



Commercial Vehicle Safety Alliance

Improving commercial motor vehicle safety and enforcement

March 11, 2025

Adrienne Camire
Acting Administrator
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, SE
6th Floor, West Building
Washington, DC 20590-9898

RE: Petition for Rulemaking – Remove Title 49 CFR § 393.86(a)(6) Certification and Labeling Requirements for Rear Impact Protection Guards

Dear Acting Administrator Camire,

Pursuant to Title 49 Code of Federal Regulations (CFR) § 389.31, the Commercial Vehicle Safety Alliance (CVSA) is petitioning the Federal Motor Carrier Safety Administration (FMCSA) to amend § 393.86, Rear impact guards and rear end protection, by removing § 393.86(a)(6), Certification and Labeling Requirements for Rear Impact Protection Guards, from the Federal Motor Carrier Safety Regulations (FMCSR).

CVSA is a nonprofit association comprised of local, state, provincial, territorial and federal commercial motor vehicle safety officials and industry representatives. The Alliance aims to achieve uniformity, compatibility and reciprocity of commercial motor vehicle inspections and enforcement by certified inspectors dedicated to driver and vehicle safety. Our mission is to improve commercial motor vehicle safety and uniformity throughout Canada, Mexico and the United States, by providing guidance and education to enforcement, industry and policy makers.

Justification

Overview

§ 393.86(a)(6) of the FMCSR requires that rear impact guards on commercial motor vehicles have a label certifying that they meet the Federal Motor Vehicle Safety Standards (FMVSS) requirements for rear impact guards. For the reasons discussed in this petition, many motor carriers are simply unable to comply with this requirement. As a result, CVSA, with support from our partners across the motor carrier industry, requests that FMCSA remove the requirement from the FMCSR.

The FMCSR establish the standards by which vehicles must be *maintained* in order to operate in interstate commerce. The purpose of the certification label required in § 393.86(a)(6) is to confirm that the component met the FMVSS manufacturing and installation requirements *at the time of production* and does not pertain to the

maintenance of the component once it is in operation. To ensure the component is maintained in order to serve its intended purpose, additional requirements in § 393.86 set physical standards the component must comply with to meet the minimum safety standards (width, height, positioning, etc.) once in operation.

It is possible for a rear impact guard to have a certification label intact but not meet the minimum physical safety standards in § 393.86 at the time of inspection. Conversely, a rear impact guard could meet all the physical requirements set forth in § 393.86 but be missing the required label due to normal wear and tear. In these scenarios, the rear impact guard that is missing its label could be safer than the guard where a label is present. This demonstrates that the presence of the certification label itself has no measurable impact on the safety performance of the component. Rear impact guard certification labels frequently wear, fade, fall off or are removed during repair. The lack of a readable label at this point in no way undermines the safety performance of the component. The structural integrity and proper mounting of the rear impact guard are critical to safety and those requirements are outlined in § 393.86.

In addition, it should be noted that a commercial motor vehicle that is missing the required rear impact guard certification label could pass the annual inspection required under Part 396 Appendix A, as the label is not part of the Appendix A requirements, then immediately be in violation for the missing label when dispatched. The requirements in Appendix A focus on the physical safety standards in § 393.86, further demonstrating that the lack of a readable label in no way undermines the safety performance of the rear impact guard.

Impact on Industry

When a certification label is illegible or missing, the current FMCSR language requires a roadside inspector to document the violation on a Driver/Vehicle Examination Report. As a result of the documented violation, motor carriers are required to correct the violation before the vehicle is re-dispatched. Unfortunately, this is often impossible since many manufacturers will not provide replacement certification labels, and others will only provide replacement labels under certain conditions. The original trailer manufacturer will no longer guarantee that the rear impact guard, which has been in operation on the roadways, meets the FMVSS manufacturing standard. Further, it is not an option for an alternative certification inspection to be performed either pre-trip or roadside prior to issuing the violation (due to lack of qualifications and training by a third party such as a roadside inspector, motor carrier, or truck driver) to potentially avoid any violation for a trailer which is otherwise compliant but is merely lacking a certification label. There is, simply put, no reasonably foreseeable way for a motor carrier to comply with the requirements in § 393.86(a)(6) after being cited.

