

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 49 CFR Part 393

[FHWA Docket No. FHWA-97-3201]

RIN 2125-AE15

**Parts and Accessories Necessary for Safe Operation; Rear Impact Guards and Rear Impact Protection**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

**SUMMARY:** The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to require that certain trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds) or more, and manufactured on or after January 26, 1998, be equipped with rear impact guards that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 223. The rear impact guards must be installed to ensure that the trailer or semitrailer meets the rear impact protection requirements of FMVSS No. 224. This rulemaking is intended to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of commercial motor vehicles (CMVs) by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer. With regard to trailers and semitrailers manufactured before January 26, 1998, motor carriers are not required to retrofit a rear impact guard that conforms to FMVSS No. 223. However, motor carriers operating these trailers and semitrailers are required to continue complying with the FHWA's requirements for rear end protection on CMVs that are not covered by FMVSS Nos. 223 and 224.

**EFFECTIVE DATE:** This rule is effective on October 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366-4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

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**Background**

On January 24, 1996 (61 FR 2003), the National Highway Traffic Safety Administration (NHTSA) published a final rule creating FMVSSs Nos. 223, Rear Impact Guards, and 224, Rear Impact Protection. The requirements apply to trailers and semitrailers manufactured on or after January 26, 1998.

The first standard, FMVSS No. 223 (49 CFR 571.223), specifies performance requirements that rear impact guards must meet before they can be installed on new trailers and semitrailers. It specifies strength and energy absorption requirements for the impact guards as well as test procedures that manufacturers and the NHTSA will use to determine compliance with the standard. The standard also requires the guard manufacturer to permanently label the impact guard to certify that the device meets the requirements and to provide instructions on the proper installation of the guard.

The second standard, FMVSS No. 224 (49 CFR 571.224), requires that most new trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or more be equipped with a rear impact guard meeting FMVSS No. 223. Requirements for the location of the guard relative to the rear end and sides of the trailer are also specified in the vehicle standard. In addition, the vehicle standard requires that the guard be mounted on the trailer or semitrailer in accordance with the instructions of the guard manufacturer.

On January 26, 1998, the NHTSA issued a final rule responding to petitions for reconsideration of the 1996 final rule, and making technical amendments to the rear impact guard requirements (63 FR 3654). The 1998 final rule clarified the applicability of the energy-absorption requirements

with regard to cargo tank motor vehicles, as defined in 49 CFR 171.8, excluded pulpwood trailers from the rear impact protection requirements (a definition of pulpwood trailer was added to § 571.224), and revised the definition of special purpose vehicle.

On May 14, 1998, the FHWA proposed amending § 393.86 to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of CMVs by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer (63 FR 26759). The agency indicated that this action is necessary because the FMVSSs are applicable only to vehicle and vehicle component manufacturers. In the absence of an amendment to the FMCSRs, there would be no Federal requirement that motor carriers maintain their trailers to conform to the rear impact protection requirements of FMVSS No. 224, or repair damaged rear impact guards. Motor carriers could also replace rear impact guards with devices that failed to comply with the NHTSA requirements.

**Discussion of Comments to the NPRM**

The FHWA received 5 comments in response to the notice of proposed rulemaking (NPRM). The commenters were: the Advocates for Highway and Auto Safety (Advocates); the American Trucking Associations (ATA); the Insurance Institute for Highway Safety (IIHS); the National Automobile Dealers Association, American Truck Dealers Division (NADA); and, Torcomian Industries, Inc.

All of the commenters supported the rulemaking. However, the ATA requested changes to certain portions of the regulatory language.

**General Comments**

The Advocates stated:

This initiative to parallel the current NHTSA standard with an in-service [requirement] for motor carrier operations clearly will enhance safety. We especially commend the agency for proposing the additional benefits of public safety gained by requiring foreign carriers to abide by the same safety standards as domestic carriers. Given the prospective increases in trilateral freight movements because of the North American Free Trade Agreement, this action appropriately anticipates and counters a potentially serious threat to highway safety from numerous new trailers/semi-trailers being operated on U.S. highways by Canadian and Mexican carriers. This proposal is a textbook example of an agency acting in the public interest and it should be adopted.

The IIHS stated:

The operational requirements for commercial motor vehicles should conform to the [F]ederal safety standards applicable to new vehicles. Interagency cooperation and consistency are particularly important for vehicle safety systems such as underride guards. Properly functioning underride guards on trailers will reduce occupant compartment intrusion in passenger vehicles striking trailers from the rear and thus reduce deaths and injuries.

