shift hours below the name of each shift (see examples below)

Example for three shifts:

DAY: (7:00 a.m. - 3:00 p.m.)
EVENING: (3:00 p.m. - 11:00 p.m.)
NIGHT: (11:00 p.m. - 7:00 a.m.)

Example for two shifts:

DAY: (7:00 a.m. - 7:00 p.m.)
EVENING: n/a
NIGHT: (7:00 p.m. - 7:00 a.m.)

5) Place the number of FTEs in the space marked "Number" next to the appropriate type of Staff" indicator. To calculate FTEs:

MULTIPLY the number of staff by hours worked.

Ex. 3 RNs work 8 hours each, 2 RNs work 4 hours each
(3x8) + (2x4) = 32 staff hours

DIVIDE the number of staff hours by the number of hours for that shift.

Ex. 32 staff hours/8 hrs = 4 RN FTEs

NOTE: FTEs does **NOT** mean number of nursing staff, although in some cases these numbers may be the same. **DO NOT** include other staff, volunteers, or feeding assistants in number of FTEs reported.

[FR Doc. 04–3732 Filed 2–26–04; 8:45 am]
BILLING CODE 4120–01–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–1998–4369; Notice 1]

RIN 2127–AH75

Federal Motor Vehicle Safety Standards; Rear Impact Guards; Notice of Proposed Rulemaking

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document responds to a petition for rulemaking from Thieman Tailgates, Inc., concerning the Federal motor vehicle safety standard requiring trailers and semitrailers to be equipped with rear impact guards. The petitioner asked us to amend the standard so that it expressly excludes trailers with rear-mounted liftgates that reside in or move through any part of the area specified in the standard for the horizontal member of the rear impact guard. Alternatively, the petitioner asked us to exclude rear impact guards on those trailers from the energy absorption requirements of the equipment standard for rear impact guards.

We are denying both requests. In lieu of proposing either of the requested amendments, we are proposing to specifically exclude trailers with "tuckunder liftgates,'' which consist of a loading platform that operates from its stowed position by swinging out to the rear of the trailer where it may be hydraulically raised and lowered to load heavy deliveries. We are also proposing to amend the definition of "special purpose vehicle'' by adding a more precise description of the cubic area at the rear of the trailer in which work-performing equipment must reside in or move through while the trailer is in transit. Finally, we are proposing to amend the requirements concerning the location of the rearmost surface of the rear impact guard.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than April 27, 2004.

ADDRESSES: You may submit comments (identified by DOT Docket No. NHTSA–1998–4369) by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery : Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. William J. J. Liu, Office of Vehicle Safety Standards, (Telephone: 202–366–2264) (Fax: 202–493–2739).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel, (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to either of these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1996, we published a final rule (61 FR 2003) establishing two Federal Motor Vehicle Safety Standards (FMVSSs) to address the problem of rear underride crashes, in which a passenger car, light truck, or multipurpose vehicle with a Gross Vehicle Weight Rating (GVWR) of 4,536 kilograms (10,000 pounds) or less (referred to collectively as "passenger vehicles'') collides with the rear end of a trailer or semitrailer (referred to collectively as "trailers''), and the front end of the passenger vehicle slides under (*i.e.*, underrides) the rear end of the trailer. Underride occurs when a passenger vehicle crashes into the rear end of a large trailer, and the trailer chassis is higher than the hood of the passenger vehicle. In the worst cases, referred to as passenger compartment intrusion (PCI) crashes, the passenger vehicle underrides so far that the rear end of the trailer strikes and enters the vehicle's passenger compartment. PCI crashes generally result in injuries and fatalities to passenger vehicle occupants due to occupant contact with the rear end of the trailer.

At the publication of the final rule, we estimated that about 11,551 rear-end crashes with trucks and trailers occurred annually. These crashes resulted in approximately 423 passenger vehicle occupant fatalities and about 5,030 non-fatal injuries.

The two standards established by the final rule operate together to reduce the number of injuries and fatalities resulting from rear underride crashes. The first standard (FMVSS No. 223, Rear Impact Guards, or the "equipment standard'') specifies performance requirements that rear impact guards (guards) must meet before they can be installed on new trailers. The standard specifies strength requirements, and test procedures, that are used to demonstrate compliance with the standard. The standard also requires the equipment manufacturers to provide instructions on the proper installation of the guard, and to permanently label the guard certifying that it meets all the performance requirements of the equipment standard.

