

■ In consideration of the foregoing, 49 CFR part 571 is amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

- 2. Section 571.116 is amended by:
- a. Removing and reserving S5.1.8;
- b. Revising S6.6.3(e);
- c. Revising in S6.6.4(a), the first and third sentences;
- d. Removing and reserving S6.8;
- e. Removing S6.8.1;
- f. Removing S6.8.2;
- g. Removing S6.8.3; and
- h. Removing S6.8.4.

The revisions read as follows:

§ 571.116 Standard No. 116; Motor vehicle brake fluids.

* * * * *

S6.6.3 * * *

(e) *Supplies for polishing strips.*

Waterproof silicon carbide paper, grit No. 320A and grit 1200; lint-free polishing cloth.

* * * * *

S6.6.4 * * *

(a) * * * Except for the tinned iron strips, abrade corrosion test strips on all surface areas with 320A silicon carbide paper wet with ethanol (isopropanol when testing DOT 5 SBBF fluids) until all surface scratches, cuts and pits visible to an observer having corrected visual acuity of 20/40 (Snellen ratio) at a distance of 300 mm (11.8 inches) are removed. * * * Except for the tinned iron strips, further abrade the test strips on all surface areas with 1200 silicon carbide paper wet with ethanol (isopropanol when testing DOT 5 SBBF fluids), again using a new piece of paper for each different type of metal. * * *

* * * * *

Issued on: November 9, 2004.

Jeffrey W. Runge,
Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2002-11875; Notice 2]

RIN 2127-AI04

Federal Motor Vehicle Safety Standards; Rear Impact Guard Labels

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

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard on rear impact guards (underride guards). Under the current requirement, rear impact guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the guard was manufactured, and the letters "DOT." In response to petitions for rulemaking, the agency issued a notice of proposed rulemaking (NPRM) proposing to allow manufacturers to place the label on the rear impact guard where it may be less exposed to damage, provided that the label does not interfere with the required retroreflective sheeting and is readily accessible for visual inspection. No comments were received. Thus, in this document, the agency is adopting the proposal as set forth in the notice of proposed rulemaking.

DATES: This final rule is effective January 18, 2005.

Petitions: Petitions for reconsideration must be received by January 3, 2005.

ADDRESSES: Petitions for reconsideration should refer to DOT Docket No. NHTSA-2002-11875 and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Please see the Privacy Act heading under Regulatory Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Michael Huntley, Office of Vehicle Safety Standards, (Telephone: 202-366-0029) (Fax: 202-493-2739) (E-Mail: Michael.Huntley@nhtsa.dot.gov).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel, (Telephone: 202-366-2992) (Fax: 202-366-3820) (E-Mail: George.Feygin@nhtsa.dot.gov).

You may send mail to either of these officials at: National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 1996, NHTSA published a final rule establishing two Federal motor vehicle safety standards (FMVSSs) to address the problem of rear underride crashes.¹ Underride occurs when a light vehicle, such as a passenger car, crashes into the rear end of a heavy truck that has a chassis higher than the hood of the light vehicle. In certain instances, the light vehicle slides under or "underrides" the rear end of the heavy vehicle such that the rear end of the trailer strikes and enters the passenger compartment of the light vehicle, resulting in passenger compartment intrusion (PCI). PCI can result in severe injuries and fatalities to the light vehicle occupants due to occupant contact with the rear end of the heavy truck. The final rule established two standards that operate together to reduce the number of injuries and fatalities resulting from underride crashes.

The first standard, FMVSS No. 223, "Rear impact guards," specifies performance requirements that rear impact guards (underride guards) must meet before they can be installed on new trailers. It specifies strength requirements and test procedures that NHTSA uses to determine compliance with those requirements. FMVSS No. 223 also requires the underride guard manufacturer to provide instructions on the proper installation of the guard. Finally, the underride guards must be permanently labeled with the guard manufacturer's name and address, the month and year in which the underride guard was manufactured, and the letters "DOT". The letters constitute certification by the manufacturer that the underride guard meets all the performance requirements of FMVSS No. 223. The standard requires manufacturers to place the label on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard, so that, as the guard is mounted on the vehicle, the label will be readily visible to Federal Motor Carrier Safety Administration (FMCSA) inspectors.

