

49 CFR Part 390

Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Global positioning systems, Highways and roads, Intelligent transportation systems, Motor carriers—driver hours of service, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: March 28, 1997.

Jane F. Garvey,

Acting Administrator, Federal Highway Administration.

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

PART 387—[AMENDED]

1. The authority citation for part 387 is revised to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.48.

2. Section 387.5 is amended by adding the definition *State*, in alphabetical order, to read as follows:

§ 387.5 Definitions.

* * * * *

State means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

PART 390—[AMENDED]

3. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941; 49 U.S.C. 201 note, and 49 CFR 1.48.

§ 390.5 [Amended]

4. Section 390.5 is amended by removing the definition for *farm-to-market agricultural transportation*.

PART 395—[AMENDED]

5. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

6. Section 395.8 is amended by revising paragraph (f)(5) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(f) * * *
(5) *Commercial motor vehicle identification.* The driver shall show the number assigned by the motor carrier, or the license number and licensing State

of each commercial motor vehicle operated during each 24-hour period on his/her record of duty status. The driver of an articulated (combination) commercial motor vehicle shall show the number assigned by the motor carrier, or the license number and licensing State of each motor vehicle used in each commercial motor vehicle combination operated during that 24-hour period on his/her record of duty status.

* * * * *

[FR Doc. 97–8924 Filed 4–7–97; 8:45 am]

BILLING CODE 4910–22–P

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

[Docket No. 80–9; Notice 13]

RIN 2127–AF59

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

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

ACTION: Response to petitions for reconsideration; final rule.

SUMMARY: This document responds to petitions for reconsideration of a final rule requiring that the rear of truck tractors be equipped with retroreflective material similar to that required on the rear of the trailers they tow to increase nighttime conspicuity.

DATES: The effective date for the final rule, as amended by this document, is July 1, 1997. Petitions for reconsideration of the rule must be received not later than 45 days after the rule is published in the **Federal Register**. Petitions filed after that time will be considered petitions for rulemaking pursuant to 49 CFR part 552.

ADDRESSES: Petitions for reconsideration of the amendments to the final rule should refer to the docket number and notice number, and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For Technical Issues: Patrick Boyd, Office of Safety Performance Standards, NPS–31, telephone (202) 366–6346, FAX (202) 366–4329. For Legal Issues: Taylor Vinson, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, FAX (202) 366–3820.

SUPPLEMENTARY INFORMATION:**Background**

On August 8, 1996, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to amend paragraph S5.7 *Conspicuity Systems*. (61 FR 41355). Effective July 1, 1997, the rule requires truck tractors to be equipped with a conspicuity treatment (either retroreflective tape or reflex reflectors) to enhance their detectability at night or under other conditions of reduced visibility.

The Final Rule

In view of the relatively short length of truck tractors and the fact that they are equipped with a full complement of lamps at the front, NHTSA adopted a conspicuity treatment for the rear only. The conspicuity treatment uses the same retroreflective sheeting or reflex reflectors certified for use on trailers (the term “retroreflective material” is used in this document to include both sheeting and reflex reflectors).

As with large trailers, two strips of white material 300 mm in length are to be applied horizontally and vertically to the right and left upper rear contours of the body (as shown in Figure 31), as close to the top of the body and as far apart as practicable. Relocation of the material is allowed to avoid obscuration by vehicle equipment when viewed from directly behind. If relocation is required for one side of the rear but not the other, the manufacturer is permitted to relocate the other strips to achieve a symmetrical effect. The final rule also permits the upper material to be obscured up to 25 percent when viewed directly from behind (the rear orthogonal view).

To indicate the overall width of the truck tractor, two strips of retroreflective material, 600 mm in length, of alternating colors of red and white, must be mounted on the rear, as horizontal as practicable and as far apart as practicable. This material may be applied to the rear fenders, if the tractor is so equipped, or to the mudflaps or mudflap support brackets. However, if the strips are located on the mudflaps, they must be placed not lower than 300 mm below the mudflap support bracket to avoid excessive movement. Since the tire diameter, and consequently the distance from the mudflap support to the road surface, is nominally 1 meter, the reflective strips can be expected to be about 700 mm above the road surface.

Under the final rule, manufacturers of truck tractors have the option of using

an array of reflex reflectors on the rear instead of retroreflective sheeting, the same option that is available to trailer manufacturers. However, reflex reflectors continue to be required by Table I of Standard No. 108, in addition to the conspicuity material, whether sheeting or reflectors. The agency did not amend paragraphs S5.1.1.1 and S5.1.1.2 of Standard No. 108 which excuse truck tractors from the full complement of rear lighting equipment required of trucks.