The second standard (FMVSS No. 224, Rear Impact Protection, or the "vehicle standard'') requires most new trailers with a GVWR of 4,536 kilograms (10,000 pounds) or more be equipped with a rear impact guard meeting the specifications of the equipment standard (FMVSS No. 223). The vehicle standard also specifies requirements for the location of the guard relative to the rear end of the trailer. A rear impact guard must extend outboard to within 100 millimeters (4 inches) of the side extremities of the vehicle, but may not extend beyond the side extremities. The vertical distance from the ground to the bottom edge of the horizontal member of the guard may not exceed 560 mm (22 inches) at any point across the full width of the horizontal member. The guard's rear surface must be located as close as practical to the rear extremity of the vehicle, but no more than 305 mm (12 inches) forward of the rear extremity. Finally, the vehicle standard requires that the guard be mounted on the trailer in accordance with the instructions from the guard manufacturer.

The vehicle standard does not apply to certain types of vehicles: Pole trailers, pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles, and temporary living quarters. A special purpose vehicle is defined as "a trailer or semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard.''

In response to petitions for reconsideration, we published minor amendments to the two standards in the **Federal Register** on January 26, 1998 (63 FR 3654). The standards became effective on that date.

Petition

On June 24, 1998, we received a petition from Thieman Tailgates, Inc., requesting that we amend Standard No. 224 by adding the following to the definition of special purpose vehicle: "Vehicles with rear mounted liftgates that operate by swinging through the area or reside in any part of the area that is designated for the horizontal member of the rear impact guard are excluded.''

Thieman manufactures two basic liftgate designs, tuckunder and rail-type,

both of which can be modified to accommodate a wide variety of trailer models and bed heights. Tuckunder liftgates consist of a loading platform, which operates from its stowed position by swinging out to the rear of the trailer where it may be hydraulically raised and lowered to load heavy deliveries. Tuckunder liftgates are stowed under the body of the trailer while not in use, thus freeing the rear of the trailer for light deliveries and dock operations with elevated bays. Rail-type liftgates consist of a loading platform that typically moves vertically along two permanently mounted rails on the rear of the trailer. With rail-type liftgates, the platform swings up and stows along the rear of the trailer body while not in use.

The petitioner asked us to expressly exclude vehicles equipped with tuckunder and rail-type liftgates from the requirements of Standard No. 224. The petitioner argued that, although the definition of "special purpose vehicle'' is based on the area that should be occupied by the horizontal member of the rear impact guard, Standard No. 224 does not contain a specific definition of that area. As a result, the petitioner claimed, truck equipment dealers are confused as to whether trailers with tuckunder and rail-type liftgates are required to be equipped with rear impact guards, or fall under the "special purpose vehicles'' exclusion. According to the petitioner, a rear impact guard can be installed on some trailers with rail-type liftgates but the liftgate would extend beyond the rear impact guard, possibly rendering it useless in the event of a rear-end collision. The petitioner claimed that if we did not expressly exclude vehicles with tuckunder and rail-type liftgates from the requirements of Standard No. 224, it would lose a significant portion of its annual sales because installers would be unable to mount a liftgate on a trailer and still comply with the standard.

If NHTSA denied petitioner's request to expressly exclude trailers with tuckunder and rail-type liftgates from the rear impact guard requirement, petitioner requested that the agency exclude rear impact guards on trailers with liftgates from the energy absorption requirements of Standard No. 223. The petitioner argued that the energy absorption requirements would be "nearly impossible'' to meet because rear impact guards on trailers with liftgates must be mounted in a manner that allows the guard to swing out of the way when the liftgate is being operated. Thus, the guard must have numerous parts that are required to move freely, causing the guard to "give'' a few inches before deflection starts to occur.

Discussion and Analysis

On January 8, 1981, we issued a Notice of Proposed Rulemaking (NPRM) proposing to adopt requirements to address the problem of rear underride collisions (46 FR 2136). In the NPRM, we proposed to exclude "special purpose vehicles'' from the requirements. We proposed to define a "special purpose vehicle'' as "a truck or trailer having work-performing equipment that is located at the lower rear of the vehicle and whose function would be significantly impaired if an underride guard meeting the requirements of this standard were attached to the vehicle'' (46 FR 2139).

