

## VI. Comment

NHTSA received one comment from the public. While the Agency takes great interest in the public's concerns and appreciates the commenter's feedback, the comment does not address the purpose of this particular petition.

## VII. NHTSA's Analysis

NHTSA has evaluated the merits of the inconsequential noncompliance petition and supplemental materials submitted by Mack Trucks and has determined that this particular noncompliance is inconsequential to motor vehicle safety. Specifically, the Agency considered the following when making its decision:

1. Each of the noncompliances described in Mack Truck's petition involve deviations from the identification requirements in FMVSS No. 101, specifically mislabeled controls. Mislabeled may affect a driver's recognition of a specific control, but it does not affect the function of a control. For each of the mislabeled controls described herein, the absence of a required label or use of an incorrect label does not otherwise affect FMVSS No. 101's identification and illumination requirements because other identifying labels are present for each subject control, which assist the driver in selecting the appropriate control.

2. Mack Trucks explained that the subject vehicles have a heating and air conditioning fan control that is missing the required label using the fan symbol or words specified in Table 1 of FMVSS No. 101. While the subject rotary control is missing the required label, it includes labeling of numbers 0 through 4 corresponding to increasing fan speed, and the rotary control is adjacent to and grouped with other labeled controls associated with heating and air conditioning functions on the same control panel; consequently, in this instance, it would be evident to a driver that the numbered rotary control is associated with fan speed for heating and air conditioning, and the noncompliance would not be consequential to safety.

3. Mack Trucks explained that the subject vehicles have marker lamp controls that are labeled with a symbol<sup>1</sup> that does not match the symbol specified in Table 1 of FMVSS No. 101, and that the symbol is still a lighting symbol rather than an arbitrary symbol. Each subject vehicle's marker lamp control is part of a master lighting control that includes multiple individually labeled positions as either a rotary control or three-position switch lever. For all subject vehicles except for the LR vehicles, the master lighting control is labeled with the master lighting switch label specified in Table 2 of FMVSS No. 101. The LR model vehicles are equipped with a master lighting toggle switch that is not labeled with the required symbol or word for identifying the master light control as specified in Table 2 of FMVSS No. 101.

<sup>1</sup> The symbol used by Mack Trucks described in the petition is a parking light symbol that is not recognized in FMVSS No. 101.

For the Anthem, Pinnacle, and Granite model vehicles, the incorrect marker lamp control label (which is an internationally recognized parking light symbol, similar in nature to the marker light symbol) would not be enough for a driver to confuse the function of the control because it is part of the master lighting switch; the master lighting switch otherwise includes the master lighting switch label specified by the standard and other commonly used lighting symbols. Notably, FMVSS No. 101 permits omission of the marker lamp label when it is part of the master lighting switch.<sup>2</sup>

For the LR model vehicle, the master lighting switch is not labeled with master lighting switch label, and the position for the marker lamps is labeled with the same incorrect symbol for the marker lamps. Still, all symbols that appear on the master lighting switch (marker lamps and head lamps) are commonly recognizable as lighting control symbols. Consequently, the specific control implementations described in Mack Truck's petition and supplemental materials are unlikely to alter a driver's understanding of the lighting controls in a manner that would be consequential to safety.

4. As explained by Mack Trucks, the subject vehicles are trucks that may only be driven by a professional driver holding a commercial driver's license (CDL). NHTSA believes that the qualifications required to drive these subject vehicles further mitigates any remaining safety risk from the noncompliance.

## VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Mack Trucks has met its burden of persuasion that the subject FMVSS No. 101 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Mack Trucks' petition is hereby granted and Mack Trucks is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision on this petition only applies to the subject vehicles that Mack Trucks no longer controlled at the time it determined that the noncompliance existed. However, the granting of this

<sup>2</sup> The standard permits omission of a separate marker lamp identifier when the marker lamp control is included as part of the master lighting switch (see 49 CFR 571.101 Table 1, Note 8); however, the standard does not permit use of a marker lamp identifier (symbol or word) other than those specified in the standard.

petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mack Trucks notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2018-0110; Notice 2]

### Great Dane, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Denial of petition.

**SUMMARY:** Great Dane, LLC (Great Dane) has determined that certain model year (MY) 2019 Great Dane Freedom Platform trailers do not comply with Federal Motor Vehicle Safety Standards (FMVSS) No. 223, *Rear Impact Guards*, and FMVSS No. 224, *Rear Impact Protection*. Great Dane filed a noncompliance report dated January 2, 2019, and subsequently petitioned NHTSA on January 2, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Great Dane's petition.