#### *Comments About the Proposed Regulatory Language*

The ATA believes the proposed language requiring rear impact guards to be no more than 22 inches above the ground at any point across the horizontal member is too strict a requirement for motor carriers. The proposed requirement fails to take into account minor damage that may occur to the impact guard in motor carrier operations.

The ATA stated:

An ATA survey conducted earlier this year of guards built to the Truck Trailer Manufacturers Association (TTMA) Recommended Practice—which is dimensionally identical to FMVSS 224—found that only 8.6 percent contained noticeable damage. Further, only 3.5 percent of the guards suffered harm that would raise their height. It typically occurred at a point near their center and consisted of an upward “vee-shaped” bend.

These narrow bends ranged up to three inches high. They typically originate from complications caused by malfunctioning dock locking mechanisms. Dock locks are devices found at shipper facilities. They lock onto the underride guard and hold trailers during loading or unloading to prevent an unexpected roll-away. Upward, center bending of underride guards occurs when the dock lock does not completely retract and a spotting tractor moves the trailer. These tractors use a hydraulic fifth wheel to lift the front of a trailer, freeing the driver from having to retract its landing gear before moving it. Much like a teeter-totter, raising the front of a trailer lowers the rear. This drives the underride guard into the top of the dock lock, causing the bending.

ATA and one of its affiliated organizations—The Maintenance Council (TMC), which consists of thousands of truck equipment professionals—explored the consequences of such damage with trailer manufacturers. We found that the degree of bending which typically occurs does not impair the guard’s capability to fulfill the requirements of FMVSS 223.

The ATA also requested that the FHWA revise the proposed definitions of “low chassis vehicles,” “special purpose vehicles,” and “wheels back vehicles” to cover any type of motor vehicle. The ATA believes this is necessary to retain exemptions currently provided for several types of straight

trucks. The ATA recommends replacing “trailer or semitrailer” with “a motor vehicle.”

#### *Comments About Retrofitting*

The ATA, Torcomian Industries, and the NADA responded to the FHWA’s request for comments on whether the agency should consider a retrofitting requirement for trailers and semitrailers manufactured before January 26, 1998. The ATA believes retrofitting trailers with new rear impact guards would be impractical and cost prohibitive, without contributing anything to safety. The ATA stated:

Retrofitting would be impractical because trailer manufacturers design the guard and the rear of the trailer to act in combination to meet the energy absorption requirements of FMVSS 223. Therefore, attaching a new rear underride guard to an older trailer might be a recipe for disaster. Older trailers may not have an attaching understructure to accommodate the new equipment, and may not function as expected.

In addition, truck operators would have no way of knowing if new guards fitted to older trailers would meet the new standards.

The cost of fitting a new guard to a new trailer—with no unexpected complications—is \$300. Since there are approximately 3 million trailers in service, the direct cost of retrofit would exceed \$900 million. Adding in the indirect cost of revenue lost due to down time and the complications of retrofitting old trailers not designed to meet FMVSS 224, the total balloons to over \$1 billion.

The NADA suggests that the FHWA “continue to examine both the costs and benefits associated with applying these new standards retroactively, as well as any technical constraints that may be involved.”

Torcomian Industries stated:

[Our] position is why not have all vehicles, regardless of year of manufacture or design, come up to standards. The technology is here, now \* \* \* an ideal method of providing vehicles with underride guards.

The transportation industry needs an underride bumper that will bridge all of the various configurations in today’s vehicles, therefore removing any objections from the end users.

Torcomian Industries believes that establishing specific standards of performance for underride bumpers by application is important to help the [original equipment manufacturer] and fleet service facilities customers better to determine how Torcomian Industries Articulating Patented Underride Bumper Guard can help reduce operating costs.

Torcomian Industries believes its articulating rear impact guard can be “easily retrofitted to all existing vehicles, whether semi-trailer or straight truck.”

#### **FHWA Response to Comments**

The FHWA agrees with the ATA’s comments about the need to revise certain portions of the regulatory text. The agency believes it is important to maintain the spirit and intent of § 393.86(e) of the FHWA’s current requirements which states “[m]otor vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle afford the rear end protection contemplated shall be deemed to be in compliance with this section.” The FHWA has revised the proposed definitions of “low chassis vehicles,” “special purpose vehicles,” and “wheels back vehicles” to make them applicable to single-unit trucks. This action will help to make the FHWA’s requirements for single unit trucks, and trailers and semitrailers manufactured prior to January 26, 1998, easier to understand, use and enforce.