The second standard, FMVSS No. 224, "Rear impact protection, requires most new trailers with a GVWR of 4,536 kilograms (10,000 pounds) or more to be equipped with an underride guard meeting FMVSS No. 223. FMVSS No. 224 specifies requirements regarding the location of the underride guard relative to the rear of the trailer. It also requires that the underride guard be mounted on

¹ See 61 FR 2003.

the trailer in accordance with the instructions of the guard manufacturer.

Both standards became effective on January 26, 1998.

II. Petitions

On December 10, 1998, NHTSA received a petition for rulemaking from the Truck Trailer Manufacturers Association (TTMA) requesting that the agency amend FMVSS No. 223 by eliminating the underride guard labeling requirement.² TTMA argued that requiring a label on the underride guard is redundant for trailer manufacturers that manufacture their own guards because trailer manufacturers are already required to place a label on their trailers to certify their compliance with all FMVSSs.³

On December 30, 1998, NHTSA received a similar petition from the American Trucking Associations (ATA),⁴ and on January 18, 1999, another petition from Compass Transportation, Inc.⁵ Both petitioners argued that the underride guard labeling requirement is redundant and requested that the agency eliminate the labeling requirement from FMVSS No. 223.

TTMA requested that if NHTSA declined to eliminate the guard labeling requirement, the agency should instead eliminate the requirement that the guard be labeled permanently. TTMA argued that it is unlikely that any label will remain on the guard for the life of the trailer. As a final alternative, TTMA requested that NHTSA allow manufacturers the flexibility to place the label where it may be the least exposed to damage from operational and environmental factors.

III. Notice of Proposed Rulemaking

NHTSA published an NPRM responding to the three petitions for rulemaking on March 29, 2002.⁶

A. Guard Labeling Requirement

In the NPRM, the agency denied the petitioners' request to eliminate the labeling requirement. The agency reasoned that the separate equipment (FMVSS No. 223) and vehicle (FMVSS No. 224) standards allow a trailer manufacturer to install an underride guard produced by a guard manufacturer rather than by the trailer

manufacturer itself. This regulatory scheme allows the trailer manufacturers to avoid the cost of developing compliant underride guards by purchasing pre-certified underride guards from underride guard manufacturers.

In order to facilitate enforcement, NHTSA uses the guard certification label to determine whether an underride guard was manufactured and certified by the trailer manufacturer or purchased from an underride guard manufacturer who certified the guard prior to selling that item of equipment to the trailer manufacturer. If NHTSA did not require the underride guards to be labeled, our enforcement personnel would not be able to conclude readily which party certified an underride guard to the requirements of FMVSS No. 223.⁷

Finally, the agency said that it did not believe that affixing the required label is a significant burden.

B. Permanency Requirement

In the NPRM, the agency also denied petitioners' request to eliminate the requirement that the guard label be permanent. The agency acknowledged that the permanency of the label is not significant for the purpose of NHTSA's compliance testing, since the agency only tests new guards for compliance with FMVSS No. 223. However, the agency noted that the Federal Highway Administration (FHWA) recently amended its rear impact regulations to make them consistent with Standard Nos. 223 and 224.^{8,9} The FHWA included a requirement for a permanent label, in part, "to help motor carriers quickly determine if the underride device on a newly manufactured trailer meets NHTSA's requirements, and to assist State agencies responsible for enforcing motor carrier safety regulations."¹⁰

NHTSA also reasoned that Standard No. 223 does not specify a particular means (*i.e.*, labeling, etching, branding, stamping, or embossing) by which the manufacturer must achieve permanency. Finally, the agency noted that none of the petitioners had provided any information documenting any problems trailer or guard

manufacturers have experienced in meeting the requirement for a permanent label.

C. Label Location Requirement

In the NPRM, the agency granted the petitioners' request to commence rulemaking to allow manufacturers to place the label where it may be least exposed to damage. The agency stated that the precise location of the guard label is of little significance to NHTSA personnel conducting compliance testing on new guards. Further, the agency stated that FMCSA representatives had indicated to NHTSA that the specific location of the guard label is not critical to trailer inspectors, so long as it is located somewhere on the horizontal member of the guard.

However, to ensure that the label would not be hidden or obscured, the agency proposed to require that the label remain readily accessible for visual inspection, so that trailer inspectors would not have difficulty locating it.

