

housing and providing food to the employee or MOW worker until the condition adverse to the safety or health of the occupant(s) is corrected.

§ 228.335 Electronic recordkeeping.

(a) Each railroad shall keep records in accordance with § 228.323 pertaining to its compliance with this subpart. Records may be kept either on paper forms provided by the railroad or by electronic means in a manner that conforms with § 228.323.

(b) Records required to be kept shall be made available to the Federal Railroad Administration as provided by 49 U.S.C. 20107.

Appendix A to Part 228 [Amended]

14. The last paragraph of the discussion headed "Sleeping Quarters" in Appendix A to part 228 is removed.

Appendix C to Part 228 [Removed]

15. Appendix C to part 228 is removed.

Issued in Washington, DC, on December 23, 2010.

Jo Strang,

*Associate Administrator for Railroad Safety/
Chief Safety Officer, Federal Railroad
Administration.*

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2007-26851]

Federal Motor Vehicle Safety Standard; Engine Control Module Speed Limiter Device

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Grant of petition for rulemaking.

SUMMARY: This notice grants two separate but similar petitions for rulemaking, one submitted by the American Trucking Associations and the other submitted by Road Safe America and a group of nine motor carriers (Schneider National, Inc., C.R. England, Inc., H.O. Wolding, Inc., ATS Intermodal, LLC, DART Transit Company, J.B. Hunt Transport, Inc., U.S. Xpress, Inc., Covenant Transport, Inc., and Jet Express, Inc.) to establish a safety standard to require devices that would limit the speed of certain heavy trucks. Based on information received in response to a request for comments,¹ the

National Highway Traffic Safety Administration believes that these petitions merit further consideration through the agency's rulemaking process. In addition, because of the overlapping issues addressed in these two petitions, the agency will address them together in a single rulemaking activity.

The National Highway Traffic Safety Administration plans to initiate the rulemaking process on this issue with a Notice of Proposed Rulemaking in 2012. The determination of whether to issue a rule will be made in the course of the rulemaking proceeding, in accordance with statutory criteria.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (Phone: 202-366-0098; FAX: 202-366-7002). For legal issues, you may call Mr. Steve Wood, Assistant Chief Counsel for Vehicle Rulemaking and Harmonization, (Phone: 202-366-2992; FAX: 202-366-3820). You may send mail to this official at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2006, the American Trucking Associations (ATA) submitted a petition to the National Highway Traffic Safety Administration (NHTSA) requesting that the agency initiate rulemaking to amend the Federal motor vehicle safety standards to require vehicle manufacturers to install a device to limit the speed of trucks with a gross vehicle weight rating (GVWR) greater than 26,000 pounds to no more than 68 miles per hour (mph). The ATA claimed that reducing speed-related crashes involving trucks is critical to the safety mission of NHTSA, and that these new requirements are needed to reduce the number and severity of crashes involving large trucks.

On September 8, 2006, Road Safe America and a group of nine motor carriers also petitioned the agency to require that manufacturers install a speed limiting device in vehicles with a GVWR over 26,000 pounds and that the devices be set at not more than 68 mph. They also requested that the requirements apply to all trucks manufactured after 1990.

Summary of the Petitions

A detailed discussion of the two petitions can be found in the request for comments notice. Items specific to NHTSA include the following requests from ATA:

1. All newly manufactured trucks with a GVWR greater than 26,000 pounds shall be equipped with an electronic control module (ECM) that is capable of limiting the maximum speed of the vehicle.

2. The ECM shall be set at no more than 68 mph by the manufacturer.

3. The ECM should be tamper-resistant, and should be designed in a way that does not allow the speed limiter setting on the ECM to be adjusted to let the vehicle exceed 68 mph.

4. Immediately upon the rule taking effect, manufacturers should be prohibited from setting the ECM speed limiter to a maximum speed of greater than 68 mph. However, this requirement should not take effect earlier than the effective date of a Federal Motor Carrier Safety Administration (FMCSA) rule prohibiting vehicle owners or operators from setting the ECM speed limiter at a level greater than 68 mph for newly manufactured trucks.

5. The effective date for installation of a tamper-resistant ECM should be established with a period of time that will allow manufacturers to undergo a systems integration process. The change to the engine ECM may affect other devices on the vehicle; therefore, manufacturers need some time to ensure that the vehicle functions properly. ATA encourages NHTSA to seek information from manufacturers to determine the length of time necessary to come into compliance with the rule.

6. An appropriate tolerance to accommodate variations in manufacturing, wear, and maintenance throughout the lifecycle of the vehicle. For example, the same diameter heavy truck tire but with a different width and sidewall aspect ratio may have a 15-20 revolutions per mile difference which will affect the actual top speed of the truck with a governed speed of 68 mph. ATA recommends that any rulemaking pertaining to this petition reference SAE J678, J862, and J1226 Recommended Practices.

