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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-99-5157]

RIN 2127-AH03

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

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

ACTION: Final rule; delay of effective date.

SUMMARY: On April 19, 2002, NHTSA published a final rule that amended the Federal motor vehicle safety standard on bus emergency exits and window retention and release, and specified an effective date of April 21, 2003 for the amendments made by the rule. Petitions for reconsideration of the rule were submitted to the agency. This document delays the effective date of the final rule one year to allow the agency more time to respond to those petitions.

DATES: Effective April 18, 2003 the effective date of the final rule published on April 19, 2002 (67 FR 19343) is delayed until April 21, 2004.

Any petitions for reconsideration of this final rule must be received by NHTSA not later than June 6, 2003

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: Federal Motor Vehicle Safety Standard No. 217,

Bus emergency exits and window retention and release, (49 CFR § 571.217) (FMVSS No. 217), specifies requirements for the retention of windows other than windshields in buses, and for operating forces, opening dimensions, and markings for bus emergency exits. The purpose of FMVSS No. 217 is to minimize the likelihood of occupants being thrown from the bus in a crash and to provide a means of readily accessible emergency egress.

Final Rule

On April 19, 2002 (67 FR 19343) (DMS Docket No. NHTSA-99-5157), NHTSA published a final rule amending FMVSS No. 217 to reduce the likelihood that wheelchair securement anchorages in new school buses will be installed in locations that permit wheelchairs to be secured where they would block access to emergency exit doors. For side emergency exit door, the final rule restricts wheelchair securement anchorages from being placed in an area bounded by transverse vertical planes 305 mm (12 inches) forward and rearward of the center of the door aisle. For a rear emergency exit door, the final rule restricts wheelchair securement anchorages from being placed in an area bounded by a horizontal plane 1,145 mm (45 inches) above the bus floor and a transverse vertical plane either 305 mm (12 inches) forward of the bottom edge of the door opening within the bus occupant space (for school buses with a gross vehicle weight rating (GVWR) over 4,536 kg (10,000 lb)) or 150 mm (6 inches) forward of the bottom edge of the door opening within the bus occupant space (for school buses with a GVWR of 4,536 kg or less).

The final rule also provides that emergency exit doors and emergency exit windows currently required to be labeled as an "Emergency Door" or "Emergency Exit" must also bear a label saying "DO NOT BLOCK". The agency said that access to these doors and exits should never be blocked with wheelchairs or other items, such as book bags, knapsacks, sports equipment or band equipment.

The final rule specified an effective date of April 21, 2003 for these amendments.

Petitions for Reconsideration

In late May 2002, NHTSA received petitions for reconsideration of the April 19, 2002 final rule from three school bus manufacturers: Thomas Built Buses, American Transportation Corporation (now known as IC Corporation), and Blue Bird Body Company. The three petitioners requested reconsideration of the final rule's use of transverse vertical

and horizontal planes to define the volumes around the side and rear emergency exit doors where wheelchair anchorages may not be located. All three companies stated that the volumes should instead be defined using "the rectangular parallelepiped fixture."

The petitioners also raised other issues for reconsideration. They requested clarification of whether the warning label specified in the final rule is required for both emergency exit doors and emergency exit windows or emergency exit doors only. They asked whether the warning, "DO NOT BLOCK," is intended to refer to wheelchairs only or other items as well, such as child restraint systems. In addition, Thomas Built asked NHTSA to revise Figure 6C to clarify whether emergency exits not required by FMVSS No. 217 must meet FMVSS No. 217 emergency exit requirements.

Finally, Thomas Built also asked about the ellipsoid used for assessing the area of unobstructed openings through windows.¹ With respect to the final rule's reference to the "ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 50 centimeters and a minor axis of 33 centimeters," Thomas Built asked whether *any* major axis of the ellipse could be held in a horizontal position.

Request for Delay of Effective Date

In a letter dated January 29, 2003, Blue Bird Body Corporation asked for the agency's interpretation of several requirements adopted in the final rule. Blue Bird also requested NHTSA to delay the effective date of the rule by a year. Blue Bird asked for a one-year delay to give NHTSA an additional six months to respond to the petitions for reconsideration and to provide the school bus industry at least six months lead time to implement the changes.

Agency Decision to Delay Effective Date

The agency is in the process of responding to the petitions for reconsideration. If the effective date were not delayed, some school bus manufacturers might have to redesign some of their vehicles to meet the requirements of the April 2002 final rule. If we respond to the petitions for reconsideration by amending that final rule's method of determining the areas on a school bus where wheelchair securement anchorages can be installed, that amendment could again affect the design and manufacture of school buses. Some manufacturers might find,

¹ The final rule did not add, remove or other amend language regarding the use of an ellipsoid for assessing the area of unobstructed openings through windows.

depending on the nature of the amendments, that the redesign they had implemented to meet the April 2002 final rule was unnecessary. This outcome is not desirable. The benefits from the April 2002 rulemaking cannot be quantified, and are likely not significant.

We anticipate issuing the response to petitions for reconsideration later this year. A one-year delay of the effective date, to April 21, 2004, preserves the status quo and avoids what may turn out to be unnecessary manufacturing changes to meet the requirements of the April 2002 final rule.

Effective Date of This Document

Because the April 21, 2003 effective date for the final rule is fast approaching, NHTSA finds for good cause that this action delaying the effective date must take effect immediately. Today's final rule makes no substantive change to the standard, but delays the effective date of the April 19, 2002 final rule for one year while the agency responds to the petitions for reconsideration of the rule. If the effective date is not delayed, the availability of school buses could be reduced and costs of some vehicles could increase.

Rulemaking Analyses and Notices

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

Executive Order 12866, "Regulatory Planning and Review" (58 Fed. Reg. 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).

This final rule delays the effective date of an April 19, 2002 final rule. There are no additional costs associated with today's final 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 April 19, 2002 final rule, the agency certified that that rule would not have a significant economic impact on a substantial number of small entities. Accordingly, I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this final rule, which delays the effective date of that earlier final rule, will not have a significant economic impact on a substantial number of small entities. There are no additional costs associated with this final rule.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), 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. Since it only delays the effective date of a final rule, this final rule does not impose any new collections of information

requirements for which a 5 CFR part 1320 clearance must be obtained.

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— Economically Significant Rules Disproportionately Affecting Children

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.

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.

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

Issued on: April 17, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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