Significantly, the proposed definition did not specify that the work-performing equipment had to reside in or move through the area that could be occupied by the underride guard while the trailer was in transit, as Standard No. 224 currently does. This proposed definition reflected our concern that incorporation of a guard on some vehicles would impair or eliminate the usefulness of rear-mounted, work-performing equipment. We were concerned that requiring rear impact guards on trailers with rear-mounted, work-performing equipment would be both impracticable and an undue burden on manufacturers.

In the 1981 NPRM, we noted our specific concerns regarding the compatibility of guards and trailers equipped with rear-mounted liftgates. We anticipated that many trailers with rear-mounted liftgates would fall within the special purpose vehicle exclusion. However, we desired to further study this issue and encouraged interested parties to comment on it.

We received comments from a number of manufacturers and operators of trailers with rear-mounted liftgates, recommending that their trailers be expressly excluded from the proposed rule by including them in the definition of "special purpose vehicle.'' Several liftgate manufacturers recommended that trailers with rear-mounted liftgates be explicitly excluded from the rule because most liftgates are installed by small businesses after the trailer leaves the trailer manufacturer. They said that it would be very burdensome for small businesses if they had to design liftgates around the guard configuration requirements. Other liftgate manufacturers claimed that guards positioned as required in the final rule would prevent the installation of liftgates. However, one liftgate manufacturer stated that the rail-type liftgate is the most commonly used type of liftgate, and that its liftgate would be compatible with the proposed guard requirements.

The National Truck Equipment Association (NTEA) commented on the 1981 NPRM that trailers equipped with liftgates make up the largest group of special purpose vehicles. The NTEA estimated that 2,500 of the 150,000 trailers built each year are equipped with rear-mounted liftgates, comprising only 1.7 percent of the market. The NTEA assured us that no trailer manufacturer would install liftgates just to manipulate the special purpose vehicle exclusion and evade the guard requirement because liftgates, on average, cost $6,000 each (1981 estimate), much more than guards.

In the January 24, 1996 final rule establishing Standard Nos. 223 and 224, we concurred with the observations made by the liftgate manufacturers regarding the complexities associated with the installation of rear impact guards on trailers with rear-mounted liftgates. We also agreed that the rear impact guard may interfere with the operation of some rear-mounted liftgates. However, we did not think it was necessary to expressly exclude all trailers equipped with liftgates, since the comments indicated that guards were compatible with some rear-mounted liftgates (61 FR 2022).

Consequently, we attempted to define "special purpose vehicle'' to make it clear that trailers with rear-mounted liftgates that operate by swinging through the area that is designated for the rear impact guard would be excluded. In fact, we stated that "vehicles equipped with tuckunder and other types of incompatible liftgates are excluded,'' but vehicles with liftgates that would be compatible with rear impact guards are not.[1]

We believed that if rear-mounted, work-performing equipment, including a liftgate, were detached or stowed out of the area occupied by the rear impact guard while the trailer was in transit, a guard would not impair the equipment. As a result, in the final rule we revised the definition of "special purpose vehicle'' to require that the work-performing equipment reside in or, in order to perform its function, move through the area designated for the rear impact guard while the vehicle is in transit. We stated:

[1] As stated above, one commentor to the NPRM (Anthony Liftgates) stated that its rail-type liftgate would be compatible with a rear impact guard. We have not received any evidence of any specific rail-type liftgates that are not compatible with a guard. Great Dane Trailer Co. installs guards on its trailers equipped with rail-type liftgates by notching the guard so that the rails can slide through the notches when they move down (61 FR 2022).

All that is required to confirm the applicability of the exclusion is a demonstration that the work-performing equipment, while the vehicle is in transit, resides in the area defined by S5.1.1 through S5.1.3 as the guard's horizontal member or passes through that area to perform its function. Therefore, the definition of special purpose vehicle in the rule has been revised to reflect that the foundation of the special purpose vehicle exclusion is the presence of work-performing equipment that resides in or, to perform its function, moves through the area designated for the underride guard while the vehicle is in transit.

(61 FR 2023).