In addition to items similar to those in ATA's petition, Road Safe America also included an item on retrofitting in its petition:

1. Every class 7 and class 8 commercial motor vehicle manufactured after the year 1990 shall be equipped with an electronic engine speed governor.

Summary of Comments

On January 26, 2007, NHTSA and FMCSA published a joint Request for Comments Notice in the **Federal Register** soliciting public comments on

¹ 72 FR 3904; January 26, 2007.

the ATA and Road Safe America petitions. The Department of Transportation Docket Management System received approximately 3,850 comments into Docket No. NHTSA–2007–26851, the majority of which were submitted by private citizens. Of these, many comments supported a regulation that would limit the speed of large trucks to 68 mph, which included comments from trucking fleets and consumer advocacy groups, and others. Other comments submitted by independent owner-operator truckers, a trucking fleet association, and private citizens were opposed to the rulemaking requested in the petitions. The remaining comments did not explicitly indicate a position with regard to the petitions.

Comments from private citizens supporting the petitions include responses from individuals who were involved in crashes with heavy trucks or had friends/relatives who were involved in crashes with large trucks. The private citizen supporters of the petitions are typically non-truck drivers who stated that they are intimidated by the hazardous driving practices of some truck drivers, such as speeding, tailgating, and abrupt lane changes. These commenters expressed the belief that limiting the speed of heavy trucks to 68 mph will result in safer highways.

Some of the organizations supporting the petition provided similar reasons for their support and the selected comments summarized below cover the range of issues they discussed.

Schneider National, Inc., a major trucking fleet, indicated that its trucks have been speed limited to 65 mph since 1996. According to Schneider's crash data from its own fleet, vehicles without speed limiters accounted for 40 percent of the company's serious collisions while driving 17 percent of the company's total miles. Schneider stated that its vehicles have a significantly lower crash rate than large trucks that are not speed limited or have a maximum speed setting greater than 65 mph.

J.B. Hunt Transport, Inc., another trucking fleet, commented that a differential speed between cars and large trucks will result from trucks being equipped with speed limiters set below the posted speed limit. This speed differential may cause a safety hazard. However, J. B. Hunt believes that the current safety hazard caused by large trucks traveling at speeds in excess of posted limits is a greater safety hazard.

Advocates for Highway and Auto Safety (Advocates) commented that large trucks require 20–40 percent more braking distance than passenger cars

and light trucks for a given travel speed. Advocates does not believe that the data in the 1991 report to Congress² are still valid because the speed limits posted by the States over the past ten years are much higher than the national posted speed limit of 55 mph that was in effect in 1991.

The Insurance Institute for Highway Safety (IIHS) stated that 97 percent of the occupants that are killed in crashes between heavy trucks and passenger vehicles are passenger vehicle occupants. IIHS stated that on-board electronic engine control modules (ECM) will maintain the desired speed control for vehicles when enforcement efforts are not sufficient due to lack of resources. IIHS stated that there is already widespread use of speed governors by carriers and a mandate will result in net safety and economic benefits.

The Governors Highway Safety Association (GHSA) stated that large trucks are 3 percent of registered vehicles and represent about 8 percent of the total miles traveled nationwide. Also, GHSA believes that it is prudent to consider speed limiting devices since they are currently installed in large trucks and can be adapted to be tamper-resistant. It stated that conventional approaches to vehicle speed control do not provide optimal benefits because of a lack of enforcement resources and too many miles of highway to cover.

Several comments, including those from ATA's Truck Maintenance Council, provided information concerning economic, non-safety benefits that would result from large truck speed limiters. The Truck Maintenance Council stated that an increase of 1 mph results in a 0.1 mpg increase in fuel consumption, and for every 1 mph increase in speed over 55 mph, there is a reduction of 1 percent in tire tread life.

Comments opposing rulemaking that would require speed limiters on large trucks to be set to a maximum speed of 68 mph were received from many independent truck drivers, the Owner-Operator Independent Drivers Association (OOIDA), the Truckload Carriers Association (TCA), and private citizens (non-truck drivers).

OOIDA commented that the 1991 report to Congress³ is still valid today—there is no need to mandate speed limiters because the target population (high speed crashes) is still small compared to the total number of truck

crashes. According to OOIDA, speed limiters would not have an effect on crashes in areas where the posted speed limit for trucks is 65 mph or below. OOIDA believes that the petitioners are attempting to force all trucks to be speed limited so that the major trucking companies with speed limited vehicles can compete for drivers with the independent trucking operations that have not limited their speeds to 68 mph or below. OOIDA also stated that it is not necessary to set large truck speed limiters at 68 mph to realize most of the economic benefits cited by the petitioners because improved fuel economy and reduced emissions can be achieved with improved truck designs.