Petitions for reconsideration of the final rule were received from American Trucking Associations (ATA), and Truck Manufacturers Association (TMA).

(1) *Truck Tractors Without Mudflaps*

TMA and ATA contend that many truck tractors used to haul auto transporters, tank trailers, or trailers hauling construction equipment, are used as "married pairs" and always operate with the same trailer. In a married pair configuration, the mudflaps for the truck tractor drive axle could be mounted on the trailer. The petitioners state that these truck tractors would never be fitted with mudflaps, and consequently, there would be no location for installing the conspicuity material. They further state that the movement of the trailer in turns would cause interference between trailer-mounted mudflaps and any brackets mounted on the rear of the truck tractor to hold conspicuity material. ATA also points out that many states do not require mudflaps on truck tractors.

The 1996 edition of the *Official Trucking Safety Guide*, published by J.J. Keller & Associates, identifies 15 states and the District of Columbia as having no mudflap requirement for any truck and identifies six other states that exempt truck tractors. The publication also reports that Michigan exempts truck tractors from mudflap requirements if they are operated at no more than 25 mph without a trailer. However, it is incorrect to conclude from these statistics that a large proportion of truck tractors do not use mudflaps. The need to travel across the 29 states requiring mudflaps on tractors and the possible liability from not protecting vehicles behind from stone damage and spray are apparently sufficient reason for most truck tractor owners to use mudflaps regardless of local state law.

Delaware, Maryland, the District of Columbia, Virginia, West Virginia, North Carolina and South Carolina form a large contiguous region having no requirements for mudflaps on truck tractors. Nevertheless, the

overwhelming majority of truck tractors observed by this agency in Virginia were equipped with mudflaps. Of the 1109 tractors observed on Interstate 95 in Virginia, 1003 had mudflaps and only 106 did not. Many of the tank trailers were equipped with mudflaps, consistent with the "married pair" combination described by the petitioners. However, of 49 tank trailers observed with forward mounted mudflaps, 37 were being towed by tractors which also had mudflaps, casting doubt on the generality of the petitioners' assertion that there is insufficient room between the trailer mounted mudflaps and the tractor tires for reflector brackets.

For regulatory purposes, it is not possible to distinguish a truck tractor that will be used in a married pair from other truck tractors. Likewise, the operators of fleets of trucks and trailers usually configured as married pairs cannot assure that breakdowns and other circumstances will not result in occasional travel of their truck tractors without trailers. Finally, the sale of the truck tractor to the second owner is unlikely to include the sale of the specialized trailer to which it was paired. Therefore, the conspicuity requirements should include provisions permitting alternative compliance of the minority of truck tractors that lack the favorable mounting locations of mudflap brackets and mudflaps.

The NPRM (60 FR 30820) originally proposing truck tractor conspicuity included the additional alternative of attaching the red/white retroreflective material to the back of the cab rather than to the mudflap brackets. The alternative was not included in the final rule because of opposition by ATA and TMA. ATA was opposed to material not located at the extreme rear of the cab, and TMA was concerned about interference with equipment. Clearly, the best attachment points for conspicuity material are the mudflap brackets which are part of most truck tractors. However, even material located forward of the usual mudflap location can accurately indicate the width of the truck tractor, mitigating difficulties in judging closing speed by drivers approaching the narrowly spaced tail lamps of truck tractors, which lack the clearance and identification lamps of other trucks. Retroreflective material attached to the back of the cab, to brackets supported by the cab, or to the frame ahead of the rear axle may be the only possible locations for conspicuity material for a small portion of truck tractors if the petitioners are correct about possible trailer interference problems. However, it appears likely

that most tractors in married pairs, and certainly others that simply lack mudflaps, could support conspicuity material with brackets behind the rear axle that need not be as strong as those designed for mudflap loads.

A general solution for the approximately 10 percent of tractors that may not be equipped with mudflaps is to replace the 2-inch wide sheeting material mounted on an aluminum backing plate (assumed in the regulatory cost estimate of the final rule) with reflex reflectors mounted on a simple 1-inch wide bent steel bracket located behind the rear axle. The reflex reflectors are equivalent in cost to the sheeting material, but the steel brackets would cost more than the aluminum backing plates. While the final rule estimated the cost to a consumer of a pair of backing plates at \$3.35, the estimated cost of a pair of reflector brackets is \$5.39. If 10 percent of tractors required the more expensive brackets, the average consumer cost of the tractor conspicuity treatment would rise from \$17.17 to \$17.37.