On April 21, 1998, the NTEA sent us a letter saying that the standard is confusing in that it does not specify the area that could be occupied by the horizontal member of the rear impact guard for purposes of determining whether a trailer meets the definition of a "special purpose vehicle,'' and thus is excluded from the standard. On September 9, 1998, we responded with an interpretation letter stating that the area that could be occupied by the horizontal member of the rear impact guard (the "guard zone'') is a three-dimensional space defined as follows:

1. *Width.* The horizontal member may extend laterally as far as the side extremities of the trailer as defined in S4 of Standard No. 224.

2. *Height.* The bottom edge of the horizontal member must be no more than 560 mm above the ground. This is not a minimum guard height; thus, the bottom of the horizontal member theoretically may be as low as the ground, although such a guard would be impractical. The horizontal member must have a vertical height of at least 100 mm. This is not a maximum vertical height; thus, the top of the horizontal member theoretically may extend upward to the bottom of the trailer bed. This combination results in a vertical area that extends from the ground upward to a horizontal plane tangent to the bottom of the trailer.

3. *Depth.* The rearward boundary of the guard zone is the transverse vertical plane tangent to the rear extremity of the trailer as defined in S4 of Standard No. 224. The forward boundary of the guard zone is the transverse vertical plane 305 mm forward of that plane.

We issued this interpretation after we received the Thieman petition. However, we do not believe the interpretation addresses the issues raised in the Thieman petition. Thus, we considered several alternative solutions.

Alternative Solutions

First, as was suggested by petitioners, we considered expressly excluding all trailers with rear-mounted liftgates from the requirements of Standard No. 224. However, we rejected this suggestion for the same reason we rejected it in the final rule: Some liftgate designs clearly are compatible with rear impact guards. If we excluded all trailers equipped with rear-mounted liftgates, some trailers that could and should be equipped with guards would not be required to have them. That result is not consistent with the purpose of Standard No. 224, *i.e.*, improving safety by requiring guards on as many trailers as possible without overburdening small manufacturers or impairing the usefulness of rear-mounted, work-performing equipment.

Second, we considered retaining the "while in transit'' qualifying language in the definition of "special purpose vehicle'' and the definition of "guard zone'' as stated in the September 9, 1998, interpretation letter to the NTEA. This alternative allows us to easily determine whether a trailer equipped with a liftgate is required to have a guard. Specifically, if the liftgate stows completely above the bottom of the trailer while the trailer is in transit (*i.e.*, most rail-type liftgate designs), the trailer is required to have a guard. If the liftgate stows below the bottom of the trailer while the trailer is in transit (*i.e.*, most tuckunder liftgate designs), it is not required to have a guard.

The second alternative bears the same disadvantages as the alternative proposed by Thieman, as it does not result in a logical application of Standard No. 224. Some trailers capable of accommodating a compliant rear impact guard would not be required to have a guard. Conversely, other trailers having significant design constrictions that make incorporation of a compliant guard impracticable because of the operation of rear-mounted, work-performing equipment would nevertheless be required to have a guard.

Third, we considered simply deleting the "while in transit'' qualifying language in the definition of a "special purpose vehicle.'' The advantage of this alternative is simplicity of enforcement. All trailers equipped with liftgates that reside in or move through the guard zone would not be required to have a guard. The disadvantage of this alternative, again, is an illogical application of Standard No. 224. Some trailers capable of accommodating a compliant rear impact guard would not be required to have a guard. As noted above, one liftgate manufacturer stated in comments on the 1981 NPRM that the rail-type liftgate is the most commonly used type of liftgate, and that its rail-type liftgate would be compatible with the proposed rear impact guard requirements.

Fourth, we considered expanding the definition of "special purpose vehicle'' by replacing the "while in transit'' qualifying language with a specific description of the cubic area in which the work-performing equipment would have to reside or move through for a trailer to qualify as a special purpose vehicle. The definition of this area would be similar to the definition provided in the September 9, 1998, interpretation letter to the NTEA.

One advantage of this alternative is that it is objective. If a trailer has work-performing equipment that resides in or moves through the defined area, it is a special purpose vehicle excluded from Standard No. 224. If a trailer has work-performing equipment that does not reside in or move through the defined area, it is not a special purpose vehicle and must comply with Standard No. 224, provided that no other exclusion applies. Another advantage of this alternative is that it is easily enforceable.

