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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Dripping Springs, Channel 285A and removing Marble Falls, Channel 285C2.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-23926 Filed 9-18-03; 8:45 am]

**BILLING CODE 6712-01-P**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 03-2714; MB Docket No. 03-190; RM-10738]

##### Radio Broadcasting Services; Athens and Doraville, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Cox Radio, Inc. and CXR Holdings, Inc. requesting the reallocation of Channel 238C1 from Athens, Georgia to Doraville, Georgia, as the community's first local aural transmission service, and modification of the license for Station WBTS to reflect the changes. Channel 238C1 can be allotted to Doraville at coordinates 34-07-32 and 83-51-32. The proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 238C1 at Doraville, Georgia.

**DATES:** Comments must be filed on or before October 27, 2003, and reply comments on or before November 12, 2003.

**ADDRESSES:** Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Kevin F. Reed, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue NW., Suite 800, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03-190, adopted September 3, 2003, and released September 5, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com)

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 238C at Athens and by adding Doraville, Channel 238C1.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 03-23998 Filed 9-18-03; 8:45 am]

**BILLING CODE 6712-01-P**

#### DEPARTMENT OF TRANSPORTATION

##### National Highway Traffic Safety Administration

##### 49 CFR Part 571

[Docket No. NHTSA-03-14396]

RIN 2127-A156

##### Federal Motor Vehicle Safety Standards No. 224; Rear Impact Protection

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** In this document, NHTSA proposes to amend the Federal motor vehicle safety standard (FMVSS) No. 224, "Rear impact protection," to exclude road construction controlled horizontal discharge semitrailers (RCC horizontal discharge trailers) from the standard. The agency has tentatively concluded that the installation of rear impact guards (underride guards), as required by FMVSS No. 224, on RCC horizontal discharge trailers is impracticable due to the unique design and purpose of such vehicles.

**DATES:** You should submit comments early enough to ensure that Docket Management receives them not later than October 20, 2003.

**ADDRESSES:** You may submit comments identified by Docket No. NHTSA-03-14396 by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For nonlegal issues: Dr. William J.J. Liu, Office of Rulemaking, NVS-113, telephone (202) 366-4923. For legal issues: Mr. George Feygin, Office of Chief Counsel, NCC-112, telephone (202) 366-2992. Both can be reached at the National Highway Traffic Safety Administration, 400 7th St., SW., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

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## I. Background

RCC horizontal discharge trailers are a unique piece of equipment used in the road construction industry to deliver asphalt and other building materials to construction sites. The trailers are equipped with a mechanical drive and a conveyor to feed asphalt into a lay down or paving machine for road construction and paving operations. With their hydraulically controlled horizontal discharge systems, the trailers discharge mixed asphalt at a controlled rate into pavers, which overlay the road surface with asphalt material.

From the standpoint of 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 itself 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. This feature also allows for a more controlled off-loading, as compared to a steel end dump trailer, which is the only other vehicle capable of delivering asphalt mix to road construction sites.<sup>1</sup> 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.

As a result of their unique configuration and the method by which they interact with paving machines, RCC horizontal discharge trailers may not be able to comply with FMVSS No. 224.

This rulemaking proposal is in response to a joint petition for rulemaking submitted to the agency on March 23, 2001, by Dan Hill & Associates, Inc. (Dan Hill) and Red River Manufacturing, Inc., a Division of Trail King Industries, Inc. (Red River) (Docket No. NHTSA-2001-8876). Dan Hill and Red River are manufacturers of RCC horizontal discharge trailers. The 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, January 26, 1998 (61 FR 2004, January 24, 1996), Dan Hill and Red River have each been twice granted temporary exemptions from FMVSS No. 224 for their RCC horizontal discharge trailers due, in part, to the impracticability of installing underride guards on RCC horizontal discharge trailers.<sup>2</sup> Red River's current temporary exemptions would have expired on April 1, 2003. NHTSA's regulations allow for the continued effectiveness of the exemption, pending the agency's final determination of a renewal petition, if such renewal petition is submitted 60 days before the expiration of the existing petition (49 CFR 555.8(e)). Since Red River once again filed for a temporary exemption from FMVSS No. 224 more than 60 days before the expiration of the most recent temporary exemptions, their current exemption will be valid until NHTSA makes a final decision on their petition. The agency has granted Dan Hill a three-year temporary exemption, which expires May 1, 2006 (68 FR 28880, May 27, 2003).