Finally, the agency proposed to require that the label not interfere with retroreflective sheeting placed across the full width of the rearward facing surface of the horizontal member of the underride guard, as required by S5.7.1.4.1(c) of FMVSS No. 108.

Accordingly, the agency proposed to revise the third sentence of S5.3 of Standard No. 223 to read as follows: "The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection."

IV. Final Rule

In the NPRM, NHTSA specified a 60-day comment period. The agency did not receive any comments on the proposal. Accordingly, the agency is adopting the proposal as set forth in the NPRM.

V. Costs and Benefits

This final rule will not result in any additional cost burdens on any regulated parties and will not produce additional safety benefits.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This

² See Docket No. NHTSA-1998-4367-24 at <http://dms.dot.gov/search/searchFormSimple.cfm>.

³ 49 CFR 567.4(g)(5) requires manufacturers to affix to trailers a label containing the statement: "This vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture shown above."

⁴ See Docket No. NHTSA-1998-4376-2.

⁵ See Docket No. NHTSA-1998-3342-3.

⁶ See 67 FR 15154 or Docket No. NHTSA-2002-11875.

⁷ Under 49 U.S.C. 30118-30120, the manufacturer of a noncompliant item of motor vehicle equipment must recall that product to bring it into compliance at no charge to the customer. In addition, this manufacturer may become subject to civil penalties. Accordingly, it is in the best interest of trailer manufacturers to affix the label that would identify the party responsible for manufacturing a noncomplying product.

⁸ See 64 FR 47703 (September 1, 1999).

⁹ This aspect of the former FHWA jurisdiction is now under FMCSA.

¹⁰ See 63 FR 26759, (May 14, 1998).

final rule was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. The agency concludes that the expected impact of the final rule is so minimal that the final rule does not warrant preparation of a full regulatory evaluation. This rulemaking will not impose any new requirements or costs on manufacturers. Instead, this rulemaking allows more flexibility in the location of the certification label already required by FMVSS No. 223. Accordingly, the final rule will not result in any additional costs burdens on the manufacturer of underride guards or trailers equipped with underride guards.

This rulemaking is not the subject of significant Congressional or public interest.

B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking does not impose any new requirements or costs on manufacturers. Instead, this rulemaking allows more flexibility in the location of the certification label already required by FMVSS No. 223. Accordingly, the final rule will not result in any additional costs burdens on the manufacturer of underride guards or trailers equipped with underride guards.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that the implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in the Executive Order 13132, and has determined that this rulemaking does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. This final rule does not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. The final rule is not

intended to preempt state tort civil actions.

E. Civil Justice Reform

This amendment will 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

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not have any new requirements that are considered to be information collection requirements as defined by the OMB 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 NHTSA to use voluntary consensus standards in its 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 NHTSA to provide Congress, through the OMB, explanations when it decides not to use available and applicable voluntary consensus standards.

There are no applicable voluntary consensus standards available at this time. However, NHTSA will consider any such standards if they become available.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 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 (\$120,700,000 as adjusted for inflation with base year of 1995).

This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$120,700,000 annually.

I. Regulation Identifier Number

The Department of Transportation assigns a regulatory 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.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.dms.dot.gov>.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—[AMENDED]

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.223 is amended by revising the third sentence of S5.3 introductory text as follows:

§ 571.223 Standard No. 223; Rear impact guards.

* * * * *

S5.3 Labeling. * * * The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label

does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection.

* * * * *

Issued: November 12, 2004.

Jeffrey W. Runge,

Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2004-19033]

RIN 2127-A156

Federal Motor Vehicle Safety Standards; Rear Impact Guards; Final Rule

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

ACTION: Final rule.

SUMMARY: This document amends the Federal motor vehicle safety standard No. 224, "Rear impact protection" (FMVSS No. 224), to exclude road construction controlled horizontal discharge semitrailers (RCC horizontal discharge trailers) from the requirements of the standard. The RCC horizontal discharge trailers are used in the road construction industry to deliver asphalt to construction sites and gradually discharge asphalt mix into the paving machines overlaying the road surface. The agency has concluded that installation of the rear impact guards, as required by FMVSS No. 224, on RCC horizontal discharge trailers would interfere with their intended function and is therefore impracticable due to the unique design and purpose of these vehicles.

DATES: *Effective Date:* This rule is effective December 20, 2004.

Petitions: Petitions for reconsideration must be received by January 3, 2005.

ADDRESSES: Petitions for reconsideration should refer to DOT Docket No. NHTSA-2004-19033 and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

Please see the Privacy Act heading under Regulatory Notices.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Michael

Huntley, Office of Vehicle Safety Standards, (Telephone: 202-366-0029) (Fax: 202-493-2739) (E-Mail: Michael.Huntley@nhtsa.dot.gov).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel, (Telephone: 202-366-2992) (Fax: 202-366-3820) (E-Mail: George.Feygin@nhtsa.dot.gov).

You may send mail to either of these officials at: National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

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I. Background

Underride occurs when a light vehicle, such as a passenger car, crashes into the rear end of a heavy truck that has a chassis higher than the hood of the light vehicle. In certain instances, the light vehicle slides under or "underrides" the rear end of the heavy vehicle such that the rear end of the trailer strikes and enters the passenger compartment of the light vehicle, resulting in passenger compartment intrusion (PCI). PCI crashes can result in severe injuries and fatalities to the light vehicle occupants due to occupant contact with the rear end of the heavy truck.

In an attempt to reduce the frequency and severity of underride collisions, NHTSA issued FMVSS No. 224.¹ The standard requires that all new trailers and semitrailers with a Gross Vehicle Weight Rating (GVWR) of 10,000 lbs or more be equipped with a rear impact guard (underride guard). The underride guard is attached to the rear of the trailer (within 12 inches [305 mm] of the rear extremity of the vehicle) and acts to prevent the light vehicle from sliding under the trailer chassis.

The RCC horizontal discharge trailer is a unique piece of equipment used in the road construction industry to deliver asphalt and other building materials to

a construction site. The trailer is equipped with a mechanical drive and a horizontal conveyor, which gradually discharges asphalt mix into a paving machine overlaying the road surface with asphalt material.

With respect to FMVSS No. 224, the RCC horizontal discharge trailer's most unique and technologically problematic feature stems from the fact that the rear of the trailer is designed to connect with and latch onto various paving machines. Typically, the paving machine attaches to the rear axle of the RCC horizontal discharge trailer via hydraulic arms, and the edge of the trailer's conveyor belt extends over the paving machine opening. An underride guard required by FMVSS No. 224 would prevent the RCC horizontal discharge trailer from effectively connecting with a paving machine.

Connection with paving equipment is critical to the road construction process as it allows the RCC horizontal discharge trailer to deposit asphalt mix directly into the paving machine hopper. This method also allows for a more controlled off-loading, as compared to a dump trailer, which is the other type of vehicle capable of delivering asphalt mix to road construction sites.²

This rulemaking was initiated by a joint petition on behalf of Dan Hill & Associates, Inc. (Dan Hill), and Red River Manufacturing, Inc., a Division of Trail King Industries, Inc. (Red River).³ Dan Hill and Red River are manufacturers of RCC horizontal discharge trailers. Their petition requested that the agency amend FMVSS No. 224 to "exclude construction controlled horizontal discharge semitrailers from the scope of the standard." Since the effective date of the standard,⁴ Dan Hill and Red River have each received a temporary exemption from the requirements of FMVSS No. 224, in part because of the impracticability of installing underride guards on RCC horizontal discharge trailers.⁵

FMVSS No. 224 currently excludes pole trailers, pulpwood trailers, wheels

² Because the horizontal discharge trailers do not rise to unload their contents like steel end dump trailers, they can be used on uneven terrain or where overhead obstructions such as bridges and power lines completely prevent the use of dump trailers.

³ See Docket No. NHTSA-2001-8876-4.

⁴ FMVSS No. 224 became effective January 26, 1998; see 61 FR 2004 (January 24, 1996).

⁵ The temporary exemptions were based on the "substantial economic hardship" grounds under 49 CFR 555.6(a). Nevertheless, the economic hardship was rooted in impracticability of installing underride guards. Both exemptions have since been renewed. See 68 FR 28880 (May 27, 2003).

¹ See 61 FR 2004, January 24, 1996.