The FHWA notes that there is a difference between the agency’s special purpose vehicle exception for single-unit trucks, and semitrailers and trailers manufactured before January 26, 1998, and the NHTSA’s special purpose vehicle exclusion. The FHWA’s exception requires that the work-performing equipment provide some level of protection against underride. Since the FHWA’s rear impact guard requirements for single unit trucks, and semitrailers and trailers manufactured before January 26, 1998, do not include specific performance criteria, the level of protection would have to be comparable to a rear impact guard that is substantially constructed and firmly attached.

By contrast, the NHTSA’s special purpose vehicle exclusion is based on the impracticability of installing a rear impact guard to satisfy the requirements of FMVSS Nos. 223 and 224. The work-performing equipment is not required to provide protection against underride.

Although the FHWA agrees with the NHTSA’s special purpose vehicle exclusion for new semitrailers and trailers, the FHWA does not believe it is appropriate to provide such a broad exception for single-unit trucks, and semitrailers and trailers built before January 26, 1998. Since the strength and dimensional requirements for the FHWA’s requirements for single unit trucks, and semitrailers and trailers not covered by the NHTSA rule, are less stringent than NHTSA’s requirements, motor carriers should not experience difficulty achieving compliance. Motor carriers that have maintained their vehicles to comply with the FHWA’s requirements in effect prior to the publication of this final rule will not

have to take any actions as a result of this rulemaking.

The FHWA does not agree with the ATA's comment about the need to remove the words "at any point across the full width of the member." The removal of these words would not preclude State officials from citing motor carriers for violating § 393.86 if there is minor damage to the rear impact guard. Since § 393.86 cross-references FMVSS Nos. 223 and 224, State officials can cite the motor carrier for failing to meet the referenced standards if the ground clearance exceeds 22 inches at any point across the full width of the member, irrespective of whether § 393.86 explicitly states "at any point across the full width of the member."

The FHWA intends that the rear impact guard requirements be enforced by State officials during roadside inspections and must rely on the enforcement discretion of these officials to determine if the rear impact guard has minor damage, or damage that appears severe enough to adversely affect the ability of the rear impact guard to perform its function. The FHWA did not propose enforcement tolerances and cannot as part of this final rule provide regulatory language to make the distinction between minor damage and more severe damage that would necessitate repairs or replacement of the rear impact guard. The agency believes that penalizing motor carriers for minor damage that would not adversely affect the performance of the rear impact guard serves no practical purpose and discourages States from taking such actions.

With regard to the comments about retrofitting, the FHWA does not intend to propose a retrofitting requirement for improved rear impact protection on trailers and semitrailers manufactured before January 26, 1998. The agency continues to believe there is insufficient accident, cost, and research data to support such a proposal, and that the obstacles to obtaining such data are essentially insurmountable.

The rear impact guard requirements applicable to single-unit trucks, and trailers manufactured prior to January 26, 1998, do not specify minimum strength, or energy absorption capabilities, nor do they prohibit the use of impact guards that have a ground clearance less than 762 mm (30 inches), or are closer than 61 cm (24 inches) to the rear and 45.7 cm (18 inches) to the sides of the vehicle. In addition, the current regulation allows impact guards to be constructed of more than one section provided the lateral distance between the sections does not exceed

610 mm (24 inches). As a result, manufacturers have used a number of rear impact guard designs to satisfy the FHWA's requirements.

To develop a sound technical basis for a retrofitting proposal, the FHWA would have to establish criteria for determining which of the older impact guard designs should be considered acceptable and which ones should be replaced. The FHWA would then have to estimate the total number of guards that would have to be replaced or modified, the per-unit and total cost for replacing or modifying those guards (including lost revenues while the trailer was being retrofitted), and the benefits in lives saved and injuries prevented if a certain number of vehicles were retrofitted. This is particularly difficult because some rear impact guards currently in use may meet or exceed the NHTSA's strength requirements but fail to meet dimensional or energy absorption requirements. Others may meet the dimensional requirements but fall short of the minimum strength requirements.

The FHWA indicated in its NPRM that the agency does not have test data or engineering analyses concerning the performance capabilities of the rear impact guard designs currently in use. The Interstate Commerce Commission (ICC) did not have authority to regulate vehicle and component manufacturers when it issued the first rear underride protection requirements in 1952 and, consequently, had no authority to compel manufacturers to provide technical data on their products. Also, the initial FMVSSs issued by the FHWA (before the NHTSA became a separate agency) did not include rear impact protection requirements. Therefore, the agency did not have access to this information during the relatively short period of time (between 1966 and 1970, when the NHTSA was established) in which vehicle and component manufacturers were regulated by the FHWA. Because of the lack of technical data concerning the performance capabilities of underride devices currently in use, the agency cannot prepare an accurate estimate of the costs and benefits associated with a retrofitting requirement.