## II. FMVSS No. 224

Underride occurs when a light vehicle 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" or underrides the rear end of the heavy vehicle to such an extent 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 (61 FR 2004, January 24, 1996). The standard went into effect on January 26, 1998. The standard requires that all new trailers and semitrailers with a GVWR of 10,000 lbs or more be equipped with an underride guard. The underride guard is attached to the rear of the platform (within 305 mm [12 in] of the rear extremity of the vehicle) and acts to prevent the light vehicle from sliding under the truck chassis.

<sup>1</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>2</sup> See 63 FR 15909, 15910 (Apr. 1, 1998); 64 FR 49049, 49050 (Sept. 9, 1999); 66 FR 20028, 20030 (Apr. 18, 2001). 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.

The standard currently excludes pole trailers, pulpwood trailers, wheels back trailers, and "special purpose vehicles" because attachment of an underride guard to these specific vehicles is either impracticable or unnecessary.<sup>3</sup> For example, in the case of a wheels back trailer, the rear axle is located within 305 mm 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, 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.<sup>4</sup> Accordingly, there is currently no exclusion in FMVSS No. 224 for this type of trailer.

Because of the unique design necessitated by their interactions with the paving machines, a practicable RCC horizontal discharge trailer appears to be ill-suited for a wheels back design. As previously mentioned, an 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 could prevent the trailer from properly extending over the paving machine.

Petitioners concede that they can design an RCC horizontal discharge trailer that would fall under the wheels back exception. Indeed, E.D. Etnyre & Co. (Etnyre), the only other manufacturer of RCC horizontal discharge trailers, has designed an RCC horizontal discharge trailer that falls under that exception. However, according to a temporary exemption petition previously filed by the petitioners, their customers have indicated that a wheels back design is

unacceptable, and therefore, the customers had no interest in purchasing their competitor's equipment (NHTSA Docket No. 2001-8827-25).<sup>5</sup> We hope to obtain more direct comments on this issue in response to this notice. In sum, it appears that an RCC horizontal discharge trailer that does not extend far enough over a paving machine cannot be used for its intended purpose. Accordingly, a wheels back design may not provide for a practicable solution for compliance with FMVSS No. 224.

### III. Petition

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. 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 that the denial of their petition would effectively terminate production of RCC horizontal discharge trailers.

Petitioners maintain that a fixed underride guard cannot be installed in order to comply with FMVSS No. 224 because it would prevent paving machines from interfacing with (locking onto) the trailers during the paving operations. Petitioners have also been unable to design a practicable retractable underride guard<sup>6</sup> that would be engaged when an 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.

According to the March 23, 2001 petition, 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 may have to retract completely against the conveyor structure, in order not to interfere with the paving machine. It appears that 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.

Petitioners note that 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.

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.<sup>7</sup>

<sup>7</sup> Removable underride guards would allow manufacturers to meet FMVSS No. 224, even if

<sup>3</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.

<sup>4</sup> However, in discussing a "rear-unload semitrailer" described by The National Potato Council as having a rear conveyor whose operation would be substantially impaired by an underride guard, NHTSA stated that assuming the Council was correct in alleging substantial impairment, such vehicle would qualify as a special purpose vehicle, despite a lack of any indication in our preamble that the conveyor actually resided or operated where the underride guard would be have been attached. See 61 FR 2004, at 2022.

<sup>5</sup> See also comments submitted by Keeler Construction Co., Inc., stating that a horizontal discharge trailer has to be able to interact with the paving machine in order to be effective (NHTSA Docket No. 2001-8827-4).

