

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

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

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 Wisconsin, is amended by removing Channel 285A at Kaukauna and adding Denmark, Channel 285C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

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

[Docket No. NHTSA-2000-6994]

RIN 2127-AH84

**Federal Motor Vehicle Safety Standards; School Bus Body Joint Strength**

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

**ACTION:** Final rule; technical amendment; response to petition to delay effective date.

**SUMMARY:** On November 5, 1998, NHTSA published a final rule that amended Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength* (49 CFR 571.221), and announced an effective date of May 5, 2000 for those amendments. This document delays the effective date of that final rule until May 5, 2001. This document also makes a technical amendment by correcting a technical error in that final rule.

**DATES:** This rule is effective April 5, 2000. Any petitions for reconsideration of this final rule must be received by NHTSA no later than April 20, 2000. The effective day of May 5, 2000 for the final rule published at 63 FR 59732, Nov. 5, 1998 amending § 571.221 is delayed until May 5, 2001.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number for

this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical issues you may call: Mr. Charles Hott, Office of Crashworthiness Standards, at (202) 366-0247. Mr. Hott's FAX number is: (202) 493-2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366-2992. Her FAX number is: (202) 366-3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** The purpose of Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*, (49 CFR 571.221) (Standard No. 221), is to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes. Standard No. 221 establishes requirements for the strength of the "body panel joints" in school bus bodies.

**Final Rule of November 5, 1998**

In a final rule published on November 5, 1998 (63 FR 59732), NHTSA enhanced the applicability of Standard No. 221 and made a number of other changes. At present, Standard No. 221 applies only to school buses with a gross vehicle weight rating (GVWR) more than 4536 kg (10,000 pounds). The standard also specifies strength requirements for each "body panel joint," currently defined as the area of contact or close proximity between the edges of a body panel and another body component, excluding spaces designed for ventilation or another functional purpose, and excluding doors, windows, and maintenance access panels (MAPs).

The November 5, 1998 final rule extended the applicability of Standard No. 221 to school buses with a GVWR of 4536 kg (10,000 pounds) or less<sup>1</sup> and narrowed the exclusion of MAPs from the joint strength requirements. Except as noted below, the final rule also required panels to be attached at least at every 203 millimeters (8 inches) and required body panel joints to withstand a tensile strength of 60 percent of the tensile strength of the weakest joined body panel. The final rule excluded two groups of MAPs from these requirements: MAPs outside of the passenger area; and MAPs smaller than a specified size inside the passenger

area. The final rule also excluded certain joints from the standard's tensile strength requirements, *i.e.*, joints from which a test sample cannot be obtained because of the joint's size or the curvature of the panels comprising the joint.

The final rule also simplified the definition of "maintenance access panel" and adopted a definition of "passenger compartment" based on the definition in Standard No. 217, *Bus Emergency Exits and Window Retention and Release* (49 CFR 571.217). In determining minimum allowable joint strength, the final rule (reversing a 1978 interpretation letter) included a new S6.2(c) specifying that the cross-sectional area of material removed to facilitate the installation of fasteners shall be considered in determining the tensile strength of the weakest joined body panel.

NHTSA specified that the final rule would take effect 18 months after **Federal Register** publication. The agency had proposed the 18 month lead time in the notice of proposed rulemaking (NPRM). No commenter addressed the lead time issue. In the final rule, NHTSA explained why 18 months was believed to provide sufficient lead time for manufacturers to accomplish any necessary redesign, retooling, testing, and marketing strategy to meet the requirements established in the final rule. NHTSA noted many manufacturers of small school buses already offer their customers the option of buying those buses with body panel joints that meet Standard No. 221. NHTSA stated its belief that at least some of the tooling needed to meet the changes mandated by the final rule were already in place but that some additional tooling may be required for all small school buses to be produced in compliance with Standard No. 221. The agency also stated that maintenance access panels in both large and small school buses might need to be redesigned and tested (that could be accomplished in 18 months) in order to meet the new requirements.