However, the original treatment cost estimate was conservative in that it assumed that every tractor would need a pair of aluminum backing plates to adapt the reflective material to the mudflap brackets. NHTSA has observed that some common styles of mudflap brackets have surfaces to which conspicuity material could be attached directly without the need for extra backing plates. Assuming that only 6 percent of tractors were to use those types of brackets, the original estimate would still be the same as the average cost of a tractor conspicuity treatment. It is likely that the convenience of mounting conspicuity material directly on the mudflap bracket will increase the popularity of compatible styles of mudflap brackets and reduce the average cost of the conspicuity treatment. However, as discussed later, the cost effectiveness of the rule does not depend on minor factors because the conspicuity costs have been weighed favorably against mere property damage prevention without the need to assign economic benefit to the principal goal of preventing injury and death.

NHTSA is therefore adopting the alternative it originally proposed (for the red/white horizontal element of the conspicuity system) of cab-mounted material and adding the additional alternatives of material mounted ahead of or behind the rear axle on separate brackets. Since the agency agreed with commenters to the NPRM that material ahead of the rear axle is not as desirable as material behind the rear axle, the alternative locations ahead of the axle

will be limited to truck tractors which lack mudflaps. As permitted for upper material mounted on the back of the cab, the amendments permit the obscuration of up to 25 percent of lower material mounted on the back of the cab so that insignificant obstructions such as braces and hoses may be accommodated.

(2) Obscuration of Upper Rear Cab Material

TMA commented that the aftermarket installation of additional equipment such as header boards, add-on sleeper compartments, cranes and winches could partially or completely obscure the conspicuity treatment on the back of the cab provided by the truck tractor manufacturer. The need to apply auxiliary conspicuity material to equipment obscuring the original material would increase the cost of such modifications by the cost of the additional conspicuity material. TMA considers the potential burden unreasonable. The solution it suggests is that truck manufacturers not install the conspicuity material but rather furnish a small roll of reflective tape or some loose reflex reflectors with a new tractor. Presumably, no tractors would have factory-installed conspicuity material since TMA points out that manufacturers would not know prior to sale and delivery which tractors were to be modified.

Manufacturers certify compliance with Federal motor vehicle safety standards on the basis of equipment they install on the vehicle at the time of manufacture, not on the basis of equipment that a purchaser may or may not install after buying the vehicle. Thus, NHTSA sees no way that it can favorably consider TMA's comment. The potential burden is the use of 4 feet of reflective tape or four reflector bars with a retail value of about two or three dollars in the modification of a minority of vehicles in a class with a unit cost on the order of one hundred thousand dollars. The burden is much less than in the analogous case discussed in the final rule notice of the installation of caps on ordinary pick-up trucks. When the installation of a cap obscures the center high mounted stop lamp of a pick-up truck, the installer must provide an auxiliary stop lamp, which is much more burdensome than reflective tape, on the cap.

TMA's suggestion would also deprive the owners of unmodified trucks of their reasonable expectation that factory installed equipment is present, in compliance with Federal safety standards, as the vehicle's certification label states. Also, header boards and

other equipment related to special trailers and cargos are likely to be removed before the sale of a tractor to a second owner who will benefit from factory-installed conspicuity material. Finally, the manufacturer is permitted to attach the material with screws or other means rather than adhesives to permit its installation on added header boards or sleeper compartments. The final rule already requires that approach when material is furnished on temporary mudflap brackets because there is a certainty of the purchaser's need to relocate the material.

ATA takes the obscuration objection further with its claim that obscuration of conspicuity material "will make it impossible for the motor carrier industry to effectively utilize such equipment as tractor mounted cranes and winches." It also was concerned that "the many differing mounting patterns, which manufacturers will have to use to meet the rule, will make it impossible for an inspector of in-service trucks to know whether a specific cab rear incorporates the same reflective material motif it had when it left the factory." It furnished photographs of a tractor with a header board and winch and of a tractor with a large cargo handling crane to illustrate its point.