In 2018, CVSA conducted a one-day enforcement initiative to collect data on rear impact guards on trailers and semi-trailers in the United States. The effort included inspection data on 10,112 trailers. Of the trailers inspected, 9,040 were manufactured on or after Jan. 26, 1998, and therefore subject to the requirements in § 393.86(a). Inspectors found a total of 3,170 rear impact guard violations on the 9,040 trailers inspected. Of the 3,170 violations documented, 72% were for a violation of § 393.86(a)(6). Only 28% of the violations were related to the physical integrity of the rear impact guard.

In support of this petition, the American Trucking Associations (ATA) recently surveyed its members to understand the extent of the issue and challenges with compliance. Their members have indicated that it likely affects over

50% of the trailers in service. Their members have also confirmed that the issue affects paper and metal plate versions of the label, all makes and model of trailer, and trailers of any age, including some trailers that are less than one year old. With § 393.86(a)(6) in place, motor carriers who are cited for the violation (as well as those who have not yet been cited, but whose label is not in compliance) have two options – remove the commercial motor vehicle with the noncompliant underride guard label from operation or continue to use the commercial motor vehicle, knowing it is not technically compliant even though it may comply with all relevant regulations that ensure the physical integrity and safe operation of the equipment. Neither option for the motor carrier improves safety or compliance with the FMCSR.

This issue is further compounded by the fact that Canada does not require a certification label on trailers manufactured in Canada. Many Canadian fleets are actively engaged in Canada-U.S. transportation in support of the integrated U.S. and Canadian supply chains. Approximately 175,000 Canadian-domiciled commercial motor vehicles participate in the International Registration Program, most of which would be in cross border operations. Canada is the largest single export market for the U.S., with over 74% of Canada’s goods exports traveling to the U.S. Canada is the number one market for 33 of 49 U.S. states accessible by road. Furthermore, trucking moves approximately 90% of all consumer products and foodstuffs and almost two-thirds (by value) of Canada’s trade with the U.S. Typically, over 10 million trucks cross the Canada-U.S. border each year.

Approximately 80% of the trucks/trailers/drivers engaged in cross border Canada-U.S. trade are Canadian domiciled. As noted, the Canadian Motor Vehicle Safety Standards also require rear impact guards on most trailers be built to the same standards as those in the U.S., but notably does *not* require a certification label. This means that a significant portion of those vehicles moving back and forth across the Canadian-U.S. border were manufactured in Canada and therefore do not have a certification label. These vehicles are automatically subject to receiving violations for § 393.86(a)(6) when they enter the U.S., and the Canadian manufacturers cannot provide replacement labels since they are not utilized in Canada.

Request to Remove § 393.86(a)(6) from FMCSR

The removal of the certification label requirement outlined in § 393.86(a)(6) would eliminate confusion and inconsistency in enforcement. This clarity would benefit both motor carriers and the enforcement community, with no negative impact on safety, as the physical components of the guard will still be inspected to the same standard during a roadside inspection and violations of the condition of the guard will be cited under the appropriate § 393.86 subsection. Failing to remove the requirement will have a significant negative impact on the motor carrier community, forcing companies to either remove vehicles from their fleets or knowingly operate in violation of the regulation. As noted above, there is no reasonably foreseeable way for a motor carrier to come into compliance with § 393.86(a)(6) once the label is illegible or missing, as manufacturers will typically not supply a replacement label.

CVSA 2019 Petitions

In 2019, CVSA petitioned FMCSA to remove this requirement. In support of this effort, CVSA also petitioned the National Highway Traffic Safety Administration to remove the certification labeling requirement outlined in § 571.223 S5.3 of the FMVSS. However, NHTSA denied that petition, stating that “removing the labeling requirement for rear impact guards would compromise the enforceability of FMVSS No. 223 and thereby increase

the safety risk to the motoring public.” CVSA understands NHTSA’s determination, as the FMVSS set manufacturing standards and requiring that a component be certified to meet that standard is reasonable. However, the FMCSR exist separately from the FMVSS specifically because manufacturing standards differ, by their very nature, from maintenance standards. While the label is relevant at the point of manufacture, it becomes immediately irrelevant once the vehicle begins operation.