<sup>6</sup> Petitioners stress that their efforts to comply with FMVSS No. 224 have otherwise been successful. They were able to design functional underride guard systems for other types of discharge trailers. The petition asserts functional impracticability specific to trailers designed to interact with paving machines (NHTSA Docket No. 1997-3122-2).

As previously stated, petitioners contend that they could design a vehicle that would fall under wheels back exception. However, petitioners say that such a vehicle would not be able to perform its intended function because the rear axle would not allow the RCC horizontal discharge trailer to extend over the paving machine.

In sum, petitioners contend that due to the impracticability of installing underride guards on RCC horizontal discharge trailers, not amending the FMVSS No. 224 would effectively eliminate production of RCC horizontal discharge trailers. We note that, in applying for temporary exemptions and subsequent renewals for exemptions from FMVSS No. 224, petitioners put forth the same arguments for grant of temporary exemptions as they did in this petition for rulemaking.

#### IV. Proposed Amendments

After careful review of the information submitted by the petitioners, NHTSA tentatively agrees with the petitioners and proposes to amend FMVSS No. 224 to exclude RCC horizontal discharge trailers from the standard.

We recognize the unique issues associated with installing underride guards on RCC horizontal discharge trailers. The current petition for rulemaking, as well as earlier petitions for temporary exemptions, outlined petitioner's efforts to bring RCC horizontal discharge trailers in compliance with FMVSS No. 224 for the past 5 years. The agency believes that petitioner's contention that no practicable solution exists may have merit.<sup>8</sup>

We note that when prescribing a motor vehicle safety standard, NHTSA

removed by the owners of the trailers, since the standard applies only to new vehicles. However, such a solution is inconsistent with the overall intent of the standard, which is to reduce the likelihood of underride collisions on U.S. highways.

<sup>8</sup>E.D. Etnyre & Co. (Etnyre), the only other manufacturer of horizontal discharge trailers, has built a horizontal discharge trailer with a "combination of retractable chutes, and wheels back configuration" to meet FMVSS No. 224 (see NHTSA Docket No. 2001-8827-19). According to the petitioners, however, field experience demonstrated insurmountable real world practicability issues that compromised any potential safety benefits. As a result, Etnyre is no longer offering trailers with retractable underride guards. Instead, they redesigned their product to fall under wheels back exception (NHTSA Docket No. 2001-8827-25). Furthermore, in a letter dated August 8, 2002 (Docket No. NHTSA-2003-14396-1), Etnyre, along with Dan Hill and Red River, noted that the complex retraction mechanism requires operator interaction to reposition the guard after each offload cycle, thereby compromising the potential safety benefits of the retractable underride guard.

is required by 49 U.S.C. 30111(b)(3) to ensure that the standard is reasonable, practicable, and appropriate for the particular type of motor vehicle equipment for which it is prescribed. As discussed above, petitioners have raised several arguments that the application of FMVSS No. 224 to RCC horizontal discharge trailers is impracticable. Given the difficulties experienced in manufacturing a compliant discharge trailer, we are proposing to exclude such vehicles from the standard.

The agency examined possible safety consequences of excluding RCC horizontal discharge trailers from FMVSS No. 224. We note that the geometry of an RCC horizontal discharge trailer is very similar to that of a wheels back trailer. The risk of a severe underride collision is reduced by the fact that the rear-most axle of the RCC horizontal discharge trailer is located between 24 and 33 inches from the rear extremity of the vehicle. Although this falls short of the 305 mm (12 inches) exemption for wheels back trailers, the likelihood of PCI intrusion is nevertheless reduced by the proximity of rear axle to the rear extremity of the trailer. It appears that the distance between the rear axle and the rear extremity of the trailer cannot be shortened any further, if the floor conveyor that delivers the asphalt is to fit over the paving machine.