ATA's concerns are unfounded. There is no requirement that auxiliary reflective material mounted on equipment which obscures OEM material be placed in exactly the same locations. The requirement is that the pairs of horizontal and vertical reflective strips be placed "as horizontally and vertically as practicable" and "as close to the top of the body and as far apart as practicable." Although this is intended for marking the upper outer edges of the body, it gives the installer the discretion to use common sense to place the material in best available locations. It provides for the possibility that the practicable locations and orientation of the upper conspicuity material could be different depending on the equipment on or behind the cab. The inspectors of trucks in service are familiar with the provision for practicability in the placement of conspicuity material. Trailers have been inspected for conspicuity material under the same practicability provision for three years with little difficulty. Tankers, bulk material trailers and trailers with onboard grain handling equipment provide routine examples of practicability considerations.

ATA's photograph of a tractor with a large crane between the cab and the fifth wheel shows an unusual vehicle designed for unloading poles from its

trailer. It is an extreme example of the influence of equipment on practicable locations for conspicuity material. A practicable location for the upper left material would be on the crane structure with the crane arm situated in the traveling position. The pieces of material could be at about cab height and angled less acutely than 90 degrees to one another. The material on the right side could be placed partly on the crane and partly on the cab or entirely on the cab at a lower height. In the other example, the winch would not appear to obscure locations where OEM material would be placed, but the header board would. The obvious location for conspicuity material would be corners of the header board. The utility even of unusual vehicles is not threatened by the rule.

(3) Need For More Research

ATA's petition asks that the effective date of July 1, 1997, be suspended for three years and that the agency perform research during that time to justify the need for the rule and to modify its requirements. It noted that "most bob-tail tractor accidents take place during the day" in support of its assertion that more research is needed, and it faulted the agency for lack of research on options for installing conspicuity material. ATA favors a requirement of reflective area alone, leaving the placement of this material entirely up to the manufacturer and consumer.

ATA is correct that only one third of the crashes in which a truck tractor is struck in the rear occur at night, but these crashes involve 60 percent of the fatalities and 41 percent of the injuries. This demonstrates that the night accidents are generally more serious. The agency considers the research on reflective conspicuity for trailers, which have a similar proportion of fatal collisions at night, as a sufficient basis for the tractor conspicuity rule. In fact, estimates of the safety effect of adding conspicuity material to tractors based on trailer research would be expected to be conservative because the required rear lighting of tractors is much inferior to that of trailers before the addition of the conspicuity material.

The agency disagrees with ATA's view that the position of the material is unimportant. The placement of conspicuity material according to the final rule addresses the particular deficiencies of the rear lighting of truck tractors and also replicates the reflective pattern of rear of trailers, now familiar to motorists. The rear lighting of truck tractors does not indicate either the width or the height of the vehicle as required for other trucks. Material at the

top of the mudflaps marks the tractor width at the rearmost position. The location was specifically recommended by most commenters, and no commenter suggested that any other position would be superior from the standpoint of safety. The amended final rule also permits all equivalent locations for material to mark the width of tractors in the small minority without mudflaps. The purpose of the other material is to mark the upper outer corners of the rear cab to complete a reasonable two dimensional image, but the placement on a particular vehicle is dictated by practicability rather than by rigid specification. There is no reasonable likelihood that the arrangement of reflective material in other patterns would be superior in improving safety or practicability, and a conspicuity requirement based only on the amount of material fails to address the distinctive aspects of truck tractor rear lighting. The agency finds no need for further research or a delay in the effective date of the rule. Therefore, ATA's petition for reconsideration is denied.

(4) Objections Regarding Costs and Benefits

ATA claims that the additional upper conspicuity material required when tractors are modified with added equipment such as header boards, material handling cranes, auto-hauling equipment and non-OEM sleeper compartments make the annual cost of the rule "far higher" than the estimated \$3 million OEM customer cost. It also faulted the agency for having no evaluation of the practicability of installing conspicuity material on add-on equipment.

Standard No. 108 requires that the material in question be installed as close as practicable to the upper outer corners of the cab. Header boards and sleeper compartments tend to offer obvious favorable surfaces, and even the material handling crane, which seems to be a worst-case example, has usable surfaces. While it is doubtful that auto-hauling equipment offers serious impediments to the application of reflective material, it may be a moot point. Structures attached to the truck to support autos as cargo would disqualify it from classification as a tractor (defined in 49 CFR 571.3 as a truck constructed to carry only loads imposed by trailers), and it would be required to have the full complement of truck lighting rather than conspicuity material.

