

drawbridge operating regulations are listed at 33 CFR 117.205(b).

The owner of the bridge, Amtrak, requested a temporary deviation from the drawbridge operating regulations to facilitate electrical repairs at the bridge.

This deviation to the operating regulations allows the Old Saybrook-Old Lyme Bridge to remain closed from 10 p.m. on November 15, 2004 through 10 a.m. on November 16, 2004.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 20, 2004.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 04-24689 Filed 11-4-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2004-19523]

RIN 2127-AH75

### Federal Motor Vehicle Safety Standards; Rear Impact Guards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** In 1996, the agency established standards for underride guards for trailers and semitrailers in order to reduce the risk to passenger vehicle occupants in crashes in which a passenger vehicle impacts the rear end of a trailer or semitrailer. In establishing these standards, the agency recognized that compliance with the requirements was not practicable for a small number of vehicles due to the presence of work-performing equipment mounted on the rear of a trailer or semitrailer. These vehicles are designated as "special purpose vehicles" and are excluded from the standard. Today's final rule amends the definition of "special purpose vehicle" by adding a precise description of the cubic area in which work-performing equipment must reside in or move through while a trailer is moving. We have also determined that the addition of those specifications eliminates the need to exclude expressly vehicles equipped with specific liftgate designs. Finally, we are amending the

requirements regarding the location of the rearmost surface of an impact guard as proposed.

**DATES:** *Effective date:* This final rule is effective November 5, 2004. Today's final rule clarifies the agency's original intent in excluding special purpose vehicles from the requirements of FMVSS No. 224. Today's document does not impact vehicles currently excluded from the underride guard requirements under FMVSS No. 224. This final rule provides additional objectivity to the application of the requirements, and we therefore, have determined it to be in the public interest for this final rule to be effective immediately.

*Petitions:* Petitions for reconsideration must be received by December 20, 2004 and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

Note that all petitions received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Rulemaking Analysis and 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 contact Mike Huntley, Office of Crashworthiness Standards, at (202) 366-0029, and fax him at (202) 493-2739.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366-2992, and fax him at (202) 366-3820.

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

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## I. Background

### A. Rear Impact Guard Standards

To address the problem of rear underride crashes, the agency established two Federal motor vehicle safety standards (FMVSSs), FMVSS No. 223, *Rear impact guards*, and FMVSS No. 224, *Rear impact protection* (61 FR 2004; January 24, 1996; Docket No. 1-11). A rear underride crash is a crash in which the front end of a passenger car, light truck, or multipurpose vehicle with a gross vehicle weight rating of 4,536 kilograms (10,000 lb) or less (referred to collectively as "passenger vehicles") collides with and slides under (*i.e.*, underrides) the rear end of a trailer or semitrailer (referred to collectively as "trailers"). Underride can potentially occur when a trailer chassis is higher than the hood of a 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 breaks the vehicle's windshield and enters its passenger compartment. PCI crashes generally result in injuries and fatalities to the passenger vehicle occupants due to their contact with the rear of the trailer. In 1996, when the underride guard standards were established, we estimated that about 11,551 rear-end crashes with trailers occurred annually, resulting in approximately 423 passenger vehicle occupant fatalities and about 5,030 non-fatal injuries.<sup>1</sup>

To reduce the number of injuries and fatalities resulting from rear underride crashes, the two Federal underride guard standards operate together. The first standard, FMVSS No. 223 (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 those requirements. The standard also requires 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 (the "vehicle standard") requires that most new trailers with a GVWR of 4,536

<sup>1</sup> In early 2005, the agency plans to begin a two-year data collection of crashes involving a passenger car, light truck and sport utility vehicle or van rear-ending a medium/heavy duty truck or heavy trailer. This information will be used to determine the effectiveness of the underride guard standards since they went into effect.

kilograms (10,000 pounds) or more be equipped with a rear impact guard meeting the specifications of FMVSS No. 223. The vehicle standard specifies requirements for the location of the guard relative to the sides and 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 not 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 furnished by the guard manufacturer.

