

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.

\* \* \* \* \*

Issued: November 12, 2004.

**Jeffrey W. Runge,**

*Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2004-19033]

RIN 2127-AI56

### Federal Motor Vehicle Safety Standards; Rear Impact Guards; Final Rule

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

**ACTION:** Final rule.

**SUMMARY:** This document amends the Federal motor vehicle safety standard No. 224, "Rear impact protection" (FMVSS No. 224), to exclude road construction controlled horizontal discharge semitrailers (RCC horizontal discharge trailers) from the requirements of the standard. The RCC horizontal discharge trailers are used in the road construction industry to deliver asphalt to construction sites and gradually discharge asphalt mix into the paving machines overlaying the road surface. The agency has concluded that installation of the rear impact guards, as required by FMVSS No. 224, on RCC horizontal discharge trailers would interfere with their intended function and is therefore impracticable due to the unique design and purpose of these vehicles.

**DATES:** *Effective Date:* This rule is effective December 20, 2004.

*Petitions:* Petitions for reconsideration must be received by January 3, 2005.

**ADDRESSES:** Petitions for reconsideration should refer to DOT Docket No. NHTSA-2004-19033 and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

Please see the Privacy Act heading under Regulatory Notices.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Michael

Huntley, Office of Vehicle Safety Standards, (Telephone: 202-366-0029) (Fax: 202-493-2739) (E-Mail: [Michael.Huntley@nhtsa.dot.gov](mailto:Michael.Huntley@nhtsa.dot.gov)).

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You may send mail to either of these officials at: National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

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#### I. Background

Underride occurs when a light vehicle, such as a passenger car, crashes into the rear end of a heavy truck that has a chassis higher than the hood of the light vehicle. In certain instances, the light vehicle slides under or "underrides" the rear end of the heavy vehicle such that the rear end of the trailer strikes and enters the passenger compartment of the light vehicle, resulting in passenger compartment intrusion (PCI). PCI crashes can result in severe injuries and fatalities to the light vehicle occupants due to occupant contact with the rear end of the heavy truck.

In an attempt to reduce the frequency and severity of underride collisions, NHTSA issued FMVSS No. 224.<sup>1</sup> The standard requires that all new trailers and semitrailers with a Gross Vehicle Weight Rating (GVWR) of 10,000 lbs or more be equipped with a rear impact guard (underride guard). The underride guard is attached to the rear of the trailer (within 12 inches [305 mm] of the rear extremity of the vehicle) and acts to prevent the light vehicle from sliding under the trailer chassis.

The RCC horizontal discharge trailer is a unique piece of equipment used in the road construction industry to deliver asphalt and other building materials to

a construction site. The trailer is equipped with a mechanical drive and a horizontal conveyor, which gradually discharges asphalt mix into a paving machine overlaying the road surface with asphalt material.

With respect to FMVSS No. 224, the RCC horizontal discharge trailer's most unique and technologically problematic feature stems from the fact that the rear of the trailer is designed to connect with and latch onto various paving machines. Typically, the paving machine attaches to the rear axle of the RCC horizontal discharge trailer via hydraulic arms, and the edge of the trailer's conveyor belt extends over the paving machine opening. An underride guard required by FMVSS No. 224 would prevent the RCC horizontal discharge trailer from effectively connecting with a paving machine.

Connection with paving equipment is critical to the road construction process as it allows the RCC horizontal discharge trailer to deposit asphalt mix directly into the paving machine hopper. This method also allows for a more controlled off-loading, as compared to a dump trailer, which is the other type of vehicle capable of delivering asphalt mix to road construction sites.<sup>2</sup>

This rulemaking was initiated by a joint petition on behalf of Dan Hill & Associates, Inc. (Dan Hill), and Red River Manufacturing, Inc., a Division of Trail King Industries, Inc. (Red River).<sup>3</sup> Dan Hill and Red River are manufacturers of RCC horizontal discharge trailers. Their petition requested that the agency amend FMVSS No. 224 to "exclude construction controlled horizontal discharge semitrailers from the scope of the standard." Since the effective date of the standard,<sup>4</sup> Dan Hill and Red River have each received a temporary exemption from the requirements of FMVSS No. 224, in part because of the impracticability of installing underride guards on RCC horizontal discharge trailers.<sup>5</sup>

FMVSS No. 224 currently excludes pole trailers, pulpwood trailers, wheels

<sup>2</sup> Because the horizontal discharge trailers do not rise to unload their contents like steel end dump trailers, they can be used on uneven terrain or where overhead obstructions such as bridges and power lines completely prevent the use of dump trailers.

<sup>3</sup> See Docket No. NHTSA-2001-8876-4.

<sup>4</sup> FMVSS No. 224 became effective January 26, 1998; see 61 FR 2004 (January 24, 1996).

<sup>5</sup> The temporary exemptions were based on the "substantial economic hardship" grounds under 49 CFR 555.6(a). Nevertheless, the economic hardship was rooted in impracticability of installing underride guards. Both exemptions have since been renewed. See 68 FR 28880 (May 27, 2003).

<sup>1</sup> See 61 FR 2004, January 24, 1996.

back trailers, and “special purpose vehicles” because attachment of an underride guard to these specific vehicles is either impracticable or unnecessary.<sup>6</sup> For example, in the case of a wheels back trailer, the rear axle is located within 12 inches of the rear extremity of the vehicle. Because the rear wheels are located so close to the rear extremity of the vehicle, they act as an underride guard, making underride virtually impossible.

The RCC horizontal discharge trailers subject to this notice do not fit the current definition of special purpose vehicles. Because of their unique design necessitated by their interactions with the paving machines, a practicable RCC horizontal discharge trailer is also ill suited for a wheels back design exception. In sum, the RCC horizontal discharge trailers do not fall under any exclusion currently available in FMVSS No. 224. At the same time, complying with the standard is impracticable due to the unique design and purpose of these vehicles.

In their March 23, 2001 joint petition, Dan Hill and Red River requested that NHTSA amend FMVSS No. 224 to exclude construction controlled horizontal discharge trailers from FMVSS No. 224. According to the petitioners, the two parties together account for virtually all of RCC horizontal discharge trailer manufacturing. Approximately 0.12% of all trailers produced in the U.S. are RCC horizontal discharge trailers. Both manufacturers claim to have been unsuccessful in their independent efforts to develop an underride guard that is compliant, functional, and capable of interfacing with road-building equipment with which these vehicles are designed to work. A discussion of these various attempts is provided below. Based on their attempts to manufacture a compliant trailer that remains functional and safe under real world operating conditions, petitioners believe that bringing RCC horizontal discharge trailers into compliance with FMVSS No. 224 is not practically feasible. Both manufacturers stated failure to amend the standard would effectively terminate production of RCC horizontal discharge trailers unless petitioners continued to receive temporary exemptions.

<sup>6</sup> “Special purpose vehicle” means a trailer or a semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard. See 49 CFR 571.224. Examples of special purpose vehicles are dump trailers, auto transporters, and trailers equipped with lift gates.

## II. Notice of Proposed Rulemaking

On September 19, 2003, NHTSA published a Notice of Proposed Rulemaking to exclude RCC horizontal discharge trailers from the requirements of FMVSS No. 224.<sup>7</sup>

In the NPRM, we described the apparent difficulty associated with installing underride guards on RCC horizontal discharge trailers without interfering with their intended function. We stated that, based on the joint petitions for rulemaking and previous petitions for temporary exemptions, there did not appear to be a practicable solution that would bring RCC horizontal discharge trailers in compliance with FMVSS No. 224. Accordingly, NHTSA proposed to exclude RCC horizontal discharge trailers from the requirements of FMVSS No. 224 by adding RCC horizontal discharge trailers to the list of excluded vehicles in S3 of the Standard.

To ensure that the standard excluded only the specific type of the vehicles discussed in this notice, we proposed the following definition of RCC horizontal discharge trailers:

“a trailer or semitrailer that is equipped with a mechanical drive and a conveyor to deliver asphalt and other road building materials, in a controlled horizontal manner, into a lay down machine or paving equipment for road construction and paving operations.”

In order to better understand practicability issues associated with bringing RCC horizontal discharge trailers in compliance with FMVSS No. 224, the agency asked for comment on the following questions:

1. Is a wheels back design a practical vehicle design alternative for RCC horizontal discharge trailers?
2. What is the maintenance and performance history of RCC horizontal discharge trailers with wheels back design?
3. Is a retractable underride guard design a practical solution for RCC horizontal discharge trailers? Does such a design create a risk of injury to workers operating or working near the trailer?
4. What is the maintenance and performance history of RCC horizontal discharge trailers with retractable underride guards?
5. Has any manufacturer of RCC horizontal discharge trailers subject to this notice been able to alternatively design a compliant vehicle equipped with an underride guard, that is able to slide over the paving machine in order to discharge asphalt mix?

<sup>7</sup> See 68 FR 54879.

## III. Summary of Comments

The agency received 24 comments in response to the September 19, 2003 NPRM. Specifically, we received three comments from RCC horizontal discharge manufacturers; seventeen comments from road construction companies; two comments from Associated General Contractors of America, a comment from a RCC horizontal discharge trailer reseller; and a comment from a gravity feed dump trailer manufacturer.

All comments supported the proposed amendment to exclude RCC horizontal discharge trailers from the requirements of FMVSS No. 224. Several commenters emphasized impracticability issues associated with installing underride guards on RCC horizontal discharge trailers. Other comments from the road construction companies indicated their preference for horizontal discharge trailers over dump trucks. One commenter urged the agency to exclude gravity feed dump trailers in addition to RCC horizontal discharge trailers.

## IV. Agency Analysis and Decision

Based on our consideration of the comments and other available information, the agency is issuing this final rule to amend FMVSS No. 224 to exclude RCC horizontal discharge trailers from the requirements of the standard. The basis for our decision is discussed below.

### A. Impracticability

Manufacturing a RCC horizontal discharge trailer to accommodate an underride guard has proven impracticable because the rear of the trailer is designed to connect with paving equipment. As previously discussed, the paving machine typically attaches to the rear axle of an RCC horizontal discharge trailer via hydraulic arms, and the edge of the trailer's conveyor belt extends over the paving machine opening. This configuration is critical to the road construction process as it allows the RCC horizontal discharge trailer to deposit asphalt mix directly into the paving machine hopper. A fixed underride guard prevents paving machines from interfacing with (locking onto) the RCC horizontal discharge trailer during the paving operations.<sup>8</sup>

In the NPRM, we detailed petitioners' independent efforts to develop an underride guard that is compliant, safe under real-world operating conditions, and capable of interfacing with road-

<sup>8</sup> See comments from Mayo Construction Co., NHTSA-2003-14396-16.

building equipment with which these vehicles are designed to work.

First, petitioners considered installing a retractable underride guard that would be engaged when the RCC horizontal discharge trailer travels to and from the actual construction sites, and retracted when the RCC horizontal discharge trailer is attached to the paving machine. However, designing a retractable underride guard suitable for this application has proven impractical for several reasons, chiefly among them the lack of adequate clearance. The edge of the RCC horizontal discharge trailer must extend over the paving machine in order to drop the hot asphalt mix into the hopper. Because paving machines differ in size and configuration, the trailer must allow for paving machines of different heights to slide under the conveyor structure. Typically, the paving machine openings are 31 to 35 inches off the ground. Conveyor structures of the RCC horizontal discharge trailers are normally 36 to 37 inches off the ground. As a result, the underride guard has to retract completely against the conveyor structure, in order to not interfere with the paving machine. Achieving such "flush" retraction has not proven feasible. Additionally, raising the overall ground clearance of the RCC horizontal discharge trailer in order to provide adequate clearance for a retractable underride guard would raise the center of gravity of the trailer, possibly making the vehicle more prone to rollovers.

Another difficulty in installing a retractable underride guard involves the location of a planetary gearbox that drives the conveyor system. The gearbox is located where a retractable underride guard system would otherwise be located. Further, asphalt accumulations on the underride guard cause certain maintenance problems, which have not yet been solved. Specifically, a retractable underride guard has mating surfaces that slide over each other. These surfaces would be under constant exposure to hot asphalt, which would result in mating surfaces sticking to each other. The hot mix asphalt materials that adhere to the guard surface may render it ineffective and may pose a risk of injury to the truck or machine operator.

In response to the NPRM, we received several comments on the practicability of a retractable underride guard. Ace Asphalt Paving Co., Keeler Construction Co., Rose's Enterprises and EDW. C. Levy Co. all stated that a retractable guard will result in increased cost and would increase the risk of an injury associated with employees being too

close to the guard as it is being retracted or lowered. Red River reiterated that a retractable guard could pose a risk to construction workers because asphalt buildup would jam the retraction mechanism.

Additional efforts by the petitioners to bring their product into compliance with FMVSS No. 224 have similarly failed. Specifically, petitioners considered adding removable underride guards. They rejected this approach because of concerns that workers would fail to replace the underride guard before transit.

The agency did not receive comments directly addressing removable underride guards. Nevertheless, the agency continues to believe that removable underride guards are not a practicable solution. Because the standard applies only to new vehicles, this design approach would allow RCC horizontal discharge trailer manufacturers to meet FMVSS No. 224. However, given the inconvenience associated with continually removing and reinstalling a removable guard, it is likely that at some point the guard would be removed permanently. This scenario is inconsistent with the overall intent of the standard, which is to reduce the likelihood of underride collisions on U.S. highways.

Therefore, the agency concludes that installing underride guards on RCC horizontal discharge trailers is impracticable.

#### *B. Alternative Methods of Compliance and Alternative Vehicles*

##### **1. Special Purpose Vehicles and Wheels Back Trailers**

As previously discussed, S.3 of FMVSS No. 224 contains certain exceptions to the requirements of the standard. Specifically, "wheels back" trailers, and "special purpose vehicles" need not comply with FMVSS No. 224 because attachment of an underride guard to these specific vehicles is either impracticable or unnecessary. Neither exception applies to RCC horizontal discharge trailers.

A special purpose vehicle is defined as " \* \* \* a trailer or a semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard"<sup>9</sup> Examples of special purpose vehicles are auto transporters, and certain trailers equipped with lift gates.

The RCC horizontal discharge trailers subject to this rulemaking do not fit the

current definition of special purpose vehicles, notwithstanding their unique nature and their work-performing equipment, because technically, their work-performing equipment does not move through or reside in the area in which the underride guard would be attached.

Wheels back trailer are equipped with a rear axle that is located within 305 mm (12 inches) of the rear extremity of the vehicle. Because the rear wheels are located so close to the rear extremity of the vehicle, they act as an underride guard, making PCI virtually impossible.

Because of the unique design necessitated by their interactions with the paving machines, a practicable RCC horizontal discharge trailer is ill-suited for a wheels back design. As previously mentioned, a RCC horizontal discharge trailer is designed to extend over a paving machine in order to drop the hot asphalt mix into the hopper. A rear axle located within 12 inches of the rearmost extremity would prevent the trailer from properly extending over the paving machine. In fact, several commenters confirmed that a RCC horizontal discharge trailer with a rear axle located within 12 inches of the rearmost extremity is unacceptable. For instance, Barre Stone Products, Inc. (Barre) stated that a 33-inch overlap between the RCC horizontal discharge trailer and the paving machine is necessary to ensure proper interaction between the hopper and the trailer, and to prevent spillage of asphalt material. Barre further noted that the wheels back design would not allow for proper articulation between the RCC horizontal discharge trailer and the paving machine at the point where they are joined. Accordingly, the agency concludes that wheels back design does not provide for a practicable solution for compliance with FMVSS No. 224.

In sum, RCC horizontal discharge trailers do not fall under any preexisting exclusions to the requirements of FMVSS No. 224 and cannot be effectively altered to fit these exclusions.

##### **2. Use of Dump Trucks Instead of RCC Horizontal Discharge Trailers**

In evaluating available alternatives, NHTSA also considered the implications of not exempting RCC horizontal discharge trailers from the requirements of FMVSS No. 224. If RCC horizontal discharge trailers were no longer available to the road construction industry, the industry would have to rely on dump trucks to deliver asphalt to the construction sites. In the NPRM we stated that RCC horizontal discharge trailers appear to allow for a more controlled off-loading, as compared to a

<sup>9</sup> See S.4 of 49 CFR § 571.224.

dump truck, which tends to discharge large quantities of asphalt mix instantly. A more controlled offloading not only prevents spillage of asphalt and other debris on the road surfaces, but also ensures a more leveled road surface construction. Furthermore, dump trucks may not be able to operate in situations where overhead obstructions such as bridges and power lines prevent raising the bed to unload asphalt materials.

In response to the NPRM, the agency received several comments from the road construction industry indicating their preference for RCC horizontal discharge trailers over dump trucks. Specifically, Central Specialties, Inc., and Las Vegas Paving Corp., stated that RCC horizontal discharge trailers are preferable to dump trucks because they allow for a more controlled delivery of asphalt, thus reducing the instances of spills and accidents on job sites. Further, RCC horizontal discharge trailers reduce or prevent asphalt material segregation during delivery. This makes road construction material more durable, resulting in better roads. By contrast, dump trucks cannot prevent asphalt material segregation, leading to a degradation in the quality of asphalt during transit. Manatt's Inc., and Mayo Construction, Co., noted that dump trucks are ineffective in delivering asphalt to uneven ground areas and present a serious safety hazard in areas with overhead power lines.

Based on the industry comments confirming the benefits of utilizing RCC horizontal discharge trailers in certain road construction operations, the agency concludes that dump trucks do not always present a viable alternative to RCC horizontal discharge trailers and cannot effectively replace them in all circumstances.

### C. Safety Consequences

The agency has examined the possible safety consequences of excluding RCC horizontal discharge trailers from FMVSS No. 224. We note that RCC horizontal discharge trailers travel on U.S. highways only infrequently, in order to deliver the hot asphalt mix to the road construction sites. These vehicles spend most of their time in a controlled environment of a construction site, surrounded by paving machines and construction traffic control equipment (e.g. traffic cones, safety signs), where a risk of underride collision is virtually nonexistent.<sup>10</sup>

<sup>10</sup> Neither Fatal Analysis Reporting System (FARS), the National Automotive Sampling System (NASS), nor the General Estimates System (GES) data files that we have examined include crash information pertaining specifically to horizontal discharge trailers. We have examined underride and

Further, only a very small number of all trailers (approximately 0.12%) produced in the U.S. are RCC horizontal discharge trailers. Accordingly, the agency concludes that the risk of a severe underride collision with an RCC horizontal discharge trailer is substantially lower than that of other vehicles subject to FMVSS No. 224.

### D. Statutory Mandate To Ensure Practicability of Safety Standards

When prescribing a motor vehicle safety standard, NHTSA is required to ensure that the standard is reasonable, practicable, and appropriate for the particular type of motor vehicle equipment for which it is prescribed (49 U.S.C. 30111(b)(3)). As discussed above, NHTSA has concluded that installing underride guards on RCC horizontal discharge trailers is impracticable. Further, comments from the road construction industry confirm that it is similarly impracticable to design an RCC horizontal discharge trailer that would fall under the existing wheels back exception. Therefore, the agency concludes that it is appropriate to exclude RCC horizontal discharge trailers from FMVSS No. 224.

### E. Request To Exempt Gravity Feed Dump Trailers

In response to the NPRM, we received a comment from Reliance Trailer Co. (Reliance), requesting that NHTSA amend the definition of an RCC horizontal discharge trailers to include gravity feed dump trailers. Reliance is a trailer manufacturer specializing in gravity feed dump trailers for the use in road construction industry.<sup>11</sup> After carefully considering Reliance's request, NHTSA declines to exclude gravity feed dump trailers from the requirements of the standard.

A RCC horizontal discharge trailer is a single-purpose vehicle designed to deliver and discharge asphalt materials into paving equipment in a controlled manner. Unlike the RCC horizontal discharge trailers, gravity feed dump trailers are versatile vehicles used for a multitude of tasks. Often, gravity feed dump trailers are used in a way that

horizontal discharge trailer information from hard copies of police accident reports (PARs) for 74 selected 1999–2001 FARS cases and 75 cases from the 1999–2001 NASS on-line summary files. A careful examination of photographs (where available) and other related information yielded no indication of rear end collisions involving horizontal discharge trailers.

<sup>11</sup> On June 1, 2004 NHTSA granted Reliance a temporary exemption from FMVSS No. 224 based on substantial economic hardship, and in part, on impracticability of compliance with the standard. For detail on the exemption, please see 69 FR 30989.

does not require controlled offloading or interaction with other equipment such as paving machines. Further, many gravity feed dump trailers fall under wheels back exception. Others can easily accommodate an underride guard.

Because it is not impracticable for *all* gravity feed dump trailers to comply with FMVSS No. 224, the agency prefers to review the necessity of exempting gravity feed dump body trailers within the context of temporary exemptions pursuant to 49 CFR Part 555. In certain limited circumstances, the agency grants temporary exemptions to gravity feed dump trailer manufacturers based, in part, on impracticability of compliance. In fact, several gravity feed dump trailer manufacturers, including Reliance, have previously received exemptions from FMVSS No. 224.<sup>12</sup>

The agency notes that gravity feed dump trailers are more common and represent a larger vehicle population compared to RCC horizontal discharge trailers. Accordingly, we are concerned that exempting a larger vehicle population from the requirements of the standard may lead to negative safety consequences exceeding those associated with exempting only the RCC horizontal discharge trailers. Because of a larger vehicle population and because of their versatility of use, the agency cannot conclude that a risk of an underride collision with a gravity feed dump trailer is negligible. Finally, we note that Reliance's request is outside the scope of the NPRM, and this rulemaking action cannot exempt other types of vehicles from the requirements of FMVSS No. 224 without further notice.

### V. Estimated Costs and Benefits

This final rule will not result in any additional cost burdens on any regulated parties. Exclusion of RCC horizontal discharge trailers from the requirements of FMVSS No. 224 will benefit RCC horizontal discharge trailer manufacturers and members of the road construction industry utilizing these vehicles because RCC horizontal discharge trailer manufacturers would not have to expend further financial resources in attempting to bring RCC horizontal discharge trailers into compliance with FMVSS No. 224.

The cost benefits associated with this final rule will result from the petitioners' and other third parties' ability to continue manufacturing and marketing their products. Currently, petitioners' ability to offer RCC

<sup>12</sup> See 68 FR 7406 (February 13, 2003), exempting Columbia Body Manufacturing Co. from FMVSS No. 224.

horizontal discharge trailers depends on temporary exemptions. Further, E.D. Etnyre & Co. and other manufacturers who may have suffered sale volume losses as a result of offering a wheels back or other designs unpopular with typical RCC horizontal discharge trailer purchasers, may once again gain market share by offering a product that is more suitable to the industry needs. The actual costs savings to RCC horizontal discharge trailer manufacturers are difficult to estimate because petitioners have not been able to produce a viable override guard for the equipment in question.

We also anticipate certain cost savings by members of the road construction industry based on their comments stating their preference of RCC horizontal discharge trailers to dump trailers. Road construction industry costs savings are not quantified because road construction companies did not submit data sufficient to enable NHTSA to create an actual cost estimate.

There are no safety benefits associated with this proposed rulemaking. As discussed in Section IV, however, we anticipate that because of very limited production, and similarly limited highway use exposure, there are minimal safety disbenefits associated with this final rule.

## VI. Rulemaking Analyses and Notices

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This final rule was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be "nonsignificant" under the Department of Transportation's regulatory policies and procedures. The agency concludes that the expected impact of the final rule is so minimal that the final rule does not warrant preparation of a full regulatory evaluation. This rulemaking will not impose any new requirements or costs on manufacturers. Instead, this rulemaking exempts RCC horizontal discharge trailer manufacturers from the requirements of FMVSS No. 224. Accordingly, the final rule will result in cost savings to manufacturers of RCC horizontal discharge trailers, and road construction companies purchasing these vehicles.

### B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601

*et seq.*). I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities. This rulemaking does not impose any new requirements or costs on manufacturers. Instead, the final rule excludes manufacturers of RCC horizontal discharge trailers from the requirements of FMVSS No. 224. The manufacturers of RCC horizontal discharge trailers, among them Dan Hill, Red River, and E.D. Etnyre & Co. will realize certain cost savings because the standard will no longer require them to install override guards on their RCC horizontal discharge trailers. However, because of the relatively small number of RCC horizontal discharge trailers produced yearly, any potential positive economic impact will not be significant. Accordingly, this amendment will not significantly affect small businesses, small organizations, or small governmental units. For these reasons, the agency has not prepared a final regulatory flexibility analysis.

### C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not contain any collection of information requirements subject review under the Paperwork Reduction Act.

### D. National Environmental Policy Act

NHTSA has analyzed this final rule under the National Environmental Policy Act and determined that it would not have a significant impact on the quality of human environment.

### E. Executive Order 13132 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in the Executive Order 13132, and has determined that this rulemaking does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. This final rule does not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. The final rule is not intended to preempt state tort civil actions.

### F. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor

vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

### G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The agency searched for, but did not find any voluntary consensus standards relevant to this final rule.

### H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (\$120,700,000 as adjusted for inflation with base year of 1995).

This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$120,700,000 annually.

### I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified

Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

#### *J. Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health, or safety risks that disproportionately affect children.

#### *K. Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

#### *L. Executive Order 12988 (Civil Justice Reform)*

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### **List of Subjects in 49 CFR Part 571**

Motor vehicle safety standards.

### **PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571.224 as set forth below.

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.224 is amended by revising S3 and by adding the definition of "Road construction controlled horizontal discharge trailer" in alphabetical order to S4 to read as follows:

#### **§ 571.224 Standard No. 224; Rear Impact Protection.**

\* \* \* \* \*

*S3. Application.* This standard applies to trailers and semitrailers with a GVWR of 4,356 kg or more. The standard does not apply to pole trailers, pulpwood trailers, road construction controlled horizontal discharge trailers, special purpose vehicles, wheels back vehicles, or temporary living quarters as defined in 49 CFR 529.2. If a cargo tank motor vehicle, as defined in 49 CFR 171.8, is certified to carry hazardous materials and has a rear bumper or rear end protection device conforming with 49 CFR part 178 located in the area of the horizontal member of the rear underride guard required by this standard, the guard need not comply with the energy absorption requirement (S5.2.2) of 49 CFR 571.223.

#### *S4. Definitions.*

\* \* \* *Road construction controlled horizontal discharge trailer* means a trailer or semitrailer that is equipped with a mechanical drive and a conveyor to deliver asphalt and other road building materials, in a controlled horizontal manner, into a lay down machine or paving equipment for road construction and paving operations.

\* \* \* \* \*

Issued: November 12, 2004.

**Jeffrey W. Runge,**  
*Administrator.*

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### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 031125292–4061–02; I.D. 111504A]

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 17, 2004, until 2400 hrs, A.l.t., December 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2004 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA is 24,404 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004). NMFS closed the directed fishery for Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA under § 679.20(d)(1)(iii) on September 10, 2004 (69 FR 55361, September 14, 2004), and reopened it on September 28, 2004 (69 FR 58367, September 30, 2004).