The cost of maintaining safety equipment during the modification of a vehicle is not routinely considered in

cost effectiveness estimates of Federal standards requiring safety features as original equipment. However, the agency does not believe that the cost of adding \$2 to \$3 worth of reflective tape or adhesive backed reflectors to aftermarket header boards or sleeper compartments will result in a "far higher" cost. Neither petitioner informed the agency of the likely numbers of vehicles with add-on equipment blocking the original upper conspicuity material. The agency's observations suggest that possibly ten percent of tractors would be equipped with header boards or add-on sleepers and that the number of tractors with equipment like cranes is negligible. Based on an annual production of 170,000 tractors, the total additional conspicuity cost incurred in the modification of 10 percent of them would be about \$50,000. The amount is insignificant compared with the estimated \$2,919,000 consumer cost for original equipment conspicuity installation.

ATA states that peripheral costs such as extra conspicuity tape on added equipment will make the rule not cost effective, because the most highly discounted estimate of property damage savings in the regulatory analysis was \$3,176,000 which is only slightly in excess of the consumer cost of \$2,919,000. It disputes the value of potential life saving with the observation that the final rule preamble's statement that "if fatalities involving rear collisions of truck tractors can be reduced by 15 to 25 percent annually, there will be 4 to 7 fewer deaths attributable to this type of accident" has no more meaning than a declaration that if fatalities could be reduced by 100 percent, there would be 28 fewer fatalities.

The tractor conspicuity rule is very cost effective because its cost is met or exceeded by property damage saving alone. The prevention of deaths and injuries is obtained at no additional cost. It is much more favorable than most safety regulations which require a societal expenditure per life saved. The gross property damage savings over the life of vehicles produced in a single year was estimated at \$4,849,000, and it was discounted to a present value of \$4,399,000 to \$3,176,000 for a range of discount rates from two percent to 10 percent. ATA cited the present value of the property damage benefits computed at a 10 percent discount rate (\$3,176,000), but the present value of those benefits would be greater computed at a discount rate more consistent with current interest rates. For example, at a four percent discount

rate, the present value of the property damage benefits would exceed \$4,000,000.

However, the purpose of the rule is the prevention of deaths and injuries. The effect of conspicuity, as predicted by a fleet study of trailers, was a reduction of certain types of collisions by 15 to 25 percent and a substantial mitigation of many others. The truck fleets cooperating in the study insisted on the confidentiality of all records pertaining to deaths and injuries. Therefore, the effectiveness could be determined only in terms of collision prevention and property damage mitigation. The statement which elicited ATA's comment expressed an expectation of death and injury prevention consistent with collision prevention without the additional consideration of further benefit occurring in collisions of mitigated severity. This is a conservative expectation, particularly in view of reports by trucking companies of substantial reductions in fatal crashes following the use of conspicuity treatments of trailers (Traffic Safety, Vol. 95, No. 5, Sept/Oct 1995).

(5) Clarifications of Regulatory Language and Illustrations

The agency grants TMA's petition for reconsideration regarding certain clarifications to the final rule. These are discussed below.

(a) Conspicuity Material on Glazing

TMA points out that the preamble to the final rule, in discussing the upper cab contour marking, states that, "* * * the material may be attached to the edge of the window itself if the window is so large as to occupy all the practicable space for an upper treatment." The final rule amending S5.3.1 established the potential for mounting conspicuity treatment on glazing and non-rigid surfaces. It states that "Except as provided in * * * S5.7 * * * each lamp, reflective device, and item of associated equipment shall be securely mounted on a rigid part of the vehicle other than glazing that is not designed to be removed, * * *" The final rule, however, never included the glazing exemption noted in the preamble. To rectify this oversight, TMA recommends that the following be added to the end of S5.7.1.4.3(b): "If the rear window is so large as to occupy all the practicable space, the material may be attached to the edge of the window itself."

ATA opposed the use of conspicuity material on the edge of the rear window citing the existence of state laws limiting the location and size of objects affixed to windows and suggesting that

the material would contribute to crashes.

This notice amends paragraph S5.7.1.4.3(b) in response to the TMA comment. The agency is not aware of any State regulations which would prohibit the application of conspicuity material to the rear windows of truck tractors. Because Standard No. 108 expressly permits conspicuity material to be applied to the rear windows of truck tractors if the rear window is so large as to occupy all the practicable space where it may otherwise be placed on the rear of the cab, any State regulation prohibiting would be preempted. Since tractors do not have inside rear view mirrors, the rear windows are of little use in driving. The agency anticipates that material would be placed only on very large windows that consume all other potential locations and continue to provide adequate direct visibility for docking with material (which may be as narrow as 1 inch with reflex reflectors) on the edge. It is likely that manufacturers will consider windows as a placement of last resort because of aesthetic considerations. However, they would be expected to use the windows before concluding that there were no practicable locations except those below the window and very far from the top of the cab. It should be noted, though, that a manufacturer using the edge of the window would be correct in determining that the practicable placements can depart from strict horizontal and vertical orientations if necessary to follow the window edge with the least intrusion on the viewing area.