The FHWA cannot determine whether the ATA's estimate of more than \$1 billion dollars is accurate. However, the agency believes the cost per trailer for retrofitting impact guards is likely to be greater than the cost per trailer for installing rear impact protection on new trailers. Generally, the costs associated with retrofitting components on motor vehicles exceeds the cost of installing those components while the vehicle is being manufactured.

For the purpose of determining a lower bound of a cost range for retrofitting trailers with rear impact guards, the cost estimates provided by the NHTSA in its final rule on rear impact guards and rear impact protection and some of those used by the FHWA in its conspicuity retrofitting rulemaking may be used.

The NHTSA estimates rear impact guards meeting the requirements of FMVSS No. 223 cost approximately \$128 to \$148 per trailer or semitrailer (61 FR 2004, January 24, 1996). This cost includes an incremental increase (above the cost of current rear impact guards) of between \$77 and \$96 per guard to satisfy the rear impact guard and rear impact protection requirements.

The FHWA indicated in its NPRM concerning trailer conspicuity that the estimated costs for retrofitting approximately 1.4 million trailers with retroreflective sheeting is \$339 million if a two-year phase-in period is allowed (63 FR 33611, June 19, 1998). These figures include an estimate of \$144 per trailer for the value of revenues that cannot be generated while the trailer is being retrofitted. It is difficult to estimate the loss in revenues because of the variety of trailer types, the variety of motor carrier operations and the rates that are charged, and the overall manner in which some trailers are used—being left idle at the motor carrier's terminals for periods of time that may be as short as a few hours to several days.

It is acknowledged by most interested parties that the costs for retrofitting a trailer to meet the requirements of FMVSSs Nos. 223 and 224 generally would be greater than the costs of retrofitting a trailer to meet the conspicuity requirements of FMVSS No. 108. At a minimum, the time required to retrofit new underride devices would be greater than that associated with applying retroreflective tape. The result would be significantly higher labor and lost-revenue costs. The lower bound for the cost range of retrofitting would therefore exceed \$339 million. This would certainly be the case if more than 1.4 million trailers were required to be retrofitted within a short timeframe.

If, as Torcomian Industries argues, the agency attempted to require retrofitting all CMVs, the lower bound for the cost range would almost certainly exceed \$1 billion. The significant increase in the lower bound for the cost range would be due to the large number of single-unit trucks that would be subject to a retrofitting requirement. The number of registered trucks in 1996 (excluding Federal, State, County, and municipal trucks; truck tractors; farm trucks;

pickups; vans; sport utilities; and other light trucks) was 73,983,774, while the number of registered private and commercial trailers and semitrailers was only 4,339, 079.<sup>1</sup> Even if only a fraction of the registered trucks were subject to the FMCSRs—a fraction that cannot be determined accurately—the number of trucks that would have to be retrofitted would greatly exceed the number of trailers.

The FHWA believes it is inappropriate to initiate a retrofitting rulemaking when the data to develop more detailed cost estimates does not exist and cannot be generated without a massive program of economic research.

#### Discussion of Final Rule

Paragraph (a)(1) of § 393.86 provides a general statement of the applicability of the new rear impact guard requirements and cross references FMVSS Nos. 223 and 224. Paragraph (a)(1) also identifies the types of trailers (which are defined in § 390.5 and § 393.5) that are exempted from the new rear impact guard requirements. Paragraphs (a)(2) through (a)(5) specify the following requirements, respectively: The minimum width for the impact guard; the maximum ground clearance; the maximum distance from the rear of the vehicle to the rear surface of the impact guard; and the cross-sectional vertical height of the horizontal member of the guard. Paragraph (a)(6) specifies the certification and labeling requirements. The agency has included detailed requirements in § 393.86 (a)(2) through (a)(6) to help motor carriers quickly determine if the underride device on a newly manufactured trailer meets the NHTSA's requirements, and to assist State agencies responsible for enforcing motor carrier safety regulations.

The existing requirements (for all CMVs manufactured after December 31, 1952, except trailers or semitrailers manufactured on or after January 26, 1998) are covered under paragraphs (b)(1) through (b)(3). Paragraph (b)(1) specifies the minimum dimensions for the rear impact guard as installed on the motor vehicle. Paragraph (b)(2) requires that the impact guard must be substantially constructed and attached by bolts, welding, or other comparable means. Paragraph (b)(2) differs from the current attachment requirements in that the phrase "firmly attached" has been replaced with "attached by means of bolts, welding, or other comparable means" to make the regulations easier to understand and enforce.