TCA commented that a speed differential will be created in many States by the 68-mph speed limit for heavy trucks and a higher speed limit for other vehicles. This speed differential will result in more interaction between cars and trucks and may be an additional safety risk for cars and trucks.

According to comments from CDW Transport, a trucking fleet, speed limiters should be required on passenger vehicles as well as commercial motor vehicles.

Several comments from private citizens and small businesses opposed to the petitions stated that speed is not the only cause of crashes, that weather and highway conditions are also significant factors. There were comments stating that passenger vehicles cause the majority of the crashes between trucks and passenger vehicles. Some comments stated that truck drivers will experience more fatigue with a 68-mph maximum speed, which could result in more crashes; some comments expressed the opinion that State and local law enforcement agencies should enforce the speed of all vehicles on the nation's roads and highways; several comments favored a 75-mph limit for truck speed limiters, instead of 68 mph, to match the highest posted speed limit in the country.

The Truck Manufacturers Association (TMA) provided information concerning the cost of tamper-proof speed limiters for large trucks. TMA estimates a one-time cost of \$35 to \$50 million would be required to develop ECMs with tamper-resistant speed limiters and a one-time cost of \$150 million to \$200 million to develop ECMs with tamper-proof speed limiters. With both of these ECM designs, there would be additional costs to make adjustments to the ECM for maximum speed, tire size, and drive axle and transmission gear ratio information.

² Commercial Motor Vehicle Speed Control Devices (1991), DOT HS 807 725.

³ Commercial Motor Vehicle Speed Control Devices (1991), DOT HS 807 725.

Research Review

The agency conducted a preliminary review of research in its evaluation of the merits of these petitions. Along with research conducted by Transport Canada,⁴ the agency has considered a DOT Research and Special Programs Administration report published in 2005,⁵ and a synthesis of safety practice from the Transportation Research Board of the National Academies published in 2008.⁶ Both of these reports indicate that there is a potential for speed limiting devices to decrease crash severity. Both of these documents also contain survey information pertaining to the current fleet usage of these devices and the speed settings of the equipment currently on the road.

Although the currently available studies have been useful in the agency's grant consideration, additional information on this topic is forthcoming. The agency anticipates the publication of a report on the findings of a study being conducted by the

Federal Motor Carrier Safety Administration.⁷ The main objective of this research is to quantitatively evaluate the safety impact and associated economic benefits of speed limiters in commercial motor vehicles. This analysis is expected to include safety impacts as well as fuel and tire consumption data.

International Speed Limiter Regulations

The European Union has limited the speed of large trucks and buses under its jurisdiction to 62 mph since 1994. In Australia, large trucks have been limited to 62 mph since 1990 with a 56-mph limit for road trains (a road train consists of a tractor pulling multiple trailers).⁸ The European Union and Australia cited economic and safety benefits as the reasons for adopting large truck speed limiter legislation and regulation.

⁷ Information on this study is available at <http://www.fmcsa.dot.gov/facts-research/art-research-Safety-Effectiveness-of-Speed-Limiters.htm>.

⁸ The Australian Design Rule (ADR) 65/00—Maximum Road Speed Limiting for Heavy Goods Vehicles and Heavy Omnibuses specifies the devices or systems used to limit the maximum road speed of heavy goods vehicles. For additional information, go to http://www.tmr.qld.gov.au/~media/7ebc7a9d-b94b-4ee8-bf82-aab41c743252/speed_limiter_requirements.pdf.

More recently, Japan and the Canadian provinces of Ontario and Quebec have also mandated speed limiters. Japan limited large trucks to 56 mph in 2003. Quebec and Ontario limited the speed of large trucks to 65 effective January 1, 2009, although they did not begin assessing fines until July 1, 2009.⁹ In addition to economic and safety benefits, the two provinces cited environmental benefits.

The granting of the petitions from ATA and Road Safe America, however, does not mean that a final rule will be issued. The determination of whether to issue a rule is made after study of the requested action and the various alternatives in the course of the rulemaking proceeding, in accordance with statutory criteria.

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

Issued: December 27, 2010.

Nathaniel Beuse,

Director, Office of Crash Avoidance Standards.

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⁹ ONTARIO AND QUÉBEC MANDATORY HEAVY TRUCK SPEED LIMITERS—FACT SHEET. Available at http://www.mtq.gouv.qc.ca/portal/page/portal/Librairie/Publications/en/camionnage/limiters_vitesse/speed_limiters_note_info.pdf.

⁴ The reports are available at <http://www.tc.gc.ca/eng/roadsafety/safevehicles-motorcarriers-speedlimiter-index-251.htm>.

⁵ "Cost-Benefit Evaluation of Large Truck-Automobile Speed Limits Differentials on Rural Interstate Highways," MBTC 2048.

⁶ "Safety Impacts of Speed Limiter Device Installation on Commercial Trucks and Buses," Available at <http://www.trb.org/Main/Blurbs.aspx>.