(b) Discontinuous Surfaces

TMA points out that in S7.1.4 the agency has described discontinuous surfaces typical of *trailers*, but has not done so for truck tractors. This could be confused by inspectors in the field as meaning the exception does not apply to truck tractors. TMA therefore recommended that NHTSA add truck tractor specific examples to those already cited for trailers. Specifically, it asked that paragraph S5.7.1.4 be revised to allow the following:

"S5.7.1.4 Location. (a) Retroreflective sheeting * * * to discontinuous surfaces such as * * * lamp bodies on trailers and body joints, stiffening beads, drip rails, and rolled surfaces on truck tractors".

The obvious good installation practices of cutting material to avoid obstructions and steps in the body and of the avoidance of curved surfaces which would inhibit the reflective properties of the material apply equally

to trailers and truck tractors, and NHTSA is pleased to make the clarification requested.

(c) Location of Conspicuity Material on Mudflaps

Paragraph S5.7.1.4.3(a), Rear of Truck Tractors, states "* * * Strips on mudflaps shall be mounted not lower than 300 mm below the *lower edge* of the mudflap support bracket." (emphasis supplied). According to TMA, the agency never defined what constitutes the "lower edge." Further, the preamble states that "* * * The rule allows it to be applied as low as 300 mm *below the top of the mudflap*," which appears to be in conflict with what is stated in the final rule. TMA recommends that the agency clear up this potential area of confusion by specifying in S5.7.1.4.3 (a) that "Strips on mudflaps should be located within 300 mm of the lower horizontal edge of the mudflap bracket." Because of the variations in mudflap support brackets, a separate figure is recommended to fully define the lower horizontal edge.

The apparent conflict pointed out by TMA is not the only reason to revise the language regarding reflective material on mudflaps. It was not wise to use the mudflap bracket as a reference position. The fact that some brackets are bent down at the outer edge makes the "lower edge of the bracket" an ambiguous term. Also, manufacturers of mudflaps who may want to apply conspicuity material do not necessarily know the exact shape of the brackets their customers may use. Simply referencing the position of the conspicuity material to the horizontal upper edge of the mudflap itself removes the ambiguity to all parties without the need for more figures added to Standard No. 108. The relevant sentence in S5.7.1.4.3 (a) is revised to "* * * Strips on mudflaps shall be mounted not lower than 300 mm below the upper horizontal edge of the mudflap."

(d) Additional Figures

TMA is concerned about the "overwhelming challenge" that federal and state inspectors will face in determining compliance because of the extremely wide range of possible treatments/locations that will fully meet the requirements of the rule. To minimize the potential problems, it recommended that the agency add several additional figures to Standard No. 108 as NHTSA did in the case of trailers. The current line drawing shows a relatively uncluttered example of the back of a truck tractor. It argued that additional examples are needed: "For

example, Figure 30-1 Trailer Conspicuity example, illustrates the 'broken inverted L' treatment for a door hinge. Since NHTSA states in the preamble that the same would apply to truck tractors, it would be appropriate to have an illustration of the rear of a truck tractor, perhaps with and without an aerodynamic roof fairing, to show that the 'broken inverted L' applies also to truck tractors." It also recommended that a figure be added "to show the 300 mm white/300 mm red as well as a 150 mm white/300 mm red/150 mm white treatment on mudflap brackets/mudflaps."

Figure 31 is being revised based on line drawings of fully equipped tractors supplied by TMA. The agency believes a single drawing with insets is sufficient to illustrate the range of issues in the TMA petition. A truck with a roof fairing was chosen to clarify that the addition of a roof fairing does not change the cab contour contemplated by the standard. However, the fairing attachment brackets on the illustrated vehicle cause practicability problems for the simple white "inverted L" upper pattern and create the need for the "broken inverted L" pattern that TMA requested in an example. The example also shows that the material has been placed to avoid a drip rail and a rolled surface above the horizontal strips, and a small permitted obstruction is shown behind the left vertical strip. Red/white material on a mounting plate attached to a mudflap bracket is shown in several variations. Treatments with both two color segments and three color segments are illustrated with straight mudflap brackets, and a typical OEM installation of an angled mudflap bracket is illustrated.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