The current language contained in paragraph (e) has been revised and included in a new paragraph (b)(3). The final rule indicates that low chassis vehicles, special purpose vehicles, and wheels back vehicles which are constructed and maintained so that the body, chassis, or other parts of the vehicle provide rear end protection comparable to an impact guard(s) conforming to the requirements of paragraph (b)(1) of § 393.86 shall be considered in compliance with the requirements.

#### Applicability to Canadian and Mexican Vehicles

The final rule is applicable to vehicles operated in the United States by Canada- and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require rear impact guards (which meet the NHTSA standard) on newly manufactured trailers operating in their countries, the FHWA believes that it is appropriate to require such guards on foreign-based trailers manufactured on or after the effective date of the NHTSA requirements if those vehicles are operated within the United States.

Commercial motor vehicles operated in the United States by Canada- and Mexico-based motor carriers are currently required to comply with the rear underride device requirements for single-unit trucks, and trailers manufactured before January 26, 1998. The revision of § 393.86 requires that trailers and semitrailers manufactured on or after January 26, 1998, and operated by foreign-based motor carriers meet the NHTSA standards.

Although the FHWA specifically requested comments from Canada- and Mexico-based motor carriers and original equipment manufacturers that sell trailers and semitrailers for the Canadian and Mexican markets, the agency did not receive comments from such parties. The FHWA has received numerous telephone inquiries from Canada-based motor carriers and trailer manufacturers that sell trailers and semitrailers for the Canadian market. The agency advised each caller that foreign motor carriers are currently required to comply with all the requirements of part 393 and that the proposed revision of § 393.86 did not include an exception for foreign-based motor carriers. The agency also advised these companies of the process for submitting comments to the rulemaking docket and, on several occasions, sent via facsimile a copy of the NPRM to Canada-based motor carriers that were unable to access the **Federal Register**

via the Internet. The agency believes that ample opportunity has been provided to foreign-based motor carriers to raise any issues which would necessitate consideration of an exception to the requirements of § 393.86 and that it is appropriate to require all motor carriers operating in the United States to comply with this rule.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures because of the substantial public interest in the prevention of rear-underride accidents involving CMVs. This rule requires that certain trailers and semitrailers manufactured on or after January 26, 1998, be equipped with rear impact protection devices meeting the requirements of FMVSS No. 223 and installed on trailers in accordance with FMVSS 224. Motor carriers are responsible for maintaining the underride protection devices on these trailers. It is anticipated that the economic impact of this requirement will be minimal because the NHTSA requires trailer manufacturers to equip new trailers and semitrailers with rear impact guards and the FHWA's rulemaking only requires motor carriers to maintain the improved underride protection devices. It is expected that the costs of repairing damaged underride devices will be the only economic burden placed upon motor carriers and that this burden generally will not exceed the costs of properly repairing underride devices on trailers manufactured prior to the effective date of the NHTSA's requirements. Accordingly, further regulatory evaluation is not necessary.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. This rule modifies the rear impact protection standards for trailers in the FMCSRs to make them consistent with the manufacturing standards in the FMVSS No. 224, which requires the installation of rear impact protection devices conforming to FMVSS No. 223 on certain newly-manufactured semitrailers and trailers. The FHWA believes that maintenance costs of the rear impact

<sup>1</sup> "Highway Statistics 1996," Federal Highway Administration, November 1997 (FHWA-PL-003).

protection devices required under the new FMVSSs will be minimal. The maintenance costs only apply to small entities that have trailers that were manufactured on or after January 26, 1998, and are required to be equipped with rear impact guard protection meeting the requirements of FMVSS Nos. 223 and 224.

As of September 1996, the FHWA estimates that there were approximately 382,128 interstate motor carriers. Of these carriers, 136,360 own, term-lease or trip-lease 6 or fewer trailers (68,405 have 1 trailer, 45,770 have 2-3 trailers, and 22,185 have 4-6 trailers). The number of motor carriers that own, term-lease or trip-lease more than 6 trailers, but fewer than 21 is 21,793 (6,658 carriers have 7-8 trailers, 6,197 have 9-11 trailers, 3,887 carriers have 12-14 trailers, 2,779 carriers have 15-17 trailers, and 2,272 carriers have 18-20 trailers). If only those motor carriers that own, term-lease, or trip-lease 20 or fewer trailers are considered small entities, this rulemaking could have an economic impact on up to 158,153 small entities.