Additionally, we note that RCC horizontal discharge trailers travel on U.S. highways only infrequently, to deliver the hot asphalt mix to the construction sites. These vehicles spend most of their time in a controlled environment of a construction site, surrounded by other paving equipment and construction traffic control equipment (e.g., traffic cones, safety signs), where a risk of underride collision is virtually nonexistent.<sup>9</sup>

In light of our findings, this NPRM proposes to amend FMVSS No. 224 by adding RCC horizontal discharge trailers to the list of excluded vehicles in S3 of the Standard. We are proposing to include a precise definition of a road construction controlled horizontal discharge semitrailers to the standard,

<sup>9</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 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.

in order to ensure that the standard excludes only the type of the vehicle discussed in this notice. The proposed definition of a road construction controlled horizontal discharge trailer is "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."

#### V. Estimated Costs and Benefits

If RCC horizontal discharge trailers are excluded from FMVSS No. 224, petitioners would realize financial gains associated with ability to continually manufacture and market their product. Currently, their ability to offer RCC horizontal discharge trailers depends on temporary exemptions. Further, those manufacturers who may have suffered sale volume losses as a result of offering a wheels back design 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 are difficult to estimate because petitioners have not been able to produce a viable underride guard for the equipment in question.

There would be no safety benefits associated with this proposed rulemaking. As discussed previously, we anticipate that due to very limited production figures and limited highway use exposure, there is minimal safety disbenefits associated with the proposed rulemaking.

#### VI. Request for and Submission of Comments

The agency requests comments on today's proposal. Specifically, NHTSA is interested in comments on the following questions.

1. Is a wheels back design a practical vehicle design alternative for RCC horizontal discharge trailers? Please provide data and information to support your response.

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? Please provide data and information to support your response.

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?

The comment period for this proposal is 30 days. As noted above, 2 of the 3 manufacturers of RCC horizontal discharge trailers have filed petitions asking to renew their existing temporary exemptions from the Standard. If a final rule excluding RCC horizontal discharge trailers is issued, NHTSA believes the rulemaking process should be completed before there is any need to file the fourth petition for a temporary exemption. Additionally, NHTSA believes that a speedy resolution of this issue will be in the best interest of Etnyre as it would no longer be limited to vehicle designs that fit within an existing exclusion, but may cause practical impediments to the safe operation of the trailers in their intended environment. Accordingly, we have determined that a 30-day comment period best serves the public interest.

The following information is provided in a question and answer format to assist interested parties in providing comments on this document.

#### *How Do I Prepare and Submit Comments?*

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to obtain instructions for filing the document electronically.

#### *How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket

Management will return the postcard by mail.

#### *How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

#### *Will the Agency Consider Late Comments?*

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

#### *How Can I Read the Comments Submitted by Other People?*

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location. You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

- (1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>).
- (2) On that page, click on "search."
- (3) On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA-1998-1234," you would type "1234." After typing the docket number, click on "search."
- (4) On the next page, which contains docket summary information for the docket you selected, click on the desired

comments. You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

*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>.

## **VII. Rulemaking Analyses and Notices**

### *a. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of the proposed rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This NPRM 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 impact of the proposed rule is so minimal that preparation of a full regulatory evaluation is not required. The proposed rule would not impose any new requirements or costs on manufacturers, but instead will result in cost savings to manufacturers of road construction controlled horizontal discharge trailers.

### *b. Regulatory Flexibility Act*

NHTSA has considered the impacts of the proposed rulemaking under the Regulatory Flexibility Act. I hereby certify that this proposal would not have a significant economic impact on a substantial number of small entities. The proposal would not impose any new requirements or costs on manufacturers, but instead will exclude manufacturers of road construction controlled horizontal discharge trailers from FMVSS No. 224. Accordingly, there would be no significant impact on small businesses, small organizations, or small governmental units by these amendments. The manufacturers of RCC

horizontal discharge trailers, among them Dan Hill and Red River, may realize certain cost savings because the standard would no longer require them to install underride 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. For these reasons, the agency has not prepared a preliminary 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 proposal does not contain any collection of information requirements requiring review under the Paperwork Reduction Act.