However, we are concerned that this alternative would exclude trailers with rail-type liftgates that are compatible with guards. If any part of the work-performing equipment, including a simple strut or support, resided in or moved through the defined area, the trailer would be excluded from the guard requirements. As previously stated, we have evidence that guards can be installed on trailers with rail-type liftgates without interfering with the operation of the liftgate.

Finally, we considered expressly excluding trailers with tuckunder liftgates from the standard and amending the definition of "special purpose vehicle'' to alleviate any confusion with respect to which vehicles qualify for the special purpose vehicle exclusion. The advantage of this alternative is that it follows our original intent as stated in the final rule establishing Standards No. 223 and 224. In the final rule, we stated that "vehicles equipped with tuckunder and other types of incompatible liftgates are excluded,'' but vehicles with liftgates that would be compatible with rear impact guards are not (61 FR 2022). This alternative allows us to specifically exclude only trailers with tuckunder liftgates, and not trailers with rail-type liftgates that can accommodate a rear impact guard.

To further clarify the "special purpose vehicle'' exclusion, the definition of the "special purpose vehicle'' would be revised to exclude trailers with other types of rear-mounted, work-performing equipment that would be incompatible with a guard. Specifically, the new definition of the "special purpose

vehicle'' would include a more precise description of the cubic area at the rear of the trailer in which the work-performing equipment must reside in, or move through, while the trailer is in transit.

We believe that this fifth alternative results in the most logical application of Standard No. 224. This alternative best addresses our safety concerns associated with rear underride collisions by assuring that trailers capable of accommodating rear impact guards are not excluded from the requirements of FMVSS No. 224. Further, specific exclusion of trailers with tuckunder liftgates will not impair the usefulness of such trailers or overburden small manufacturers.

As previously stated, we believe that trailers equipped with tuckunder liftgates should be excluded from the FMVSS No. 224 because a guard would interfere with the operation of the liftgate. We note that since tuckunder liftgates are stowed under the body of the trailer while the trailer is in transit, they may provide some protection from underride in the event of a crash. These arguments do not apply to trailers equipped with rail-type liftgates. A guard does not interfere with the operation of the rail-type liftgate. Rail-type liftgates offer no protection from underride in the event of a crash. Thus, we believe trailers equipped with a tuckunder liftgate should be excluded from the standard, while trailers equipped with a rail-type liftgate should not.

Proposed Rule

Accordingly, we are proposing to exclude trailers equipped with tuckunder liftgates from the standard. The application section of Standard No. 224 would be revised to read as follows:

S3. *Application.* This standard applies to trailers and semitrailers with a GVWR of 4,536 kg or more. The standard does not apply to pole trailers, pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles, vehicles equipped with tuckunder liftgates, or temporary living quarters as defined in 49 CFR 523.2 * * *

A definition of "tuckunder liftgate'' would be added to S4 as follows:

Tuckunder liftgate means an item of work-performing equipment consisting of a loading platform that operates from its stowed position by swinging out to the rear of the vehicle where it may be hydraulically raised and lowered and, while the vehicle is in transit, resides completely between the unaltered vehicle's rear-most axle and rear extremity, as defined in S4 of this section, and beneath a horizontal plane 1,500 mm from the ground.

NHTSA requests comments on the tuckunder liftgate definition and the height requirement.

The definition of "special purpose vehicle'' would be revised to read as follows:

Special purpose vehicle means a trailer or semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through any portion of the cubic area extending: (1) Vertically from the ground to a horizontal plane 660 mm above the ground; (2) laterally the full width of the trailer, determined by the trailer's side extremities as defined in S4 of this section; and (3) from the rear extremity of the trailer as defined in S4 of this section to a transverse vertical plane 305 mm forward of the rear extremity of the trailer.