In establishing the vehicle standard, the agency recognized that compliance with it was not practicable for a limited number of trailer designs. Accordingly, the agency provided that the vehicle standard does not apply to: pole trailers, pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles, and temporary living quarters. FMVSS No. 224 defines a special purpose vehicle 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."

#### *B. Petition for Rulemaking*

On June 24, 1998, we received a petition from Thieman Tailgates, Inc. (Thieman), requesting that we amend Standard No. 224 to exclude vehicles with rear-mounted lift gates. Specifically, Thieman was concerned about two liftgate designs, tuckunder and rail-type. A tuckunder liftgate consists 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 stated 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, FMVSS 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 within the "special purpose vehicle" exclusion. Therefore, the petitioner requested that FMVSS No. 224 explicitly exclude vehicles equipped with rear-mounted liftgates.

In the alternative, the petitioner requested that the agency expressly exclude tuckunder and rail-type liftgates from the energy absorption requirements of FMVSS No. 223. The petitioner stated 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 move freely, causing the guard to "give" a few inches before deflection starts to occur.

#### *C. Notice of Proposed Rulemaking*

In a February 27, 2004 notice of proposed rulemaking (NPRM), the agency denied Thieman's petition, but proposed: (1) To define "special purpose vehicle" to include a more precise description of the cubic area at the rear of a trailer in which work-performing equipment must reside or travel through while the trailer is in transit, (2) to specifically exclude trailers equipped with "tuckunder" liftgates, as defined by the proposal, from FMVSS No. 224, and (3) to clarify the requirements related to the location of the rearmost surface of the rear impact guard (69 FR 9288; Docket No. NHTSA-1998-4369).

In the February 2004 NPRM, the agency proposed a definition of "special purpose vehicle" 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 proposed cubic area 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 FMVSS No. 224. The proposed 660 mm (26 inches) vertical specification incorporates the 560 mm (22 inches) minimum height from the ground as required in S5.1.2 of FMVSS No. 224 and the 100 mm (4 inches) minimum guard vertical height requirement in S5.1 of Standard No. 223. Horizontally, the proposed cubic area extends laterally the full width of the trailer. Conversely, S5.1.1 of FMVSS No. 224 permits the outermost surfaces of the horizontal member of a guard to be inside the side extremities of the vehicle by up to 100 mm. Thus, the proposed cubic area is larger both vertically and horizontally than the area defined by S5.1.1 through S5.1.3.

The proposed cubic area for the special purpose vehicle definition also differs from the "guard zone" defined in an interpretation letter sent to the National Truck Equipment Association (NTEA).<sup>2</sup> The difference between the "guard zone" and the proposed zones is with the height of the area. The proposal defined 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.

In addition to clarifying what constitutes a special purpose vehicle, the proposal also sought to exclude vehicles equipped with "tuckunder liftgates" from the standard. In the February 2004 NPRM, the agency proposed the following definition of "tuckunder liftgate:"

[A]n item of work-performing equipment consisting of a loading platform that operates

<sup>2</sup> On September 9, 1998, we issued a 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. The horizontal member must have a vertical height of at least 100 mm. 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.

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.

Finally, the agency proposed to amend S5.1.3 of FMVSS No. 224 in order to clarify the required distance of the rear most surface of a guard from a trailer's rear extremity. While S5.1.3 has consistently been interpreted in the proper manner, the current language could be read as not being applicable to a guard surface that is completely below a height of 560 mm (22 inches) from the ground.

## II. Comments

In response to the NPRM, the agency received divergent comments on the proposal from two truck equipment manufacturers, an industry association, and two consumer safety organizations. One truck equipment manufacturer, Waltco Truck Equipment Co. (Waltco), supported the exclusion for tuckunder liftgate equipped vehicles but requested that the agency clarify the term "tuckunder liftgate" to avoid potential confusion with brand name lifts. The industry association, the NTEA, stated that all but one of its members concurred with Waltco. Additionally, the NTEA requested that the agency maintain the specifications as described in the September 1998 interpretation letter. The NTEA stated that the specifications in the letter had already created a fair amount of confusion for manufacturers and expressed concern that any changes would result in further confusion.

