

pension plans, and other deferred compensation plans.

242.7302 Requirements.

Follow the procedures at PGI 242.7302 to determine if a CIPR is needed.

242.7303 Responsibilities.

Follow the procedures at PGI 242.7303 when conducting a CIPR.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2004-19523]

RIN 2127-AJ80

Federal Motor Vehicle Safety Standards; Rear Impact Guards and Rear Impact Protection

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

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: To address the problem of rear underride crashes, Federal safety standards require heavy trailers and semitrailers to be equipped with underride guards. Compliance with these requirements is not practicable for vehicles featuring work-performing equipment mounted in the area where an underride guard would normally be located. These trailers and semitrailers are designated as “special purpose vehicles” and are excluded from the standard. On November 5, 2004, we published a final rule amending the definition of “special purpose vehicles” in order to clarify the exclusion by specifying the dimensions of the area where the work-performing equipment must reside or pass through in order for the exclusion to apply. On December 14, 2004, we were petitioned by the National Truck Equipment Association to reconsider the final rule because the amendment has had an unintended effect of narrowing the exclusion applicable to “special purpose vehicles.”

In response to that petition for reconsideration, this document further amends the definition of a “special purpose vehicle” to exclude a specific group of vehicles that cannot comply with the underride guard requirements in a practicable manner.

DATES: This final rule is effective April 24, 2006. Voluntary compliance is permitted before that time.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC, 20590:

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SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 224, “*Rear impact protection*,” requires that heavy¹ trailers and semitrailers be equipped with underride guards in order to reduce the risk to passenger vehicle occupants in crashes in which a passenger vehicle impacts the rear of a heavy truck trailer or a semitrailer. Compliance with these requirements is not practicable for a small number of vehicles featuring work performing equipment mounted on the rear of a trailer or semitrailer where an underride guard would normally be located. If the equipment needs to move through the area that could be occupied by the horizontal member of the guard, the presence of a guard would impair or eliminate the usefulness of the equipment. These vehicles are designated as “special purpose vehicles” and are excluded from the standard.

On June 24, 1998, Thieman Tailgates, Inc., (Thieman) petitioned NHTSA to amend FMVSS No. 224 in order to exclude trailers with rear-mounted rail type² and tuckunder³ lift gates from the requirements of the standard because, according to the petitioner, they could not accommodate underride guards for reasons of impracticability. Thieman

¹ Trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kg or more.

² Rail-type liftgate consists 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.

³ 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.

argued that the previous definition of special purpose vehicles (as set forth below) was not descriptive enough to exclude all rail type and tuckunder lift gates.

Special purpose vehicle means 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, as defined by S5.1.1 through S5.1.3.⁴

We note that in a September 9, 1998 letter of interpretation responding to the National Truck Equipment Association (NTEA) question about the “area that could be occupied by the horizontal member of the rear underride guard,” we described the area as follows: (1) The side boundaries are the side extremities of the trailer; (2) the rearward boundary is the transverse vertical plane tangent to the rear extremity of the vehicle; (3) the forward boundary is the transverse vertical plane 305 mm (12 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle; (4) the vertical boundaries may be as high as the bottom of the vehicle body, and as low as the ground.

On February 27, 2004, NHTSA published an NPRM proposing to amend FMVSS No. 224.⁵ Specifically, the NPRM proposed to define and specifically exclude tuckunder lift gates from the requirements of the standard. The NPRM also proposed to amend the definition of “special purpose vehicle” to include a precise description of the space in which work-performing equipment must reside in or move through while a trailer is in transit. The NPRM did not propose to exclude rail type lift gates from the requirements of FMVSS No. 224.

On November 5, 2004, NHTSA published a final rule amending FMVSS No. 224.⁶ First, with respect to rail type liftgates, we reiterated that we never intended to exclude rail-type lift gates from the requirements of the standard. Second, the agency agreed that the requirements of the standard are impracticable for vehicles equipped with tuckunder lift gates. However, instead of creating a specific exclusion for tuckunder lift gates, the November 2004 final rule amended the definition of “special purpose vehicles” with the intent to exclude such vehicles. We indicated our belief that expressly excluding tuckunder lift gates would be redundant in light of the revised definition. We also stated that the

⁴ See <http://www.nhtsa.dot.gov/cars/rules/interps/files/17799-2.pja.html>.

⁵ See 69 FR 9288.

⁶ See 69 FR 64495.

amended definition would not subject previously excluded vehicles to the requirements of FMVSS No. 224.⁷

As set forth below, the new definition contained a precise description of the space in which work-performing equipment must reside in or move through while a trailer is moving.

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 new description of the space in which work-performing equipment must reside differed from the one described in the September 1998 letter of interpretation to NTEA. Specifically, the vertical boundary of the area became more limited and extended only to a horizontal plane 660 mm above the ground, instead of all the way up to the horizontal surface of the trailer. This is because the agency believed it was appropriate to require underride guards on trailers that have only a small portion of work-performing equipment located just underneath the trailer bed. That is, we concluded that some work performing equipment located closer to the trailer bed would be compatible with underride guards. We explained that the relationship of the work performing equipment to the location in which the rear impact guard would have to be installed, and not the mere presence of the equipment, should be the criterion for determining the exclusion.

On December 17, 2004, the NTEA submitted a petition for reconsideration of the November 2004 final rule.⁸ NTEA stated that the amendment to the definition of "special purpose vehicles" has had an unintended effect of subjecting many previously excluded trailers equipped with tuckunder lift gates to the requirements of the standard. NTEA argued that this change was contrary to agency's statements in the preamble where we indicated that vehicles equipped with tuckunder lift gates would continue to qualify for a special purpose vehicle exclusion.⁹

⁷ See *id.* We also stated that vehicles equipped with tuckunder lift gates would continue to qualify for a "special purpose vehicle" exclusion. See *id.* at 64497.