The cubic area (as defined in this proposal) in which work-performing equipment would have to reside in or move through for a trailer to qualify as a special purpose vehicle differs from the area in which the horizontal member of a rear impact guard must reside, as defined by S5.1.1 through S5.1.3 of the current Standard No. 224, if a trailer is required to have a guard. Those paragraphs read, in relevant part:

S5.1.1 Guard width. The outermost surfaces of the horizontal member of the guard shall extend outboard to within 100 mm of the longitudinal vertical planes that are tangent to the side extremities of the vehicle, but shall not extend outboard of those planes. * * *

S5.1.2 Guard height. The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm at any point across the full width of the member. * * *

S5.1.3 Guard rear surface. At any height 560 mm or more above the ground, the rearmost surface of the horizontal member of the guard shall be located as close as practical to a transverse vertical plane tangent to the rear extremity of the vehicle, but no more than 305 mm forward of that plane. Notwithstanding this requirement, the horizontal member may extend rearward of the plane. * * *

In this proposal, the cubic area which work-performing equipment would have to reside in or move through for a trailer to qualify as a special purpose vehicle extends vertically from the ground to a horizontal plane 660 mm (26 inches) above the ground, laterally to the side extremities of the trailer, and from the rear extremity of the trailer to a transverse vertical plane 305 mm (12 inches) forward of the rear extremity of the trailer. The 660 mm (26 inches) vertical requirement incorporates the 560 mm (22 inches) guard height requirement in S5.1.2 and the 100 mm (4 inches) minimum guard vertical height requirement in S5.1 of Standard No. 223. Thus, the cubic area in this proposal is larger horizontally and vertically than the cubic area defined by S5.1.1 through S5.1.3.

Paragraphs S5.1.1 through S5.1.3 define the minimum and the maximum guard dimensions as required by Standard No. 224, while the proposed rule defines the cubic area which a trailer's work-performing equipment would have to reside in or move through, or to interfere with the area where the guard would reside, in order *for the trailer to be considered a special purpose vehicle.*

The proposed cubic area for the special purpose vehicle is also different from the "guard zone'' defined in our September 9, 1998, interpretation letter to the NTEA. The difference between the current and the proposed zones is in the height of the cubic area. Our proposal would define the vertical area as extending from the ground to a horizontal plane 660 mm (26 inches) above the ground, while our interpretation letter defined the vertical area as extending from the ground to a horizontal plane tangent to the bottom of the trailer. We believe the 660 mm height requirement is necessary for safety reasons. If the cubic area extended to the bottom of the trailer, a trailer with any portion of the work-performing equipment located just underneath the bottom of the trailer would not be required to have a guard. For example, a trailer with a rail-type liftgate would be excluded from the requirements of the standard if only a small portion of it were mounted at a minimal distance below the trailer bed. This could result in a trailer that has no necessary structural members to limit underride. This would be contrary to the purpose of the standard. Thus, we are proposing that the cubic area extend vertically from the ground to a horizontal plane 660 mm (26 inches) above the ground.

In summary, if we use the term "guard zone'' as a common comparison parameter; the proposed guard zone (the cubic area) to qualify as a special purpose vehicle is larger than the allowed guard zone in the current Standard No. 224 (which is the smallest allowable), and is smaller than the defined guard zone in NHTSA's September 9, 1998 interpretation letter to the NTEA (which is, theoretically, the largest).

We also note that rail-type liftgates may cause confusion as to the where the rear extremity of the trailer is located—at the rear of the trailer itself or the rear of the rail-type liftgate. This is significant because Standard No. 224 requires the guard to be located no more than 12 inches forward of the rear

extremity of the trailer. "Rear extremity'' is defined as:

> The rearmost point on a vehicle that is above a horizontal plane located 560 mm above the ground and below a horizontal plane located 1,900 mm above the ground when the vehicle is configured as specified in S5.1 of this section and when the vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is in motion. Nonstructural protrusions such as taillights, rubber bumpers, hinges and latches are excluded from the determination of the rearmost point.

The common attributes among the examples of nonstructural protrusions listed in the definition are that they are relatively small and localized and would not have a major impact on a colliding passenger vehicle. Rail-type liftgates, in contrast, are neither small nor localized, and they would be expected to have a major impact on a colliding passenger vehicle. Thus, we consider rail-type liftgates to be part of the trailer structure. As such, the rear of the rail-type liftgate is the rear extremity of the trailer, and the guard on such trailers must be no more than 12 inches forward of the rear of the rail-type liftgate.

We note that some rail-type liftgates may be more than 12 inches deep. On trailers equipped with such liftgates, the guard would have to be installed either on the liftgate or on the trailer so that it extended rearward to within 12 inches of the rear of the liftgate. We request comments on whether we should revise the definition of "rear extremity'' to accommodate trailers equipped with rail-type liftgates that are more than 12 inches deep.

