

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–2022–0053]

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

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

ACTION: Response to petition for reconsideration.

SUMMARY: This document denies a petition, submitted by Advocates for Highway and Auto Safety, the Truck Safety Coalition, Citizens for Reliable and Safe Highways, and Parents Against Tired Truckers, for reconsideration of a final rule amending Federal Motor Vehicle Safety Standard (FMVSS) No. 223, “Rear impact guards,” and FMVSS No. 224, “Rear impact protection.” The final rule, published on July 15, 2022, upgraded NHTSA’s standards addressing rear underride protection in crashes of passenger vehicles into trailers and semitrailers by requiring rear impact guards to provide sufficient strength and energy absorption to protect occupants of compact and subcompact passenger cars impacting the rear of trailers at 56 kilometers per hour (km/h) (35 miles per hour (mph)).

DATES: June 28, 2024.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Ms. Lina Valivullah, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590, (telephone) (202) 366–8786, (email) Lina.Valivullah@dot.gov.

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SUPPLEMENTARY INFORMATION:**I. Background**

The final rule addressing rear underride protection, which was published in the **Federal Register** on July 15, 2022,¹ upgraded NHTSA’s safety standards for rear underride protection in crashes of passenger vehicles into trailers and semitrailers by adopting requirements similar to Transport Canada’s standard for rear

impact guards. With this final rule, the standards now require rear impact guards to provide sufficient strength and energy absorption to protect occupants of compact and subcompact passenger cars impacting the rear of trailers at 56 kilometers per hour (km/h) (35 miles per hour (mph)). The final rule provides upgraded protection for crashes in which a passenger motor vehicle hits the rear of the trailer or semitrailer such that 50 to 100 percent of the width of the passenger motor vehicle overlaps the rear of the trailer or semitrailer.

NHTSA initiated this rulemaking in response to petitions for rulemaking from the Insurance Institute for Highway Safety (IIHS) and from Ms. Marianne Karth and the Truck Safety Coalition. The final rule also responded to and fulfilled the rulemaking mandate of Section 23011(b)(1)(A) of the Infrastructure, Investment and Jobs Act, Public Law 117–58 (commonly referred to as the Bipartisan Infrastructure Law or BIL), which directs the Secretary (by delegation, NHTSA) to upgrade the Federal safety standards for rear impact guards. NHTSA also issued the final rule in accordance with DOT’s January 2022 National Roadway Safety Strategy, which describes the five key objectives of the Department’s Safe System Approach: safer people, safer roads, safer vehicles, safer speeds, and post-crash care. One of the key Departmental actions to enable safer vehicles was to issue a final rule to upgrade existing requirements for rear impact guards on newly manufactured trailers and semitrailers.

In accordance with the Administrative Procedure Act,² NHTSA’s regulations specify, at 49 CFR 553.35, that any interested person may petition NHTSA for reconsideration of any final rule by filing a petition within 45 days after publication of the final rule in the **Federal Register**. As required by 49 CFR 553.35(a), the petition must contain a brief statement of the complaint and an explanation why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

II. Petitions for Reconsideration

NHTSA received two petitions in response to the final rule. The first petition was submitted by Jerry and Marianne Karth, Aaron Kiefer, Eric Hein, Lois Durso-Hawkins, Andy Young, and Garrett Mattos and dated July 15, 2022.³ That petition did not

meet the requirements in 49 CFR part 553 for a petition for reconsideration and NHTSA will instead treat and respond to it as a petition for rulemaking in a separate notice.⁴

The second petition, dated August 25, 2022, was submitted by Advocates for Highway and Auto Safety (Advocates), the Truck Safety Coalition (TSC), Citizens for Reliable and Safe Highways (CRASH), and Parents Against Tired Truckers (PATT), referred to collectively as “Advocates et al.” throughout this document.⁵ The petitioners disagreed with the data and analysis that the agency used for the final rule and asserted that NHTSA should require reinforced rear guards designed for the 30 percent overlap crash condition. The petitioners stated that the lesser requirements established by the final rule are “inadequate and dangerous” and will increase market demand for weaker guards, leading to additional fatalities. The petitioners asserted that the final rule is not in the public interest and requested a stay of the effective date.

III. Response to Petition*a. Crash Data and Underreporting***Petitioners’ Assertions**

The petitioners claimed that NHTSA did not fully consider the available data on underride crashes. They cited statistics regarding the number of fatal large truck crashes in recent years, the cost of crashes involving trucks and buses, and the occupational hazards of truck driving. They asserted that NHTSA’s data analysis was incorrect because it relied on a single University of Michigan Transportation Research Institute (UMTRI) study and did not account for underreporting of underride crashes. They claimed that the UMTRI study was faulty due to its use of police reports and the Fatality Analysis Reporting System (FARS), which they assert do not properly identify underride crashes. The petitioners also stated that NHTSA ignored recommendations from IIHS, the National Transportation Safety Board

Rear Impact Guard Rule (July 2022)”, available at <https://www.regulations.gov/document/NHTSA-2022-0053-0003>.