One truck equipment manufacturer and both consumer safety organizations objected to the proposed rulemaking. Maxon Lift Corp. (Maxon), a truck equipment manufacturer, objected to an exclusion for vehicles equipped with tuckunder liftgates. Maxon stated that it has designed a tuckunder liftgate that is compatible with the current standards and that a new exclusion is not necessary. The two consumer safety organizations, Advocates for Highway and Auto Safety (Advocates) and Public Citizen, objected to the proposed rulemaking generally. Both organizations stated that there was inadequate evidence of any need to expand the exclusion under FMVSS No. 224. Further, both organizations stated that the agency failed to demonstrate that the proposal would not reduce the safety benefits of the current standards.

## III. Final Rule

Today's final rule amends FMVSS No. 224 in order to reflect more clearly the intent of the standard as originally established. Today's document specifies the cubic area in which work-performing equipment must reside in or move through, while the vehicle is in transit, in order for a vehicle to be excluded from the standards as a "special purpose vehicle" as proposed in the February 2004 NPRM. As explained below, we have determined that the specifications established here sufficiently address concerns with rear mounted liftgates in general. Therefore, a specific exclusion for vehicles equipped with "tuckunder liftgates" is not required. Finally, we are amending the guard rear surface provision to remove ambiguous wording.

### A. Special Purpose Vehicles

Today's final rule establishes the cubic area in which work-performing equipment must reside or move through while a trailer is in transit in order for that vehicle to be classified as a special purpose vehicle as proposed in the February 2004 notice. The cubic area defined in this final rule clarifies the agency's longstanding intent to exclude from FMVSS No. 224 trailers equipped with work performing equipment that is located in the area occupied by a guard.

While the cubic area defined by today's final rule is different than that described in the agency's September 1998 letter, the difference in area ensures that vehicles equipped with lift designs that are compatible with the rear impact guard requirements remain subject to the standard. As explained above, the difference between the area described in the September 1998 letter and the area established in the final rule is the height. The interpretation letter described the vertical area as extending from the ground to a horizontal plane tangent to the bottom of the trailer. The vertical area specified in today's final rule extends from the ground to a horizontal plane 660 mm above the ground. If the cubic area extended to the bottom of a trailer, as specified in the interpretation letter, a trailer with any portion of work-performing equipment located just underneath 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. As stated in the final rule establishing FMVSS No. 224, the agency never intended to exclude rail-type liftgates (see 61 FR 2022).

Additionally, we do not agree with NTEA that specifying the cubic area as proposed will cause confusion as to which vehicles are "special purpose vehicles." The specifications established today are incorporated directly into the standard, as opposed to an interpretation letter. This provides manufacturers with the necessary information on the face of FMVSS No. 224 so that they no longer need to look beyond the standard. Further, as explained above, the difference between the previous specifications and those established today help ensure that the special purpose vehicle exclusion is not broader than originally intended.

### B. "Tuckunder Liftgates"

The agency is not establishing an exclusion expressly mentioning vehicles equipped with tuckunder lifts. While the agency has always intended for vehicles with tuckunder lifts to be excluded, we have determined that carving out an express exclusion would be redundant, given the cubic area established above. Tuckunder liftgates, by design, should continue to qualify a vehicle for the special purpose vehicle exclusion.

In objecting to the NPRM by stating that a new exclusion is not required, Maxim apparently misinterpreted FMVSS No. 224. The term "special purpose vehicles" has always been defined to exclude vehicles equipped with tuckunder lifts from the requirements of the standards. The preamble to the January 1996 final rule stated that, "vehicles equipped with rail type lifts \* \* \* are not excluded, *while vehicles equipped with tuckunder and other types of incompatible liftgates are excluded* (61 FR 2022, emphasis added)." Consequently, the tuckunder liftgate exclusion proposed in the NPRM would not have created a new exclusion.

Further, the agency does not believe that the tuckunder liftgate exclusion was too narrow or would have been confusing, as stated by Waltco and the NTEA. Both Waltco and the NTEA stated that "tuckunder liftgate" is often used as a product name and that several other types of lifts (e.g., "flipaway," "stowaway," "slider" and "cantilever" liftgates) also interfere with rear impact guards.