We have received anecdotal evidence of rail-type liftgates being installed on trailers already equipped with a compliant guard. According to these reports, the guard is removed so that the liftgate can be installed.

This is a violation of the agency's "make inoperative'' provision (49 U.S.C. " 30122). After the first sale of a vehicle, manufacturers, distributors, dealers, and repair businesses are prohibited from "knowingly making inoperative'' any device or element of design installed on or in a motor vehicle in compliance with an applicable standard. In general, the "make inoperative'' prohibition requires businesses that modify motor vehicles to ensure that they do not remove, disconnect, or degrade the performance of safety equipment installed in compliance with an applicable standard. Violations of this prohibition are punishable by civil penalties of up to $5,000 per violation.

We added this discussion to ensure that liftgate manufacturers who install rail-type liftgates on trailers already equipped with a compliant rear impact guard do not remove the guard under the mistaken assumption that the addition of the rail-type liftgate transforms the trailer into a "special purpose vehicle'' excluded from Standard No. 224. As currently written, Standard No. 224 does not exclude trailers equipped with rail-type liftgates. Moreover, nothing we are proposing in this document would exclude such trailers. They must be equipped with a compliant rear impact guard.

Finally, although not directly related to the subject matter of the Thieman petition, we believe that some ambiguous language exists in paragraph S5.1.3 of Standard No. 224, and we are proposing to clarify it. S5.1.3 reads, in relevant part:

> *S5.1.3 Guard rear surface.* At any height 560 mm or more above the ground, the rearmost surface of the horizontal member of the guard shall be located as close as practical to a transverse vertical plane tangent to the rear extremity of the vehicle, but no more than 305 mm forward of that plane.

Although it has been interpreted to apply to all guards, the language of this requirement indicates that it applies only to the portion of the guard rear surface that is at a height greater than 560 mm (22 inches) from the ground and, therefore, would not be applicable if the guard rear surface were completely below that height. To correct this, we are proposing to remove the introductory clause from the first sentence. The first sentence of S5.1.3 would be revised to read as follows:

> *S5.1.3 Guard rear surface.* The rearmost surface of the horizontal member of the guard shall be located as close as practical to a transverse vertical plane tangent to the rear extremity of the vehicle, but no more than 305 mm forward of that plane.

With respect to petitioner's request that we exclude guards on trailers equipped with rear-mounted liftgates from the energy absorption requirements of Standard No. 223, the agency believes that the proposed revisions to Standard No. 224 would, in most cases, solve the problem articulated by the petitioner. Under these revisions, trailers equipped with tuckunder liftgates and other types of rear-mounted, work-performing equipment that would be incompatible with a guard would be excluded from the guard requirement. Thus, the agency is denying the petitioner's request to exclude trailers equipped with rear-mounted liftgates from the energy absorption requirements of Standard No. 223.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. We have tentatively concluded that this rulemaking action would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The Federal Motor Carrier Safety Administration requires rear impact guards on trailers and semitrailers with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or more manufactured on or after January 26, 1998 (49 CFR 393.86). However, that standard incorporates Standard Nos. 223 and 224 by reference, and also excludes "special purpose vehicles'' as defined in Standard No. 224. Thus, we believe that this rulemaking action would not create a serious inconsistency with the FMCSA rear impact guard standard. Moreover, FMCSA has advised NHTSA that it will consider amendments to 49 CFR 393.86 and any relevant definitions under 49 CFR 393.5, in order to ensure consistency between 49 CFR 393.86 and Standard No. 224.

We have also tentatively determined that this rulemaking action would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. This rulemaking

action has no such effects. We have tentatively concluded that this rulemaking action would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Finally, we do not believe that this rulemaking action would have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. We are proposing to specifically exclude trailers with tuckunder liftgates and clarify the definition of "special purpose vehicle'' so that trailers with rear-mounted, work-performing equipment that would not be compatible with a guard would be excluded from Standard No. 224.