⁴ While it was submitted as a petition for reconsideration of the final rule, the petition did not explain “why compliance with the rule is not practicable, is unreasonable, or is not in the public interest,” as required by 49 CFR part 553. In addition, the petitioners did not assert that the requirements established by the final rule should be stayed or revoked. For these reasons, the petition does not meet the requirements in 49 CFR part 553 for a petition for reconsideration.

⁵ Docket No. NHTSA–2022–0053–0004, available at <https://www.regulations.gov/document/NHTSA-2022-0053-0004>.

² 5 U.S.C. 553(e) requires that each agency provide interested persons the right to petition for the issuance, amendment, or repeal of a rule.

³ Docket No. NHTSA–2022–0053–0003, document titled “Petition for Reconsideration of the

(NTSB), and the Government Accountability Office (GAO) regarding underride data collection, including the 2019 GAO recommendation⁶ to include underride in the Minimum Modal Uniform Crash Criteria.

Agency Response

The petitioners raised substantially similar points in comments they submitted during the rulemaking process. NHTSA carefully reviewed all information submitted by the petitioners and commenters throughout the rulemaking process to inform the final rule. The agency gave full consideration to the comments submitted in response to the NPRM, including those regarding underride crash data and underreporting. No new data was provided in this petition for reconsideration; the statistics cited by Advocates et al. are not specific to truck crashes with light passenger vehicles and do not provide information on underride. The concerns raised about the data on rear underride crashes used to inform rulemaking were addressed in the preamble to the final rule.

As explained in the preamble (at 87 FR 42354), NHTSA's analysis did not rely on underride coding in FARS or in police reports, and instead used TIFA⁷ data with supplemental information reported in the 2013 UMTRI Study. The TIFA database has greater accuracy than FARS for all medium and heavy trucks involved in fatal traffic crashes, providing more detailed information on the involved large trucks, motor carriers, and sequence of events. The 2013 UMTRI Study analyzed crash information to determine if the crashes might have been underride crashes even when they were not categorized as such in the police reports and in FARS. The study gathered additional information on the rear geometry of single unit trucks and trailers, the configuration of rear impact guards on trucks and trailers, and the incidence and extent of underride and fatalities in rear impacts with trucks and trailers. Because of the detailed analysis and the supplemental information collected for each crash, the 2013 UMTRI Study forms the most comprehensive and valid data set available to inform the agency regarding crashes involving trucks and trailers and the incidence of underride. The crash severity and occurrence of passenger

compartment intrusion (PCI) were determined from the passenger vehicle information. Further, to avoid underestimating underride fatalities, the agency's analysis of the UMTRI study considered all crashes with PCI to be underride even though large striking vehicles may sustain PCI in crashes without underride due to high impact speed and other factors.

NHTSA acknowledges that there is undercounting of underride crashes in FARS and in police reports, which is partly why NHTSA did not rely on these sources in the final rule. NHTSA is taking steps to improve data collection to support future rulemaking. NHTSA and the Federal Motor Carrier Safety Administration have developed and provided educational materials to State and local police departments on identifying and recording underride crashes. An underride data element was also included in the recently published "Minimum Modal Uniform Crash Criteria" 6th Edition,⁸ as recommended in the 2019 GAO report. In addition to the education materials NHTSA provided to State and local police departments, NHTSA will continue to provide training and guidance resources to the law enforcement community to improve accuracy and consistency in the reporting of truck underride crashes.

b. 30 Percent Overlap Protection

Petitioners' Assertions

The petitioners claimed that NHTSA failed to fulfill what they describe as a BIL mandate to match IIHS TOUGHGUARD performance⁹ and that NHTSA did not address the guard deficiencies that IIHS previously identified for 30 percent overlap protection. The petitioners stated that some trailer manufacturers currently provide redesigned guards that meet the IIHS TOUGHGUARD requirements as standard, and that Stoughton's guard does not add weight or cost. They asserted that NHTSA set an unreasonably low standard and there

will be an "increase in deaths and injuries that will result from an increase in market demand for weaker guards" due to the requirements in the final rule.

Agency Response

The section in the final rule titled "NHTSA's Statutory Authority and Response to BIL"¹⁰ described provisions of the Safety Act, relevant sections of the BIL, and fulfillment of BIL mandates in relation to the final rule. The BIL made clear that NHTSA was to adopt a standard for the 30 percent overlap condition if the standard met the Safety Act's requirements and considerations for a safety standard. The Safety Act requires, at 49 U.S.C. 30111, motor vehicle safety standards to be practicable, meet the need for motor vehicle safety, and be stated in objective terms. Further, when establishing new FMVSS requirements, NHTSA must consider whether a proposed standard is reasonable, practicable, and appropriate for the motor vehicle type for which it is prescribed. While a particular trailer model may include a more robust guard as standard, the agency must consider the effect of a mandate on all vehicles subject to FMVSS No. 223 and FMVSS No. 224. As explained in the final rule (at 87 FR 42359–42360), NHTSA has decided that an FMVSS that requires *all* covered vehicles (trailers and semitrailers) to provide rear impact protection in full-frontal, 50 percent overlap, and 30 percent overlap crashes at 56 km/h (35 mph) impact speed would not be reasonable or practicable and would not meet the requirements of Sections 30111(a) and (b) of the Safety Act for issuance of FMVSS.