⁸ See NHTSA-2004-19523-3.

⁹ See 69 FR 64497.

NTEA explained that some tuckunder lift gates are stowed just underneath the trailer bed. However, they require the area normally occupied by an underride guard in order to deploy the lift platform. Thus, according to the petitioner, the presence of an underride guard would therefore interfere with the operation of these tuckunder lift gates. In sum, NTEA argued that because the description of the space in which work-performing equipment must reside was narrowed, the November 2004 final rule had the effect of subjecting some previously excluded tuckunder lift gates to the requirements of FMVSS No. 224.

II. Response to the Petition for Reconsideration

After carefully considering the issues raised in the NTEA petition for reconsideration, we conclude that the definition of "special purpose vehicles" included in the November 2004 final rule has had an unintended effect of subjecting previously excluded trailers equipped with tuckunder lift gates from the requirements of the standard. This is contrary to our intent because certain tuckunder lift gates cannot comply with the requirements of FMVSS No. 224 for reasons of impracticability. Specifically, some tuckunder lift gates reside just underneath the trailer bed, but nevertheless must move through the space normally occupied by an underride guard in order to deploy. Accordingly, an underride guard installed on vehicles equipped with tuckunder lift gates would make these lift gates useless.

In short, the agency did not anticipate that our rulemaking would subject previously excluded vehicles to the requirements of FMVSS No. 224 because we were unaware that certain work performing equipment stowed close to the surface of the trailer nevertheless requires greater space for operation. Therefore on reconsideration, we have decided to further amend the definition of "special purpose vehicles."

Instead of enlarging the "exclusion zone" for all vehicles, which could make the "special purpose vehicle" exclusion broader than the agency intended, the amendment will specifically exclude vehicles equipped with tuckunder lift gates; i.e., loading platforms that are stowed between the rear vehicle extremity and the rearmost axle, and that deploy through the space that would be normally occupied by an underride guard. This approach incorporates language that is similar to that used in the notice of proposed rulemaking to amend the definition of "special purpose vehicle" where the agency proposed to define and exclude

tuckunder lift gates.¹⁰ In the final rule, the agency concluded that expressly excluding tuckunder lift gates would be redundant. However, we have reconsidered this position after considering the information presented in NTEA's petition.

The revised definition reads as follows:

Special purpose vehicle means a trailer or semitrailer that:

(a) Has work performing equipment that, while the vehicle is in transit, resides in or moves through any portion of the space bounded:

- (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; or

(b) Is equipped with a loading platform that, while the vehicle is in transit, is completely stowed in the space bounded by a plane tangent to the underside of the vehicle, the ground, the rear extremity of the vehicle, and the rearmost axle, and that, when operated, deploys from its stowed position to the rear of the vehicle through any portion of the space described above.

This amendment to the definition of "special purpose vehicles" becomes effective 60 days after the publication of this document. Voluntary compliance is permitted before that time. We conclude that because this amendment excludes tuckunder lift gates, it will not subject previously excluded trailers to the requirements of FMVSS No. 224, and therefore, will not result in any additional costs to trailer or underride guard manufacturers. Trailers capable of complying with FMVSS No. 224 in a practicable manner are likewise unaffected this final rule.

III. Request Concerning Vehicles in Use

In regard to our November 5, 2004 final rule, we also received a request¹¹ from Brenntag asking that "the agency allow all rail type lift gates now in operation as of the date of [e]nactment of the regulation to be exempt from this new ruling. All rail type lift gates installed after that date must comply with the new regulation." In response to this request, we note that the November 5, 2004 final rule was applicable to trailers and semitrailers manufactured on or after November 5, 2004 and did

¹⁰ See 69 FR 9288 at 9296 (February 27, 2004); Docket No. NHTSA-1998-4369.

¹¹ We note that the request from Brenntag was referred to as a petition. However, the agency received the petition after the closing date for petitions for reconsideration. Given the response we provide in this paragraph, however, the type of document submitted by Brenntag is immaterial.

not apply retroactively to rail type lift gates already in operation.

IV. 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 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).

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 simply amends the definition of a "special purpose vehicle" to exclude a specific group of vehicles that cannot comply with the override guard requirements in a practicable manner.

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). 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, this document amends the definition of a "special purpose vehicle" to exclude a specific group of vehicles that cannot comply with the override guard requirements in a practicable manner. Therefore, I hereby certify that this final rule does not have a significant economic impact on a substantial number of small entities.

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

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. 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>.

V. Regulatory Text

List of Subjects in 49 CFR Parts 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 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 as follows:

§ 571.224—Standard No. 224; Rear impact protection.

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S4. Definitions

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Special purpose vehicle means a trailer or semitrailer that:

(1) Has work performing equipment that, while the vehicle is in transit, resides in or moves through any portion of the space bounded:

(i) Vertically from the ground to a horizontal plane 660 mm above the ground;

(ii) Laterally the full width of the trailer, determined by the trailer's side extremities as defined in S4 of this section; and

(iii) 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; or

(2) Is equipped with a loading platform that, while the vehicle is in transit, is completely stowed in the space bounded by a plane tangent to the underside of the vehicle, the ground, the rear extremity of the vehicle, and the rearmost axle, and that, when operated, deploys from its stowed position to the rear of the vehicle through any portion of the space described above.

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Issued on: February 16, 2006.

Jacqueline Glassman,

Deputy Administrator.

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