**Petitions for Reconsideration**

NHTSA received petitions for reconsideration of the final rule from AmTran Corporation, Blue Bird Body Company, and Thomas Built Buses. The petitioners asked for reconsideration of decisions regarding issues such as whether the standard would apply to joints from which a test sample cannot be made; the number of fasteners for curved and complex joints; whether the term "automotive" type joints should be defined; whether the term "bus body" should exclude structures forward of the

<sup>1</sup> Referred to below as small school buses.

passenger compartment; and the degrees of tolerance that should be permitted in a test machine's grip.

The manufacturers stated the greatest cost effect would result from the final rule's rescinding a November 28, 1978 interpretation letter that addressed the issue of how to compute the area of a sample of a body panel when testing for Standard No. 221 compliance. In the letter, NHTSA stated that in its compliance testing, it would determine the net cross-sectional area of a body panel sample by multiplying the width of the sample by its thickness and then subtracting the area of each "discreet fastener hole." Rescinding the letter means that when testing for compliance with Standard No. 221, NHTSA would no longer subtract the area of each discreet fastener hole when determining the net cross-sectional area of the sample. The practical effect of that change is that school bus manufacturers would have to use more fasteners in order to meet the standard. The final rule included a new provision, S6.2(c), making it clear that the cross-sectional area of material removed to facilitate the installation of fasteners shall be considered in determining the tensile strength of the weakest joined body panel.

All three petitioners asked that S6.2(c) be removed, and the November 28, 1978 interpretation letter be reinstated. Blue Bird stated that the interpretation letter has been the basis for determining minimum allowable tensile strength for FMVSS certification and NHTSA compliance purposes since it was issued. Blue Bird informed the agency that approximately half of the joint designs used in manufacturing Blue Bird school buses use discrete fasteners, the majority of which will require redesign and retesting. Other school bus manufacturers may use non-discrete fasteners such as welds and adhesives, which may also have to be redesigned and retested. If the November 28, 1978 interpretation letter is not reinstated and if S6.2(c) takes effect, Blue Bird estimated that there will be an increase of 12 to 25 percent in the number of required fasteners. Blue Bird indicated that the new method of calculating joint strength would result in hard tooling (*i.e.*, dies, which are tools for manufacturing materials) with long lead times, and increased material and labor costs. Blue Bird did not provide dollar estimates of the increased costs.

Thomas Built stated that most of its cost increases would be incurred when providing the extra fasteners needed when the change in the joint strength calculation procedure (in S6.2(c)) becomes effective. Thomas estimated

that the increase in costs for a school bus to meet the final rule's maintenance access panel changes only, (including labor, fasteners, tooling and fixtures), would be \$157. The cost per school bus of meeting maintenance access panel changes and S6.2(c) would be \$352. Thomas also estimated that the total cost to modify its plant (which would be necessary to meet the new final rule) would be \$313,000 if the maintenance access panel changes only take effect and \$1,388,000 if the maintenance access panel changes and S6.2(c) take effect.

#### Petition for Extension of Effective Date

In a letter dated September 28, 1999, Blue Bird asked that NHTSA extend the effective date of its November 5, 1998, final rule to "a minimum of 18 months following publication of an amended final rule, or to May 5, 2002, whichever is later." Blue Bird cited the expense involved in pursuing redesign, testing, tooling and manufacturing changes that would result when the final rule takes effect. Blue Bird noted that these retooling and other changes would not be necessary if the changes requested by the petitioners are made to the November 5, 1998 final rule. Blue Bird asked that if granted, the petition for extension of the effective date be issued as soon as possible. Blue Bird said that it and other school bus manufacturers already have had to make preparations with tooling and die manufacturers to produce machining that would enable the production (in May 2000) of school buses that meet the November 5, 1998 final rule.