In comments to the Supplemental Notice of Proposed Rulemaking, published in the **Federal Register** January 3, 1992 (57 FR 252), the NTEA and liftgate manufacturers estimated that 2,500 of the 150,000 trailers built each year are equipped with rear-mounted liftgates, comprising less than 2 percent of the number of new trailers manufactured annually. We believe that the changes proposed in this document would affect only trailers equipped with rear-mounted liftgates. However, if commenters believe that this proposal would exclude trailers other than trailers equipped with rear-mounted liftgates, they should inform us in their comments to this notice.

We also believe that the proposed changes may exclude more trailers equipped with rear-mounted liftgates from Standard No. 224. In its petition, Thieman stated that truck equipment dealers are confused as to whether trailers with tuckunder and rail-type liftgates are required to be equipped with a guard or are excluded from the standard as special purpose vehicles. We assume this means that some such trailers are being equipped with guards. Under the proposed changes, all trailers with tuckunder liftgates would be excluded. Thus, this rulemaking action should not require additional expenditures by manufacturers of trailers with rear-mounted, work-performing equipment. However, if these manufacturers disagree with this tentative conclusion, they should address it in their comments to this notice.

We believe that adding a definition of the cubic area which work-performing equipment must move through or reside in for a trailer to meet the definition of "special purpose vehicle'' would merely clarify this exclusion. We believe that this proposal would not have a substantive effect on the determination of whether a trailer qualifies as a special purpose vehicle and would not impose any additional cost burden on manufacturers of trailers equipped with work-performing equipment. If commenters disagree with any of these tentative conclusions, they should address them in their comments to this notice.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act. Many of the businesses that manufacture trailers equipped with work-performing equipment are considered small businesses. However, as explained above in the discussion under E.O. 12866, we believe that this proposal will eliminate problems these manufacturers have encountered in complying with Standard No. 224 and will not impose any additional costs on them. Therefore, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

We have analyzed this rulemaking action for the purposes of the National Environmental Policy Act. We have determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' "Policies that have federalism implications'' is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, we may not issue a regulation with federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, we consult with State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

We have analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. We have determined that the amendment does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

E. Civil Justice Reform

This proposed amendment would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Paperwork Reduction Act

This proposed rule does not have any requirements that would be considered information collection requirements as

defined by the Office of Management and Budget in 5 CFR part 1320.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards available at this time. However, we will consider any such standards when they become available.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this proposed rule would not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on "Help & Information'' or "Help/Info'' to obtain instructions for filing the document electronically.

Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

2. On that page, click on "search.''

3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234,'' you would type "1234.'' After typing the docket number, click on "search.''

4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the "PDF'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber products, Tires.

In consideration of the foregoing, NHTSA proposes to amend part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

2. Section 571.224 would be amended by:

a. Revising paragraph S3;

b. Revising the definition for "Special purpose vehicle'' and adding a new definition for "tuckunder liftgate'' in paragraph S4; and

c. Revising the first sentence of paragraph S5.1.3.

The additions and revisions read as follows:

§ 571.224 Standard No. 224; Rear impact protection.

* * * * *

S3. *Application.* This standard applies to trailers and semitrailers with a GVWR of 4,536 kg or more. The standard does not apply to pole trailers, pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles, vehicles equipped with tuckunder liftgates, or temporary living quarters as defined in 49 CFR 523.2.

* * * * *

S4. *Special purpose vehicle* means a trailer or semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through any portion of the cubic area extending: (1) Vertically from the ground to a horizontal plane 660 mm above the ground; (2) laterally the full width of the trailer, determined by the trailer's side extremities as defined in S4 of this section; and (3) from the rear extremity of the trailer as defined in S4 of this section to a transverse vertical plane 305 mm forward of the rear extremity of the trailer.

Tuckunder liftgate means an item of work-performing equipment consisting of a loading platform that operates from its stowed position by swinging out to the rear of the vehicle where it may be hydraulically raised and lowered and, while the vehicle is in transit, resides completely between the unaltered vehicle's rear-most axle and rear extremity, as defined in S4 of this section, and beneath a horizontal plane 1,500 mm from the ground.

* * * * *

S5.1.3 *Guard rear surface.* The rearmost surface of the horizontal member of the guard shall be located as close as practical to a transverse vertical plane tangent to the rear extremity of the vehicle, but no more than 305 mm forward of that plane. * * *

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Issued on: February 23, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–4276 Filed 2–26–04; 8:45 am]

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