The petitioners also did not provide any evidence to support the claim that the requirements in the final rule may lead to market demand for weaker guards and a higher rate of fatalities and injuries in comparison to current statistics. Nor does the agency believe that manufacturers will cease selling guards that have received awards from IIHS. In the absence of sufficient information to quantify potential changes in consumer behavior, accounting for such claims in the regulatory analysis is not appropriate. As the requirements of the final rule are more stringent than the preceding requirements, the agency does not agree that it would be in the public interest to stay the final rule.

IV. Conclusion

For the reasons discussed above, the agency is denying the August 25, 2022

⁶ Government Accountability Office. 2019. Truck underride guards: Improved data collection, inspections, and research needed. GAO-19-264.

⁷ The Trucks in Fatal Accidents (TIFA) database contains records for all trucks with a gross vehicle weight rating greater than 4,536 kg (10,000 lb) that were involved in fatal traffic crashes in the 50 states and District of Columbia.

⁸ The "Minimum Modal Uniform Crash Criteria" 6th Edition was published on January 4, 2024, available at <https://www.nhtsa.gov/traffic-records/model-minimum-uniform-crash-criteria>.

⁹ BIL does not contain such a mandate. The petitioners may be referring to appropriations report language urging NHTSA to "to complete rulemaking to improve rear guards in order to ultimately meet the Insurance Institute for Highway Safety standards for Toughguard awards." House Report No. 117-99 at p. 53; see also the Joint Explanatory Statement accompanying the Consolidated Appropriations Act, 2022 (Division L—Transportation, Housing and Urban Development and Related Appropriations Act, 2022, Pub. L. 117-103). This and similar report language must be read in the context of the specific statutory requirements to which NHTSA is subject under the Safety Act.

¹⁰ 87 FR 42341-42344.

petition from Advocates et al. for reconsideration of the July 15, 2022 final rule (87 FR 42339).

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Raymond R. Posten,

Associate Administrator for Rulemaking.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2021–0007;
FXES1111090FEDR–245–FF09E21000]

RIN 1018–BE80

Endangered and Threatened Wildlife and Plants; Threatened Status for the Suwannee Alligator Snapping Turtle with a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the Suwannee alligator snapping turtle (*Macrochelids suwanniensis*), a large, freshwater turtle species from the Suwannee River basin in Florida and Georgia. This rule adds the species to the List of Endangered and Threatened Wildlife. We also finalize a rule issued under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of this species. We have determined that designating critical habitat for the Suwannee alligator snapping turtle is not prudent.

DATES: This rule is effective July 29, 2024.

ADDRESSES: This final rule is available on the internet at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2021–0007 and on the Service’s Environmental Conservation Online System (ECOS) species page at <https://ecos.fws.gov/ecp/species/10891>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2021–0007.

Availability of supporting materials: Supporting materials we used in preparing this rule, such as the species status assessment report, are available at

<https://www.regulations.gov> at Docket No. FWS–R4–ES–2021–0007.

FOR FURTHER INFORMATION CONTACT:

Lourdes Mena, Classification and Recovery Division Manager, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; email: Lourdes.Mena@fws.gov; telephone: 352–749–2462.

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SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species’ critical habitat to the maximum extent prudent and determinable. We have determined that the Suwannee alligator snapping turtle meets the Act’s definition of a threatened species; therefore, we are listing it as such. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This rule lists the Suwannee alligator snapping turtle (*Macrochelys suwanniensis*) as a threatened species and finalizes the rule issued under the authority of section 4(d) of the Act (the “4(d) rule”) that provides measures that are necessary and advisable to provide for the conservation of this species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors

affecting its continued existence. We have determined that the primary threats acting on the Suwannee alligator snapping turtle include illegal harvest and collection (Factor B), nest predation (Factor C), and hook ingestion and entanglement due to bycatch associated with freshwater fishing (Factor E).

Previous Federal Actions

Please refer to the April 7, 2021, proposed rule (86 FR 18014) for a detailed description of Previous Federal actions concerning the Suwannee alligator snapping turtle.

Peer Review

A species status assessment (SSA) team prepared an SSA report, version 1.0, for the Suwannee alligator snapping turtle (Service 2020, entire). The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought peer review of the SSA report version 1.0 (Service 2020, entire). As discussed in the proposed rule, we sent the SSA report to four independent peer reviewers and received responses from one reviewer. The peer review can be viewed at <https://www.regulations.gov> and at our Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). In preparing the proposed rule, we incorporated the results of this review, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found in the Summary of Comments and Recommendations below.

Summary of Changes From the Proposed Rule

In preparing this final rule, we reviewed and fully considered comments we received on our April 7, 2021, proposed rule to list the Suwannee alligator snapping turtle as a threatened species with a 4(d) rule. We updated the Suwannee alligator snapping turtle SSA report (to version 1.2 (Service 2022, entire) based on comments and additional information provided during the proposed rule’s