**FOR FURTHER INFORMATION CONTACT:** Natasha Iwegbu, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366-2334.

### SUPPLEMENTARY INFORMATION:

#### I. Overview

Great Dane has determined that certain MY 2019 Great Dane Freedom Platform trailers do not fully comply with paragraph S5.3 of FMVSS No. 223, *Rear Impact Guards* (49 CFR 571.223), and paragraph S5.1 of FMVSS No. 224, *Rear Impact Protection* (49 CFR 571.224). Great Dane filed a noncompliance report dated January 2, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and

subsequently petitioned NHTSA on January 2, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Great Dane's petition was published with a 30-day public comment period, on November 7, 2019 in the **Federal Register** (84 FR 60145). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2018-0110."

## II. Trailers Involved

Approximately 72 MY 2019 Great Dane Freedom Platform trailers, manufactured between July 10, 2018, and November 8, 2018, are potentially involved.

## III. Noncompliance

Great Dane explained that the noncompliance is that the subject trailers were manufactured with a rear impact guard (RIG) that does not contain the certification plate as required by paragraphs S5.3 of FMVSS No. 223 and S5.1 of FMVSS No. 224.

## IV. Rule Requirements

Paragraphs S5.3 of FMVSS No. 223 and S5.1 of FMVSS No. 224 include the requirements relevant to this petition. 49 CFR 571.223, S5.3 provides that each guard shall be permanently labeled with the information specified in paragraphs S5.3(a) through (c) of FMVSS No. 223. The information shall be in English and in letters that are at least 2.5 mm high. The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection and includes the following: (a) The guard manufacturer's name and address, (b) the statement: "Manufactured in \_\_\_\_" (inserting the month and year of guard manufacture), and (c) the letters "DOT," constituting a certification by the guard manufacturer that the guard conforms to all requirements of this standard. 49 CFR 571.224, S5.1 requires that each vehicle shall be equipped with a rear

impact guard certified as meeting FMVSS No. 223.

## V. Summary of Great Dane's Petition

The following views and arguments presented in this section, "V. Summary of Great Dane's Petition," are the views and arguments provided by Great Dane. They do not reflect the views of the Agency.

1. Great Dane believes that the lack of the impact guard certification plate is an inconsequential type of noncompliance as it relates to vehicle safety. The fact that the certification plate was not installed on the rear impact guard on this particular group of trailers does not make these trailers any less safe.

2. Great Dane stated that these rear impact guards as manufactured and installed by Great Dane, are compliant as required by the Federal Standard.

3. Great Dane stated that the subject trailers have affixed to them certification plates, certifying that the entire trailer, including the rear impact guard, meet and/or exceed all the Federal Motor Vehicle Safety Standards in effect, on the date of manufacture as indicated.

4. Great Dane stated that to meet the standards of FMVSS Nos. 223 and 224, it has never installed a third party produced rear impact guard on any of its trailers.

5. Great Dane stated that the incident that led to these trailers being produced without the plate attached was an isolated incident. It has since been investigated, resolved, and should not occur again in the future.

6. Great Dane believes that the extra certification plate required on the rear impact guard is redundant.

Great Dane concluded by contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

## VI. Public Comments

The Agency received one comment from the public. This comment was received from the Commercial Vehicle Safety Alliance (CVSA).<sup>1</sup> CVSA supports the granting of Great Dane's petition that the subject noncompliance is inconsequential as it relates to motor vehicle safety and "agrees with Great Dane's assessment that a rear impact guard with a certification label, that otherwise meets the requirements

outlined in FMVSS No. 223, is not any less safe than a rear impact guard with a label." In its comment, CVSA contends that because these certification labels "frequently wear, fade or are removed during repair" and "motor carriers are unable to obtain new certification labels from the original trailer manufacturers because they can no longer guarantee that the rear impact guards meet the FMVSS manufacturing standard," the rear impact guard certification label requirements should be removed. CVSA goes on to give its views about the effects of the rear impact guard certification label requirements.

## VII. NHTSA's Analysis

Rear impact guards for trailers reduce the risk to passenger vehicle occupants in crashes in which a passenger vehicle impacts the rear end of a trailer or semitrailer. RIGs need to be certified as meeting all applicable standards.

The principle of self-certification is the foundation of the method the National Traffic and Motor Vehicle Safety Act of 1966 establishes for regulated motor vehicles and motor vehicle equipment in the United States. Under 49 U.S.C. 30112(a), there is a general prohibition against manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce, or importing into the United States any motor vehicle or item of motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard is in effect unless the vehicle or equipment both complies with the standard and is covered by a certification issued under section 30115.

Offering for sale products that fail to contain the manufacturer's certification violates this system, and therefore the consequences to safety are potentially significant. Furthermore, omitting all of the labeling from an item of regulated motor vehicle equipment may have other safety consequences. NHTSA has a long-standing position that removing required labeling reduces the safety effectiveness of items of motor vehicle equipment. The labeling is an indication to consumers, including secondhand purchasers, that the item of equipment provides a minimum level of safety protection.<sup>2</sup>

NHTSA received a comment from CVSA in support of Great Dane's position, and in support of removing the RIG certification label requirements altogether. NHTSA finds the argument that these labels "frequently wear, fade, or are removed during repair" to be a

<sup>1</sup> See Docket Number "NHTSA-2018-0110-0003."