The economic impact on each of the motor carriers will vary depending on the number of trailers that the carrier would be responsible for maintaining and the severity of the damage to the rear impact guard. For the most severe level of damage (e.g., damage from a passenger car crashing into the rear of the trailer), the motor carrier would be required to replace the rear impact guard.

The Small Business Administration (SBA), which oversees agencies' compliance with the Regulatory Flexibility Act, has published guidelines to classify small business. The SBA has indicated that for entities engaged in motor freight transportation and warehousing, small businesses are those with \$18.5 million or fewer dollars in annual receipts. For a private motor carrier with a principal business other than transportation that operates 20 trailers and has annual receipts of \$18.5 million, the total economic impact would most likely be less than one tenth of one percent of the carrier's annual receipts. For example, if all 20 trailers had to have the rear impact guards replaced and the total costs for parts and labor for each trailer reached \$1,000, the economic impact would be one tenth of one percent (\$20,000/\$18.5 million). Although the FHWA does not have documentation concerning the replacement costs for a rear impact guard meeting the requirements of FMVSS Nos. 223 and 224, the agency believes the costs would be less than \$1,000.

Based on its analysis of impacts on small entities summarized above, the FHWA believes that this rule will affect a substantial number of small entities, but will not have a significant economic impact on these entities.

#### *Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

#### *Paperwork Reduction Act*

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

#### *National Environmental Policy Act*

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned 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. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 393**

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Issued on: August 26, 1999.

**Gloria J. Jeff,**

*Federal Highway Deputy Administrator.*

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, as follows:

#### **PART 393—[AMENDED]**

1. The authority citation for part 393 continues to read as follows:

**Authority:** Section 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.5 is amended by adding the definitions of "low chassis vehicle," "special purpose vehicle," and "wheels back vehicle," and by revising the definitions of "pulpwood trailer," "rear extremity," and "side extremities" (now "side extremity"), placing them in alphabetical order, to read as follows:

#### **§ 393.5 Definitions.**

\* \* \* \* \*

*Low chassis vehicle.* (1) A trailer or semitrailer manufactured on or after January 26, 1998, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard width, height, and rear surface requirements of § 571.224 in effect on the date of manufacture, or a subsequent edition.

(2) A motor vehicle, not described by paragraph (1) of this definition, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard configuration requirements of § 393.86(b)(1).

\* \* \* \* \*

*Pulpwood trailer.* A trailer or semitrailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container.

*Rear extremity.* The rearmost point on a motor vehicle that falls above a horizontal plane located 560 mm (22 inches) above the ground and below a horizontal plane located 1,900 mm (75 inches) above the ground when the motor vehicle is stopped on level ground; unloaded; its fuel tanks are full; the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations; and the motor 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 taillamps, rubber bumpers, hinges

and latches are excluded from the determination of the rearmost point.

\* \* \* \* \*

*Side extremity.* The outermost point on a side of the motor vehicle that is above a horizontal plane located 560 mm (22 inches) above the ground, below a horizontal plane located 1,900 mm (75 inches) above the ground, and between a transverse vertical plane tangent to the rear extremity of the vehicle and a transverse vertical plane located 305 mm (12 inches) forward of that plane when the vehicle is unloaded; its fuel tanks are full; and the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations. Non-structural protrusions such as taillights, hinges and latches are excluded from the determination of the outermost point.

\* \* \* \* \*

*Special purpose vehicle.* (1) A trailer or semitrailer manufactured on or after January 26, 1998, having work-performing equipment that, while the motor vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 571.224 (paragraphs S5.1.1 through S5.1.3), in effect on the date of manufacture, or a subsequent edition.

(2) A motor vehicle, not described by paragraph (1) of this definition, having work-performing equipment that, while the motor vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 393.86(b)(1).

\* \* \* \* \*

*Wheels back vehicle.* (1) A trailer or semitrailer manufactured on or after January 26, 1998, whose rearmost axle is permanently fixed and is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 305 mm (12 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

(2) A motor vehicle, not described by paragraph (1) of this definition, whose rearmost axle is permanently fixed and is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 610 mm (24 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

\* \* \* \* \*

3. Section 393.86 is revised to read as follows:

**§ 393.86 Rear impact guards and rear end protection.**

(a)(1) *General requirements for trailers and semitrailers manufactured on or after January 26, 1998.* Each trailer and semitrailer with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or more, and manufactured on or after January 26, 1998, must be equipped with a rear impact guard that meets the requirements of Federal Motor Vehicle Safety Standard No. 223 (49 CFR 571.223) in effect at the time the vehicle was manufactured. When the rear impact guard is installed on the trailer or semitrailer, the vehicle must, at a minimum, meet the requirements of FMVSS No. 224 (49 CFR 571.224) in effect at the time the vehicle was manufactured. The requirements of paragraph (a) of this section do not apply to pole trailers (as defined in § 390.5 of this chapter); pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles (as defined in § 393.5); and trailers towed in driveway-towaway operations (as defined in § 390.5).