In the proposed rulemaking, the agency defined "tuckunder liftgate" as a type of design and not a brand name. The proposed definition of this design would have included the liftgate designs raised by commenters as also requiring consideration for exclusion. However, we understand how the phrase might have resulted in confusion, given the

industry's current use of the phrase as a brand name.

While the agency believes the "tuckunder liftgate" exclusion would have clarified the agency's intended application of the standard, we have determined the cubic area specifications established above already address the issue. The special purpose vehicle definition excludes vehicles equipped with tuckunder liftgates as well as similar liftgates that result in compatibility problems with the standard. Although Maxon stated that it has designed tuckunder liftgates that do not conflict with the requirements of FMVSS No. 224, not all tuckunder liftgates are compatible with the standard.<sup>3</sup> The cubic area specified by this final rule provides an objective method for determining which vehicles are excluded from FMVSS No. 224. Again, the cubic area established today clarifies the agency's longstanding intent to exclude a small number of vehicles for which compliance with FMVSS No. 224 is impracticable.

#### C. "Guard Rear Surface" and Trailer "Rear Extremity"

We are amending the S5.1.3, *Guard rear surface*, of FMVSS No. 224 as proposed in the NPRM to remove potentially ambiguous language. However, we are not revising the definition of the rear extremity of a vehicle as requested by the NTEA. Although S5.1.3 has been properly interpreted to apply to all guards across their entire rear surface, the language in S5.1.3 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. To correct this, we are removing the introductory clause from the first sentence so that the sentence reads 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.

We are not revising the definition of "rear extremity" to accommodate trailers equipped with rail liftgates that are more than 12 inches deep as requested by NTEA. As stated in the NPRM, we note that rail-type liftgates may cause confusion as to whether 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 not more than 12 inches forward of the rear extremity of the trailer.

"Rear extremity" is defined at S4 of FMVSS No. 224 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 agency has previously explained that 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 (see, 69 FR 9293). 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.

As noted in the NPRM, some rail-type liftgates may be more than 12 inches deep. On trailers equipped with such liftgates, a guard would have to be installed either on the liftgate or on the trailer so that it extends rearward to within 12 inches of the rear of the liftgate.

#### D. Impacted Vehicle Population

Contrary to statements made by Advocates and Public Citizen, today's final rule does not change the number or type of vehicles excluded from FMVSS No. 224. The cubic area established in this document merely provides a more precise description of the area at the rear of the trailer in which work-performing equipment must reside in or move through while the trailer is in transit to qualify for the special purpose vehicle exclusion.

The percentage of vehicles excluded from the requirements of FMVSS No. 224 as a result of being equipped with a rear mounted liftgate remains comparable to the percent excluded when the agency first proposed FMVSS No. 224 (46 FR 2136; January 8, 1981). In 1981, the NTEA estimated that 2,500 of the 150,000 trailers built each year were equipped with rear-mounted liftgates, comprising 1.7 percent of the

market. For the year 2002, the NTEA estimated that 2,899 of the 139,000 trailers manufactured that year were equipped with rear-mounted liftgates, or 2.1 percent of the market. We expect the number of vehicles actually excluded from FMVSS No. 224 to be a lower percentage because the 2002 estimate includes all liftgates, even those that may not qualify a vehicle as a special purpose vehicle (e.g., rail-type liftgates).

Further, we do not believe that today's final rule will encourage customers to purchase one type of liftgate over another as a means to avoid the underride guard requirements. Vehicles are equipped with a particular liftgate design based on its performance capabilities. We do not expect that vehicles will be equipped with one liftgate design over another simply to be excluded from the underride guard requirements. Again, as stated above, we are not excluding vehicles equipped with a liftgate design that have not previously been excluded. The agency is merely clarifying our longstanding intent to exclude tuckunder and similarly functioning liftgates. Therefore, today's final rule does not diminish the safety benefits of FMVSS No. 224.