In FMCSA’s 2024 denial of the Alliance’s petition, the agency noted that “when a rear impact guard has become damaged beyond repair and is replaced, the FMVSS label requirement ensures that the replacement rear impact guard complies with all applicable FMVSS 223 and FMVSS 224 requirements.” In addition, the requirements of this label, at the time of manufacture, meet FMVSS 223 requirements if it is permanently labeled. To be permanently labeled, as used in 49 CFR Part 567.4 for vehicle certification labels, the label must be “affixed in such a manner that it cannot be removed without destroying or defacing it”. A permanent label is not required to maintain legibility or even remain on the vehicle, as long as it is destroyed when removed. The requirement by the FMCSR to remain legible and present on the vehicle places a higher standard on the label than was originally required by FMVSS. To remain legible and intact for the lifetime of the vehicle, FMVSS would need to include these specifications to ensure the rear impact guard was labeled at the time of manufacture to remain in compliance with the FMCSRs throughout the lifetime of the vehicle. As noted above, the current label requirement only confirms that the guard meets those standards at the point of manufacture and installation. Presence of the label in no way confirms that the underride guard complies with the minimum physical safety standards in § 393.86 at the time of inspection. The requirement that the label be maintained throughout the life of the vehicle, after potentially hundreds of thousands of miles, is not practical.

While both FMCSA and NHTSA state in their denials of CVSA’s petitions that the labeling requirement is necessary to ensure the safety of the motoring public, it should be noted that in 2005 the agencies withdrew a joint notice of proposed rulemaking (NPRM) that would have required all commercial motor vehicles operating in the U.S. to display a sticker that they comply with all FMVSS. The withdrawal specifically states: "In withdrawing the NPRM, we conclude the proposed FMVSS certification label requirement is not necessary to ensure the safe operation of CMVs on our nation's highways." This conflicts with the conclusions reached in the denial determinations from both agencies. If a label certifying that a commercial motor vehicle complies with all FMVSS does not have a safety benefit once in operation, it cannot be argued that a label related to one specific FMVSS has a safety benefit once a vehicle is in operation. The agencies also acknowledged the international impact of such a labeling requirement, saying “Although the NPRM would have applied to all CMVs operated in the United States, its greatest impact would have been on motor carriers domiciled in Canada and Mexico.”

Finally, on December 10, 2024, FMCSA issued the following guidance regarding the rear impact guard certification label:

Question: *Does an illegible, incomplete, or missing rear impact guard certification label establish a violation of 49 CFR 393.86(a)(6), or indicate that the impact guard did not meet the National Highway Traffic Safety Administration’s (NHTSA) strength and energy absorption requirements applicable to manufacturers at the time the trailer was built?*

Guidance: No. The regulation in 49 CFR 393.86(a)(6) requires a rear impact guard to be permanently marked or labeled as required by Federal Motor Vehicle Safety Standard (FMVSS) No. 223. NHTSA determined that labels that wear, fade, or are removed during repair do not indicate a current compliance issue with the requirements in FMVSS No. 223. (88 FR 5844-5845, Jan. 30, 2023). FMCSA is also aware that a motor carrier may be unable to replace an illegible, incomplete, or missing certification label.

The condition of rear impact guards should be inspected to ensure compliance with all other FMVSS Nos. 223 and 224 requirements, including:

- General requirements (§ 393.86(a)(1));
- Guard width (§ 393.86(a)(2));
- Guard height (§ 393.86(a)(3));
- Guard rear surface (§ 393.86(a)(4)); and
- Cross-sectional vertical height of the horizontal member (§ 393.86(a)(5)).

Given this guidance from FMCSA, it is appropriate for the agency to remove § 393.86(a)(6) Certification and Labeling Requirements for Rear Impact Protection Guards from the FMCSR.

Conclusion

As currently written, it is often very difficult, if not impossible for motor carriers to comply with § 393.86(a)(6) once the label has become illegible or is missing. Further, as noted above and by both FMCSA and NHTSA in the Aug. 26, 2005, Federal Register notice, the presence of a certification label “is not necessary to ensure the safe operation of CMVs on our nation's highways.” CVSA requests that the agency remove the certification label requirement outlined in § 393.86(a)(6). Doing so will not negatively impact safety, as the physical components of the guard will still be inspected to the same standard during a roadside inspection and violations of the condition of the guard will be cited under the appropriate § 393.86 subsection.

CVSA works to closely monitor, evaluate and identify potentially unsafe transportation processes and procedures as well as to help facilitate and implement best practices for enhancing safety on our roadways. Commercial motor vehicle safety continues to be a challenge, and we need the involvement of all affected parties to help us better understand these issues and put into place practical solutions. We appreciate the agency’s consideration of this request.

If you have further questions or comments, please do not hesitate to contact me at 202-998-1008 or collin.mooney@cvsa.org.

Respectfully,



Collin B. Mooney, MPA, CAE
Executive Director
Commercial Vehicle Safety Alliance