<sup>2</sup> <https://isearch.nhtsa.gov/files/08-002439as.htm>.

complaint of inconvenience, not a complaint of substance. Furthermore, to the extent that CVSA states that certification labels are removed during repair and not replaced, such practice may violate 49 U.S.C. 30122(b), which prohibits manufacturers, distributors, dealers, or motor vehicle repair businesses from knowingly making inoperative any part of a device or element of design installed on motor vehicle equipment in compliance with an applicable motor vehicle safety standard. NHTSA has stated that removal of markings and information required by an applicable FMVSS would take such item out of compliance, and therefore would be a violation of 49 U.S.C. 30122(b).

The removal of these labels may further endanger the motoring public in a rear end collision with a trailer that has had a substandard repair, or cannot be properly inspected for safety and compliance. For example, once a trailer is in-service, the owner of the trailer may choose to replace or repair the RIG at any time and may source a replacement RIG from any number of places, over which the original certifying entity has no control. If a RIG were to be involved in a crash or if it were to fail an inspection, it may be difficult to know who the certifying entity for a RIG was if there were no permanent labeling on it. This would inhibit the ability of the investigators to determine if there was a potential safety trend involved with the subject equipment item. This example demonstrates the need for critical safety equipment, such as the rear impact guard, to be labeled permanently with the required information.

NHTSA does not agree with Great Dane's argument that the RIG certification plate is redundant to the trailer certification plate, nor does it agree that the lack of date of manufacture is inconsequential. Further, Great Dane argues that all the trailers in question were fitted with Great Dane RIGs and no third-party RIGs were used, therefore the trailer certification plate is sufficient to symbolize certification for the RIG. However, in the event of a rear-end crash, the RIG would likely be replaced, while the trailer may remain unaffected. In this instance, a replacement RIG would no longer share the certification or date of manufacture stated on the trailer certification plate.

Furthermore, while NHTSA regulates new motor vehicles and equipment, the importance of the requirements does not end when the vehicles or equipment are sold. A purchaser of such vehicles would likely need to know if the

manufacturer certified the RIG when the vehicle was new. This is one reason why the requirement is for the label to be permanent. Therefore, lack of a certification plate could have a safety implication throughout the life of the product.

A RIG certification plate is required by FMVSS No. 223 as the Rear Impact Guard is a part of trailer, much in the same way an independent DOT certification, as indicated by the symbol DOT, is required on regulated vehicle lamps, wheels, tires, and various other regulated parts of a vehicle. In the same way, the presence of a passenger vehicle certification label does not obviate the marking requirements of the aforementioned vehicle equipment. Similarly, a trailer certification plate does not obviate the requirement for a RIG certification plate.

After reviewing the petition of inconsequentiality from Great Dane, NHTSA has determined that this particular noncompliance is not inconsequential to motor vehicle safety, therefore this petition is denied.

#### VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Great Dane has not met its burden of persuasion that the subject FMVSS No. 223 and FMVSS No. 224 noncompliance is inconsequential to motor vehicle safety. Accordingly, Great Dane's petition is hereby denied and Great Dane is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Anne L. Collins,

Associate Administrator for Enforcement.

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#### DEPARTMENT OF TRANSPORTATION

##### National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0117; Notice 2]

##### Sumitomo Rubber Industries, Ltd., and Sumitomo Rubber North America, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

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

**ACTION:** Denial of petition.

**SUMMARY:** Sumitomo Rubber Industries, Ltd. and Sumitomo Rubber North

America, Inc. (collectively, "Sumitomo") have determined that certain Sumitomo and Falken truck tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles*. Sumitomo filed a noncompliance report dated November 12, 2020. Sumitomo subsequently petitioned NHTSA on December 4, 2020, and later amended its petition on April 8, 2021, and July 9, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the denial of Sumitomo's petition.

#### FOR FURTHER INFORMATION CONTACT:

Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655-0547.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

Sumitomo has determined that certain Sumitomo and Falken truck tires do not fully comply with the requirements of paragraph S6.1.2(a) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles* (49 CFR 571.119). Sumitomo filed a noncompliance report dated November 12, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Sumitomo subsequently petitioned NHTSA on December 4, 2020, and later amended its petition on April 8, 2021, and July 9, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

Notice of receipt of Sumitomo's petition was published with a 30-day public comment period, on October 12, 2021, in the **Federal Register** (86 FR 56750). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2020-0117."

##### II. Tires Involved

Approximately 8,275 of the following Sumitomo and Falken truck and bus radial tires, manufactured between January 26, 2020, and June 2, 2020, are potentially involved: