

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer D. Johnson,

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

[Docket No. NHTSA-2023-0001]

Federal Motor Vehicle Safety Standards; Rear Impact Guards; Denial of Petition for Rulemaking

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA) requesting that NHTSA amend Federal Motor Vehicle Safety Standard (FMVSS) No. 223, “Rear Impact Guards,” to remove the certification label requirement in S5.3 of the standard. The agency is denying the petition because the requested amendment would compromise the enforcement of the rear impact guard standard. Limiting the ability to identify noncompliant products would reduce the effectiveness of the standard and increase the safety risk to the motoring public.

DATES: January 30, 2023.

ADDRESSES: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

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.

For legal issues: Ms. Callie Roach, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590, (telephone) 202-366-2992, (email) Callie.Roach@dot.gov.

SUPPLEMENTARY INFORMATION:**Background**

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. Rear impact guards must be certified as meeting applicable safety standards. S5.3 of FMVSS No. 223 and S5.1 of FMVSS No. 224 include the requirements relevant to this petition.

The regulation at 49 CFR 571.223, S5.3, provides that each guard shall be permanently labeled with the information specified in 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. The specified information includes: (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. The regulation at 49 CFR 571.224, S5.1, requires that each vehicle shall be equipped with a rear impact guard certified as meeting FMVSS No. 223.

The Petition

NHTSA received a petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA)¹ on March 12, 2019, requesting NHTSA to initiate a rulemaking proceeding to amend FMVSS No. 223, “Rear Impact Guards,” by removing the certification label requirement in S5.3 of the standard. CVSA provided the following justification for its petition for rulemaking regarding the certification label requirement.

1. CVSA states that the certification label requirement “is resulting in the citation of rear impact guards that otherwise meet the physical requirements and have no negative impact on safety.” CVSA states that they are also petitioning the Federal Motor Carrier Safety Administration (FMCSA) to remove the certification label requirement in the Federal Motor Carrier Safety Regulations (FMCSR) and

¹CVSA describes itself as a nonprofit association comprised of local, state, provincial, territorial, and federal commercial motor vehicle safety officials and industry representatives. CVSA aims to achieve uniformity, compatibility, and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety throughout Canada, Mexico, and the United States. <https://www.cvsa.org/about-cvsa/>.

that amending the FMVSS would assist with that change.

2. CVSA claims that “certification labels frequently wear, fade or are removed during repair” and that “motor carriers are unable to obtain new certification labels from the original trailer manufacturers because they can no longer guarantee that the rear impact guard meets the FMVSS manufacturing standard.” CVSA says that “there are no reasonable options to meet the certification requirements” as a result.

3. CVSA believes removing the certification label requirement would “eliminate confusion and inconsistency in enforcement,” which CVSA states would be beneficial, “while not negatively impacting safety as the physical components of the guard will still be inspected to the same standard during a roadside inspection.”

Analysis of the Petition

NHTSA believes that the petitioner’s requested amendment to FMVSS No. 223 could reduce the safety provided by rear impact guards on trailers and semitrailers. Under 49 U.S.C. 30112(a) (Section 30112(a) of the National Traffic and Motor Vehicle Safety Act), 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. Section 30115 requires manufacturers of vehicles and manufacturers of motor vehicle equipment subject to motor vehicle safety standards to certify that the vehicle or equipment complies with all applicable FMVSS. Section 30115 further specifies that certification of equipment may be shown by a label or tag on the equipment or on the outside of the container in which the equipment is delivered. Pursuant to these authorities, NHTSA issued the certification labeling requirements for rear impact guards.

In issuing FMVSS No. 223 and FMVSS No. 224, NHTSA specifically accounted for the burden on small trailer manufacturers. In order to lessen to the extent reasonable the burden associated with compliance testing on small manufacturers, NHTSA issued two standards. FMVSS No. 223 establishes the strength and certification requirements for rear impact guards and FMVSS No. 224 establishes requirements for certain trailers to be

equipped with certified rear impact guards. A trailer manufacturer has the option to either manufacture their own rear impact guards that comply with the equipment standard or may purchase and install guards from a guard manufacturer that has certified the guards as complying with FMVSS No. 223.

In the January 1996 final rule (61 FR 2004) that established FMVSS No. 223, NHTSA described its rationale for requiring each rear impact guard to be labeled. This rationale was provided in response to a request that trailer manufacturers not be required to affix a certification to rear impact guards that they manufacture and install on trailers they produce. The commenters asked that the trailer's certification label be allowed to serve as the certification label for the rear impact guard. As NHTSA explained in the final rule, allowing some guard manufacturers to omit the label would be impractical from an enforcement standpoint. If all of the guards were not labeled, vehicle inspectors would not be able to tell whether the guard was certified by the guard/vehicle manufacturer as part of the vehicle or whether the vehicle manufacturer installed a guard purchased from a guard manufacturer that neglected to make the required certification.² This would reduce the likelihood of non-compliant guards being identified, which would increase the safety risk to the motoring public. Additionally, without the labeling requirement, it would be more difficult for NHTSA to identify trends that may indicate a particular rear impact guard contains a safety related defect. If a rear impact guard were to be involved in a crash, it may be difficult to know who the certifying entity was if there were no permanent labeling on it. This would inhibit the ability of the investigators to determine a potential safety trend involved with the subject equipment item. Accordingly, NHTSA maintains its long-standing position³ that removing a labeling requirement from the FMVSS limits the ability to identify products that do not meet all applicable Federal motor vehicle safety standards and compromises the enforceability of those standards.

NHTSA has considered the assertion that compliance labels “wear, fade or are removed during repair,” and does not believe that this indicates a current compliance issue with the requirements

in FMVSS No. 223. FMVSS No. 223 specifies permanent labeling of the rear impact guard on the forward- or rearward-facing surface of the horizontal member of the guard. NHTSA does not specify a particular means (*i.e.*, labeling, etching, branding, stamping, or embossing) by which the manufacturer must achieve permanency. Thus, for NHTSA compliance purposes, the guard label is considered permanent if it satisfies the certification requirements specified in 49 CFR part 567. Section 567.4(b) specifies, “The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it.” The means of achieving permanence and the exact placement of the label are left to the discretion of the manufacturer. NHTSA does not believe that the wearing or fading of labels that meet this requirement for permanency would result in a significant impairment of NHTSA's enforcement capabilities.

Conclusion

NHTSA has reviewed the petition for rulemaking submitted by CVSA requesting that NHTSA amend FMVSS No. 223 by removing the labeling requirement for rear impact guards on trailers and semitrailers. The agency is denying the request because removing the labeling requirement for rear impact guards would compromise the enforceability of FMVSS No. 223 and thereby increase the safety risk to the motoring public.

In accordance with 49 U.S.C. 30162 and 49 CFR part 552, the petition for rulemaking from CVSA is hereby denied.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648-BL71

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 34

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (South Atlantic Council) submitted Amendment 34 to the Fishery Management Plan (FMP) for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (CMP FMP) for review, approval, and implementation by NMFS. If approved by the Secretary of Commerce, Amendment 34 to the CMP FMP would revise the acceptable biological catch (ABC), the annual optimum yield (OY), sector allocations, the stock and sector annual catch limits (ACL), recreational annual catch target (ACT), and the recreational bag and possession limits off the east coast of Florida for Atlantic migratory group king mackerel (Atlantic king mackerel). For both Atlantic king mackerel and Atlantic migratory group Spanish mackerel (Atlantic Spanish mackerel), Amendment 34 would revise the landing fish intact provisions for the recreational sector. The purpose of Amendment 34 is to revise the catch limits based on a recent stock assessment and revise sector allocations for Atlantic king mackerel based on the best scientific information available, and to revise management measures for Atlantic king mackerel and Atlantic Spanish mackerel.

DATES: Written comments must be received on or before March 31, 2023.

ADDRESSES: You may submit comments on Amendment 34, identified by “NOAA-NMFS-2022-0108,” by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter “NOAA-NMFS-2022-0108” in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Mary Vara, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information

² January 24, 1996, 61 FR 2001.

³ See, *e.g.*, April 18, 2022 notice announcing the denial of Great Dane's petition for a decision that a noncompliance involving missing FMVSS No. 223 certification labels is inconsequential as it relates to motor vehicle safety (87 FR 23018).