#### *d. National Environmental Policy Act*

NHTSA has analyzed this proposal 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 proposed rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism and has determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposal would 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.

#### *f. Civil Justice Reform*

This proposal would 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 proposal.

#### *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 (adjusted for inflation with base year of 1995). This rulemaking would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million 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 proposed 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. Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

#### **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 proposes to amend 49 CFR part 571.224 as set forth below.

1. The authority citation for part 571 would continue 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 would be amended as follows:

- a. By revising paragraph S3; and
- b. By revising the definition for "Road construction controlled horizontal discharge trailer" in paragraph S4.

The revised text is set forth 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: September 15, 2003.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 03-23960 Filed 9-18-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[I.D. 010903D]

#### Atlantic Highly Migratory Species (HMS); Atlantic Shark Management Measures

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

**ACTION:** Rescheduling of public hearings; extension of comment period.

**SUMMARY:** Due to concern regarding the path of Hurricane Isabel, NMFS is canceling two public hearings that were previously published in the **Federal Register** on August 12, 2003, and scheduled for September 17, 2003, in Pawleys Island, SC and September 22, 2003, in Manteo, NC. The public hearings are rescheduled for October 1, 2003, in Manteo, NC, and October 2,

2003, in Pawleys Island, SC. These hearings are being held to receive comments from fishery participants and other members of the public regarding proposed shark regulations and draft Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (Amendment 1). Due to rescheduling the hearings, NMFS is also extending the comment period of the proposed rule for Amendment 1, published in the **Federal Register** on August 1, 2003, from September 30, 2003, to October 3, 2003.

**DATES:** The public hearings will be held on:

1. Wednesday, October 1, 2003, from 7 – 9 p.m. in Manteo, NC, and
2. Thursday, October 2, 2003, from 7 – 9 p.m. in Pawleys Island, SC.

Comments on the proposed rule for Amendment 1, published at 68 FR 45196, August 1, 2003, must be received no later than 5 p.m., on October 3, 2003.

**ADDRESSES:** The public hearings will be held in:

1. North Carolina Aquarium, Roanoke Island, Airport Road, Manteo, NC 27954, and
2. Waccamaw Neck Branch Library, 24 Commerce Dr., Pawleys Island, SC 29585.

Written comments on this action should be mailed to Christopher Rogers, Chief, NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910; or faxed to (301) 713-1917. Comments will not be accepted if submitted via email or Internet. Copies of draft Amendment 1 can be obtained from the HMS website at: <http://www.nmfs.noaa.gov/sfa/hmspg.html>.

#### FOR FURTHER INFORMATION CONTACT:

Karyl Brewster-Geisz, Heather Stirratt, or Chris Rilling at (301) 713-2347 or Greg Fairclough at (727) 570-5741.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, is implemented by regulations at 50 CFR part 635. On August 1, 2003 (68 FR 45196), NMFS published in the **Federal Register** a proposed rule that would amend some of the regulations in the HMS FMP. Complete descriptions of the measures, as well as the purpose and need for the

proposed actions, are contained in the proposed rule and are not repeated here.

On August 12, 2003 (68 FR 47904), NMFS published in the **Federal Register** notice of six public hearings. Due to concern regarding the path of Hurricane Isabel, NMFS is canceling and rescheduling two of those public hearings. The hearing previously scheduled for September 17, 2003, in Pawleys Island, SC, is now scheduled for October 2, 2003, in Pawleys Island, SC (see **DATES** and **ADDRESSES**). The hearing previously scheduled for September 22, 2003, in Manteo, NC, is now scheduled for October 1, 2003, in Manteo, NC (see **DATES** and **ADDRESSES**). The schedule for the other public hearings remains unchanged.

Additionally, in order to incorporate these rescheduled hearings during the public comment period, NMFS is extending the public comment period on the proposed rule until 5 p.m. on October 3, 2003.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt, (301) 713-2347, at least 7 days prior to the hearing in question.

Dated: September 16, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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