In asking that the final rule be delayed 36 months, ATA commented that the final rule "will have a significant impact on equipment and trucking operations which are being safely used today", and that it "is likely to make it impossible to use such things as tractor mounted winches and cranes." In view of this, ATA did not see how the following articles in Executive Order 12866 can be considered to be met:

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability,

the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

Comment: As noted in the final rule, NHTSA has not reviewed this rulemaking action under E.O. 12866, but it considers that the actions it has taken are consistent with the Executive Order. Further, ATA's comments lack specificity. The agency believes that it has adopted the most cost effective manner (retroreflective tape rather than a system of marker lamps) to address the safety problem.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

Comment: The agency has done so.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

Comment: The agency has done so.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

Comment: The agency has specified performance objectives, to be met through the use of retroreflective tape or reflectors, in a pattern intended to provide immediate recognition to observers of a large truck tractor.

(11) The agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

Comment: The agency has done so by adopting a regulation whose cost of compliance on a per vehicle basis is minimal, involving the installation of retroreflective tape or reflectors.

ATA justifies its request for a delay "while it completes the research necessary to both define the problem and show proven solutions which do not eliminate certain safe and reasonable equipment and operations." ATA's request is denied. The agency has adequately identified the problem and

provided for its solution, without eliminating "certain safe and reasonable equipment and operations."

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. Implementation of the rule would not have a yearly cost impact that exceeds \$2,919,000 in the aggregate. The agency has prepared a final regulatory evaluation dated July 1996, which has been placed in the docket.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that the final rule will have a significant effect upon the environment. Compliance would require the application of not more than 8 feet of retroreflective tape to the rear of a truck tractor (1,360,000 feet for an estimated year's production of 170,000 truck tractors), retroreflective material is currently in use with no known negative environmental effects.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of truck tractors, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected because the price of new truck tractors will be only minimally increased. An increase in cost of about \$17 per vehicle is expected to be more than offset by savings in repair to it over its life.

Executive Order 12612 (Federalism)

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

Civil Justice

The 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. See discussion under paragraph 5a of this notice regarding Federal preemption allowing use of conspicuity material applied to truck tractor rear windows. Sec. 30103 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

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

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

Authority: 49 U.S.C. 322, 30111, 30115, 30162; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended by revising paragraphs S5.7.1.4(a), and S5.7.1.4.3 (a) and (b) and Figure 31 added at 61 FR 41360, Aug. 8, 1996, effective 7-1-97, to read as follows:

§ 571.108 Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment.

* * * * *

S5.7.1.4 *Location.* (a) Retroreflective sheeting shall be applied to each trailer and truck tractor as specified below, but need not be applied to discontinuous surfaces such as outside ribs, stake post pickets on platform trailers, and external protruding beams, or to items of equipment such as door hinges and lamp bodies on trailers and body joints, stiffening beads, drip rails and rolled surfaces on truck tractors.

* * * * *

S5.7.1.4.3 *Rear of truck tractors.* Retroreflective sheeting shall be applied to the rear of each truck tractor as follows:

(a) Element 1: Two strips of sheeting in alternating colors, each not less than 600 mm long, located as close as practicable to the edges of the rear fenders, mudflaps, or the mudflap support brackets, to mark the width of the truck tractor. The strips shall be mounted as horizontal as practicable, in a vertical plane facing the rear, on the rear fenders, on the mudflap support brackets, on plates attached to the mudflap support brackets, or on the

mudflaps. Strips on mudflaps shall be mounted not lower than 300 mm below the upper horizontal edge of the mudflap. If the vehicle is certified with temporary mudflap support brackets, the strips shall be mounted on the mudflaps or on plates transferable to permanent mudflap support brackets. For a truck tractor without mudflaps, the strips may be mounted outboard of the frame on brackets behind the rear axle or on brackets ahead of the rear axle and above the top of the tires at unladen vehicle height, or they may be mounted directly or indirectly to the

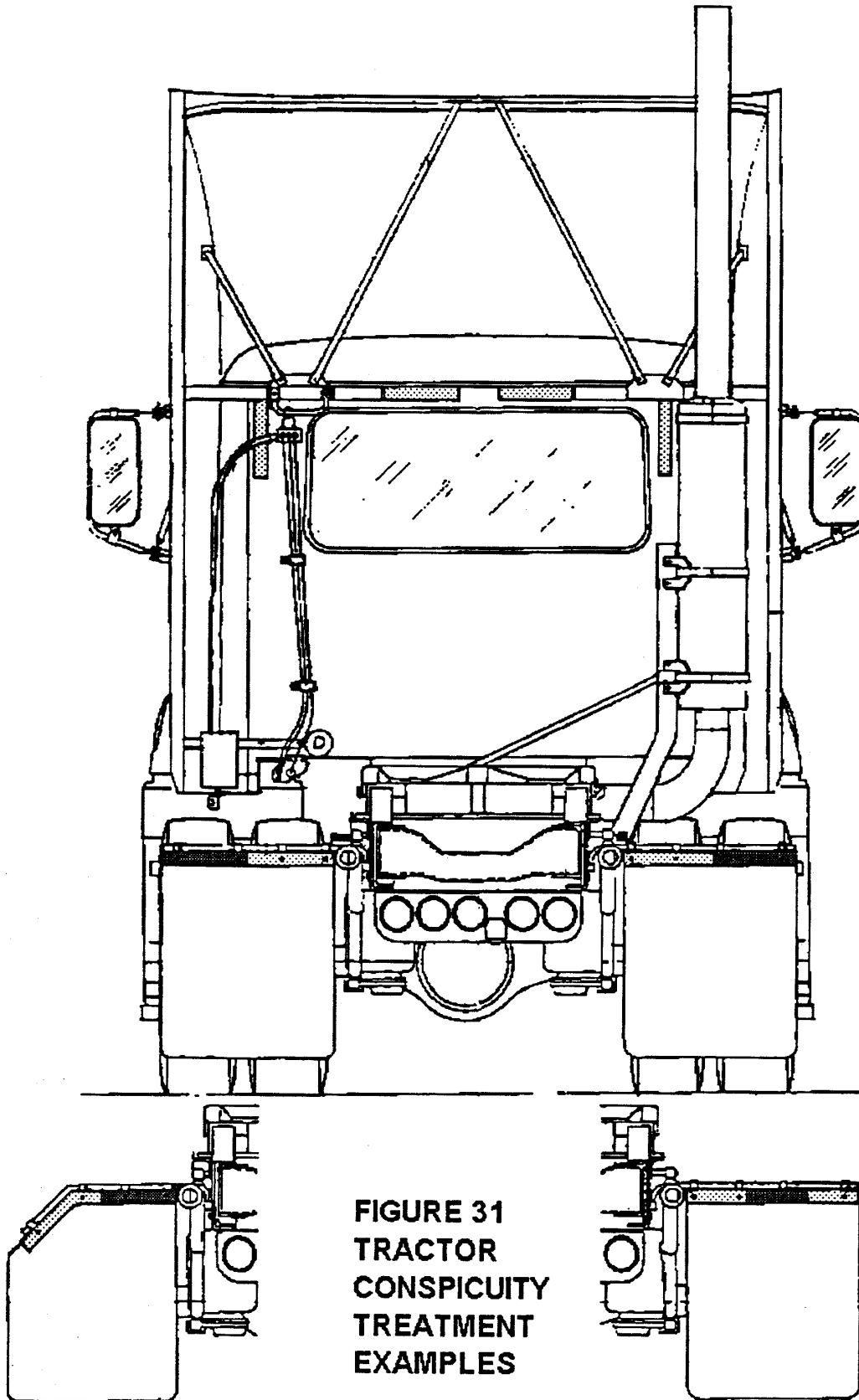
back of the cab as close to the outer edges as practicable, above the top of the tires, and not more than 1525 mm above the road surface at unladen vehicle height. If the strips are mounted on the back of the cab, no more than 25 percent of their cumulative area may be obscured by vehicle equipment as determined in a rear orthogonal view.

(b) Element 2: Two pairs of white strips of sheeting, each pair consisting of strips 300 mm long, applied as horizontally and vertically as practicable, to the right and left upper contours of the cab, as close to the top

of the cab and as far apart as practicable. No more than 25 percent of their cumulative area may be obscured by vehicle equipment as determined in a rear orthogonal view. If one pair must be relocated to avoid obscuration by vehicle equipment, the other pair may be relocated in order to be mounted symmetrically. If the rear window is so large as to occupy all the practicable space, the material may be attached to the edge of the window itself.

* * * * *

BILLING CODE 4910-59-P



Issued on March 27, 1997.

Ricardo Martinez,

Administrator.

[FR Doc. 97-8521 Filed 4-7-97; 8:45 am]

BILLING CODE 4910-59-C