(2) *Impact guard width.* The outermost surfaces of the horizontal member of the guard must extend to within 100 mm (4 inches) of the side extremities of the vehicle. The outermost surface of the horizontal member shall not extend beyond the side extremity of the vehicle.

(3) *Guard height.* The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm (22 inches) at any point across the full width of the member. Guards with rounded corners may curve upward within 255 mm (10 inches) of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

(4) *Guard rear surface.* At any height 560 mm (22 inches) or more above the ground, the rearmost surface of the horizontal member of the guard must be within 305 mm (12 inches) of the rear extremity of the vehicle. This paragraph shall not be construed to prohibit the rear surface of the guard from extending beyond the rear extremity of the vehicle. Guards with rounded corners may curve forward within 255 mm (10 inches) of the side extremity.

(5) *Cross-sectional vertical height.* The horizontal member of each guard must have a cross sectional vertical height of at least 100 mm (3.94 inches) at any point across the guard width.

(6) *Certification and labeling requirements for rear impact protection guards.* Each rear impact guard used to satisfy the requirements of paragraph (a)(1) of this section must be

permanently marked or labeled as required by FMVSS No. 223 (49 CFR 571.223, S5.3). The label must be on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard. The certification label must contain the following information:

(i) The impact guard manufacturer's name and address;

(ii) The statement "Manufactured in \_\_\_\_\_" (inserting the month and year that the guard was manufactured); and,

(iii) The letters "DOT", constituting a certification by the guard manufacturer that the guard conforms to all requirements of FMVSS No. 223.

(b)(1) *Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998).* Each motor vehicle manufactured after December 31, 1952, (except truck tractors, pole trailers, pulpwood trailers, or vehicles in driveway-towaway operations) in which the vertical distance between the rear bottom edge of the body (or the chassis assembly if the chassis is the rearmost part of the vehicle) and the ground is greater than 76.2 cm (30 inches) when the motor vehicle is empty, shall be equipped with a rear impact guard(s). The rear impact guard(s) must be installed and maintained in such a manner that:

(i) The vertical distance between the bottom of the guard(s) and the ground does not exceed 76.2 cm (30 inches) when the motor vehicle is empty;

(ii) The maximum lateral distance between the closest points between guards, if more than one is used, does not exceed 61 cm (24 inches);

(iii) The outermost surfaces of the horizontal member of the guard are no more than 45.7 cm (18 inches) from each side extremity of the motor vehicle;

(iv) The impact guard(s) are no more than 61 cm (24 inches) forward of the rear extremity of the motor vehicle.

(2) *Construction and attachment.* The rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means.

(3) *Vehicle components and structures that may be used to satisfy the requirements of paragraph (g) of this section.* Low chassis vehicles, special purpose vehicles, or wheels back vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle provide the rear end protection comparable to impact guard(s) conforming to the requirements of paragraph (b)(1) of this section shall

be considered to be in compliance with those requirements.

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

#### 49 CFR Parts 1000, 1001, and 1004

[STB Ex Parte No. 572 (Sub-No. 1)]

#### Removal, Revision, and Redesignation of Miscellaneous Regulations

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

**SUMMARY:** The Surface Transportation Board (Board) is revising and updating regulations pertaining to indexing and making documents available, and incorporating them into the Board's regulations on inspection of records. The Board is also removing seven sections from 49 CFR part 1004 that have been incorporated by the Federal Highway Administration (FHWA) into FHWA regulations, and redesignating and updating the remainder of that part. **EFFECTIVE DATE:** These rules are effective October 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

**SUPPLEMENTARY INFORMATION:** The Board is removing the regulations at 49 CFR part 1000, revising language from that part concerning indexing and making documents publicly available, and incorporating that revised rule into 49 CFR part 1001. We are also removing unnecessary sections of 49 CFR part 1004, and updating the remaining sections in that part.

#### Parts 1000 and 1001 (Availability and Indexing)

We are removing the regulations at 49 CFR part 1000, but we are also revising and updating the portions of that rule that deal with indexing and the availability of documents, and we are incorporating them into a new 49 CFR 1001.1(b). The Interstate Commerce Commission (ICC) issued the rules now found in part 1000 on June 24, 1967 (32 FR 9020) (Ex Parte No. 37)<sup>1</sup> in response to the passage of the Freedom of Information Act, 5 U.S.C 552 (FOIA). Under the FOIA, government records are divided into three categories: (1) Those required to be published in the **Federal Register** [section 552(a)(1)]; (2)

those that must be made publicly available for inspection and copying and indexed—the so-called “reading room” documents [section 552(a)(2)]; and (3) all others that are to be furnished upon request unless an exception applies [section 552(a)(3) and 552(b)]. Rule 1000.10 implemented the section 552(a)(2) requirement that the three categories of reading room documents—final decisions, including concurring and dissenting opinions, made in the adjudication of cases; statements of policy and interpretation adopted by the agency and not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public [sections 552(a)(2)(A), (B) and (C)]—be made available and indexed.<sup>2</sup>

The Electronic Freedom of Information Act of 1996, Pub. L. No. 104-231, 110 Stat. 3049 (1996) (EFOIA), amends the FOIA. Among other things, EFOIA adds a fourth category of reading room documents: records released pursuant to a request under section 552(a)(3) that have become or are likely to become the subject of a subsequent request—the so-called “subsequent request” documents [section 552(a)(2)(D)]. It also requires agencies to make available to the public a general index of subsequent request documents [section 552(a)(2)(E)] and to make that index available via computer telecommunications by December 31, 1999. In addition, EFOIA requires that all reading room documents created on and after November 1, 1996, be made available, preferably via computer

<sup>2</sup> Section 1000.10 also refers to the Interstate Commerce Acts Annotated (the ICAA). The ICAA was published in accordance with a 1928 Senate resolution requesting the ICC to prepare a comprehensive manuscript covering the text of laws administered by and affecting the work of the ICC, suitably annotated with digests and indexes, and to be published as a Senate document. S. Res. 17, 70th Congress, 1st Sess. January 14, 1928. Twenty-two volumes of the ICAA were published between 1930 and 1977.

Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), abolished the ICC and created the Board. Section 204(a) of the ICCTA directs the Board to rescind all regulations established by the ICC that are based on provisions of law repealed and not substantively reenacted by the ICCTA. Although the Senate Resolution was not a law, because the ICC has been abolished and the ICCTA contains no mention of an annotated compendium of laws administered by the Board, we are under no legal obligation to resurrect the ICAA (which, as noted, was last published in 1977), and the new rules delete references to the ICAA. We note that today there are many sources of information about the laws the Board implements and how we implement them, and there appears to be no reason for the Board to expend its limited resources to duplicate readily available information.

telecommunications, by November 1, 1997. *Id.*<sup>3</sup>

Thus, section 552(a)(2) requires that we make publicly available for inspection and copying at our offices four types of documents: final decisions, policy statements, staff manuals, and subsequent request documents. Our new rule at 49 CFR 1001.1(b) provides for the availability of these documents in paper format, and it requires that those same four types of documents that were created on and after November 1, 1996, be available via computer telecommunications as well.

With respect to indexing, section 552(a)(2) provides that (a) indexes furnishing “identifying information” of the four types of documents be made available for public inspection and copying; (b) indexes be published and distributed quarterly or more frequently, unless such publication is “unnecessary and impracticable”; and (c) a general index of subsequent request documents be made available on the Internet by December 31, 1999:

Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 5, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) [a general index of subsequent request documents] available by computer telecommunications by December 31, 1999.

Beyond the statutory requirement that the index “provide[] identifying information to the public as to any matter issued \* \* \* and required by this paragraph to be made available or published,” there is little authority as to what constitutes an appropriate index. “Congress has imposed some very limited record-creating obligations with regard to indexing under the FOIA.” *Kissinger v. Reporters Committee*, 445 U.S. 136, 152, n.17 (1980) (citation omitted). See also *Irons & Sears v. Dann*, 606 F.2d 1215, 1223 (D.C. Cir.

<sup>3</sup> The Board maintains an Electronic Reading Room at its Internet website at [www.stb.dot.gov](http://www.stb.dot.gov), in compliance with the EFOIA requirement that all reading room documents created on and after November 1, 1996, be accessible via computer telecommunications by November 1, 1997. All documents are available for inspection and copying from the site. We are also making available on our website FOIA annual reports. 5 U.S.C. 552(e)(2).

<sup>1</sup> The rules were originally codified at 49 CFR 100. The current part 1000 has also been revised and consists of one section, section 1000.10.