#### IV. Effective Date

The amendments adopted in today's document are effective immediately upon publication of this notice in the **Federal Register**. Today's final rule merely clarifies the existing underride guard requirements. This document does not alter the vehicle population previously excluded from the requirements of FMVSS No. 224. The definition of "special purpose vehicle" adopted today clarifies the agency's original intent and provides additional objectivity to existing requirements. Today's amendments will not result in previously compliant vehicles becoming non-compliant.

#### V. Rulemaking Analyses and Notices

##### A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type

<sup>3</sup> Maxon's website offers tuckunder liftgate designs that have a "built-in underride guard," as well as liftgate designs that offer underride guards as optional equipment and liftgate designs without any notation regarding underride guards. (See, inset Maxon's Web site)

of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

The agency carefully considered these statutory requirements in amending FMVSS No. 224.

We believe that the amendments to FMVSS No. 224 do not affect its practicability. The specifications added to the definition of "special purpose vehicle" clarify an existing exclusion from the standard that is based on the impracticability of applying the standard to a small number of vehicles equipped with work-performing equipment.

The dimensional specifications adopted in this final rule provide additional objectivity for determining which vehicles are special purpose vehicles.

Finally, this final rule ensures that FMVSS No. 224 is applied to vehicles for which the standard is appropriate by clarifying which vehicles are excluded. Today's final rule maintains the safety benefits of the standard as originally established.

#### *B. 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 Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

We have concluded that this rulemaking action does not create an 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 FMVSS Nos. 223 and 224 by reference, and also excludes "special purpose vehicles" as defined in FMVSS No. 224. Thus, this rulemaking action will not create an 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.

Further, this rulemaking action will not 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. This document clarifies the definition of "special purpose vehicle" so that trailers with rear-mounted, work-performing equipment that is not compatible with a guard would be excluded from FMVSS No. 224.

By adding a quantified 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," the agency is providing a more objective basis for determining which vehicles are excluded. This final rule does not have a substantive effect on the determination of whether a trailer qualifies as a special purpose vehicle and does not impose any additional cost burden on manufacturers of trailers equipped with work-performing equipment.

#### *C. 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). 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, this final rule does not substantively impact the determination of which vehicles are excluded from the requirements in FMVSS No. 224. Therefore, I hereby certify that this final rule does not have a significant economic impact on a substantial number of small entities.

#### *D. National Environmental Policy Act*

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

#### *E. Executive Order 13132 (Federalism)*

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

#### *F. 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 \$109 million annually (adjusted for inflation with base year of 1995). Because this final rule does not have a \$100 million effect, no Unfunded Mandates assessment has been prepared.

#### *G. Executive Order 12778 (Civil Justice Reform)*

This final rule does not have any retroactive effect. Under section 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.

#### *H. 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 rule does not establish any new information collection requirements.

#### *I. 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.

#### *J. Executive Order 13045*

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental

health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not economically significant and does not concern an environmental health or safety risk that disproportionately affects children.

#### *K. 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 relevant voluntary consensus standards available at this time. However, we will consider any such standards when they become available.

#### *L. Privacy Act*

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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://dms.dot.gov>.

#### **List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

#### **PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS [AMENDED]**

■ 1. The authority citation for Part 571 of Title 49 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 571.224 is amended by revising the definition of "Special purpose vehicle" in S4 to read as follows:

#### **§ 571.224 Standard No. 224; Rear impact protection.**

\* \* \* \* \*

##### *S4. Definitions.*

\* \* \* \* \*

*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.

\* \* \* \* \*

Issued on: November 2, 2004.

**Jeffrey W. Runge,**  
*Administrator.*

[FR Doc. 04-24737 Filed 11-4-04; 8:45 am]

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## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Part 574**

[Docket No. NHTSA-2004-19557]

**RIN 2127-AH10**

#### **Tire Safety Information; Correction**

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** On July 8, 1999, the National Highway Traffic Safety Administration (NHTSA) published in the **Federal Register** (64 FR 36807), a final rule amending the tire identification and recordkeeping regulation, which requires that each tire be labeled with a tire identification number (TIN). In amending the TIN requirements, we inadvertently removed a provision for tires of less than 13 inches bead diameter or those of less than 6 inches