#### Agency Decision To Grant Petition for Extension

We are carefully reviewing the petitions for reconsideration of the November 1998 final rule. One possible outcome of that review would be a decision to grant the petitioners' request to remove S6.2(c) and reinstate the November 28, 1978, interpretation letter permitting subtraction of holes in calculating joint strength. If we were to remove S6.2(c) and reinstate the letter, the expensive die and tooling changes cited by school bus manufacturers in their petitions for reconsideration would be unnecessary. Therefore, while we are deciding whether to grant the petitions for reconsideration, we are preserving the status quo by extending the effective date for the November 1998 final rule until May 5, 2001. We expect to issue a new document addressing the issues raised in the petitions for reconsideration well before May 5, 2001. If additional time is needed, we will issue an additional extension.

#### Technical Amendment

This document also corrects an error in S5.2.1(a) of the November 5, 1998 final rule. The preamble of the final rule stated that the rule excluded certain maintenance access panels (MAPs) from the joint tensile strength requirements. Excluded were MAPs with openings of less than 305 mm. Specifically, we stated in the preamble:

To be excluded, the MAP must either: (1) \* \* \* ; or (2) be located within the passenger seating area but have an opening that does not exceed 305 mm (12 inches) when measured across any two points diametrically on opposite sides of the opening.

(See 63 FR 59732 at 59735)

The language quoted above makes explicit NHTSA's intent to exclude MAPs with openings of less than 305 mm from joint tensile strength requirements. However, as drafted, S5.2.1(a) of the final rule states that MAPs which *exceed* 305 mm are excluded. So that the regulatory language meets NHTSA's intent, we amend S5.2.1(a) to exclude from the joint tensile strength requirements any MAP with an opening that does not exceed 305 mm (12 inches) when measured across any two points diametrically on opposite sides of the opening.

#### A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, we have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures (44 FR 11034, February 26, 1979).

In its Final Regulatory Evaluation for the November 5, 1998 final rule, NHTSA estimated that the total cost for implementing the final rule would be approximately \$8,500,000 per year. This rule delays the effective date of that final rule for one year, *i.e.*, to May 5, 2001. Thus, it delays the incurring of those costs. During that one-year period, manufacturers will continue to meet the same requirements (and incur the same costs) resulting from the existing rule.

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In the November 5, 1998 final rule, the agency certified that that rule would not have a significant economic impact on a substantial number of small entities. Accordingly, I certify that this final rule, which delays the implementation of that earlier final rule, will not have a significant economic impact on a substantial number of small entities.

As noted in the November 5, 1998 final rule, the SBA defines a motor vehicle retailer with less than \$11,500,000 in annual receipts as a small business. There are approximately 465 school bus dealers and distributors in the United States. The average sales

of school buses from 1995 to 1999 was about 40,000 per year, representing an average of less than 100 buses per dealer. In order to reach the threshold of \$11,500,000 in annual sales receipts, the average dealer would have to sell a much larger number (270) of large school buses annually, assuming a cost of \$45,280 per unit. Thus, most school bus dealers are probably small businesses. Because of the negligible cost impact on manufacturers, the agency also anticipates little measurable impact on retailers' revenue levels, profitability, or employment.

#### *C. Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we note that there are no collection of information requirements associated with this final rule.

#### *D. National Environmental Policy Act*

We have analyzed this final rule for the purposes of the National Environmental Policy Act. We have determined that implementation of this action will not have any significant impact on the quality of the human environment.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to manufacturers of school buses and to school buses, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

#### *F. Civil Justice Reform*

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

#### *G. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal 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 in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### *H. 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 rule on children, and explain why the regulation is preferable to other

potentially effective and reasonably feasible alternatives considered by us.

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

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

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, 49 CFR 571.221 is amended as follows:

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

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

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

2. Section 571.221 is amended by revising S5.2.1(a) to read as follows:

#### **§ 571.221 Standard No. 221, School Bus Body Joint Strength.**

\* \* \* \* \*

S5.2.1 The requirements of S5.1.1 and S5.1.2 do not apply to—

(a) Any interior maintenance access panel which lies forward of the passenger compartment, or which is less than 305 mm when measured across any two points diametrically on opposite sides of the opening.

\* \* \* \* \*

Issued on: February 29, 2000.

**Rosalyn Millman,**

*Acting Administrator.*

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