

Additional Docket Information

When submitting written comments (see **ADDRESSES** section earlier) please submit an original and three copies of your comments and enclosures (including any references). For an acknowledgment that we have received your information, please include a self-addressed, stamped envelope. EPA will not accept facsimiles (faxes).

The record is available for inspection from 8:30 a.m. to 3:30 p.m. Eastern daylight-saving time, Monday through Friday, excluding legal holidays at the Environmental Protection Agency, Region 4 Library (9th Floor), Sam Nunn Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303-8960. For information on how to access Docket materials, please call (404) 562-8190 and refer to the Florida UIC docket.

EPA is also making the docket available to interested parties at EPA's South Florida Office in West Palm Beach. A copy of the docket will be available in Florida until the end of the comment period, October 20, 2000, from 9:00 a.m. to 3:30 p.m. at the following location: Environmental Protection Agency, South Florida Office, 400 N. Congress Ave., Suite 120, West Palm Beach, Florida 33401, for information call (651) 615-4557. Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, FL 32399-2400, for information call (850) 921-9417.

Dated: August 22, 2000.

J. Charles Fox,

Assistant Administrator for Water.

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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 565**

[Docket No. NHTSA 98-3949; Notice 2]

RIN 2127-AH69

Low-Speed Vehicles

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

ACTION: Response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of Federal Motor Vehicle Safety Standard No. 500, *Low-Speed Vehicles* (LSV). We are treating most of the requests in the petitions as petitions for rulemaking.

The request that we are granting is either to immediately adopt performance requirements for the parking brake, mirrors, and lighting equipment required by the standard, or, in the alternative, allow States to set their own requirements. In response to that request, we have reviewed our decision at the time of Standard No. 500's issuance to assert preemption. We have decided that, until we can establish performance requirements for parking brake, mirrors, and lighting equipment installed on LSVs, we will not assert preemption. Thus, States may establish or maintain their own performance requirements for these equipment items.

FOR FURTHER INFORMATION CONTACT:

For legal issues: Taylor Vinson, Office of Chief Counsel, NHTSA, Room 5219, 400 7th Street, SW., Washington, DC 20590 (telephone 202-366-5263; fax 202-366-3820).

For technical issues: Richard Van Iderstine, Office of Crash Avoidance Standards, NHTSA, Room 5307, 400 7th Street, SW, Washington, DC 20590 (telephone 202-366-4931; fax 202-366-4329).

SUPPLEMENTARY INFORMATION:**The Final Rule: Federal Motor Vehicle Safety Standard No. 500, Low-Speed Vehicles**

On June 17, 1998, we published a final rule establishing Federal Motor Vehicle Safety Standard No. 500, *Low-Speed Vehicles* (63 FR 33194), effective on that date. This standard was based upon an NPRM published on January 8, 1997 (62 FR 1077). We are now responding to the petitions for reconsideration of Standard No. 500 that we received.

In the Standard, we defined a "low-speed vehicle" (LSV) as a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mi) is more than 32 km/h (20 mph), but not more than 40 km/h (25 mph) on a paved level surface. The definition reflected the intent of the rule which was to relieve LSVs of the legal obligation to comply with Federal motor vehicle safety standards more appropriate for faster vehicles, and to adopt a Federal standard tailored to the more modest speed capabilities of LSVs.

We based the substance of Standard No. 500 upon the requirements of Palm Desert, California, which has been licensing "golf carts" as defined under state law for use on certain streets since 1993. In parallel with Palm Desert's specifications, Standard No. 500 requires LSVs to be equipped with headlamps, front and rear turn signal

lamps, taillamps, stop lamps, reflex reflectors, rearview mirrors, and a parking brake. We were more specific than Palm Desert in specifying that a windshield be provided that is of AS-1 or AS-5 composition, and that seat belt assemblies be either Type 1 (lap) or Type 2 (lap and shoulder) complying with Federal Motor Vehicle Safety Standard No. 209, *Seat Belt Assemblies*. We also decided to require that LSVs be equipped with a Vehicle Identification Number (VIN) meeting the specifications of 49 CFR Part 565. However, we did not specify any performance requirements for the lighting equipment, mirrors, or parking brake, saying that we would consider the possibility of proposing performance requirements for them, as well as other requirements that might be appropriate for slow-moving small vehicles, in response to our monitoring the safety record of LSVs (63 FR 33212).

In the final rule, we also addressed several matters concerning the effect of Standard No. 500 on state and local laws (63 FR 33197). First, we stated that the final rule did not affect the ability of states and local governments to decide for themselves whether to permit on-road use of golf cars and LSVs. Second, we advised that state and local governments could supplement Standard No. 500 by requiring the installation and performance of equipment not required by Standard No. 500, such as a horn. However, we stated that state and local governments were preempted from specifying performance requirements for lighting equipment, mirrors, and parking brake because we had not specified performance requirements for them. Finally, we noted that the decision whether to require retrofitting of faster golf cars in use at the time of the final rule, and which would have been LSVs if manufactured on or after that time, remained in the domain of state and local law. We also noted that the final rule had no effect on other aspects of state or local regulation of golf cars and Neighborhood Vehicles (NVs) "including classification for taxation, vehicle and operator registration, and conditions of use upon their state and local roads." (63 FR 33216).

Petitions for Reconsideration

We received petitions for reconsideration of Standard No. 500 from the Department of Motor Vehicles of the State of Connecticut ("Connecticut"), the Department of Highway Safety and Motor Vehicles of the State of Florida ("Florida"), American Association of Motor Vehicle Administrators ("AAMVA") and

Solectria Corporation ("Solectria"), a manufacturer of electric vehicles, which was supported by Electric Transportation Coalition. We also received a request for assistance from Global Electric Motors, a manufacturer of LSVs ("Global").

We discuss below the issues raised by the petitions and our disposition of them.

1. Whether Standard No. 500 Should Be Applicable to Low-Speed Light Trucks

Solectria, seconded by Electric Transportation Coalition, asked that we reconsider our exclusion of "trucks" from the definition of LSV. Solectria believes that we intended "to exclude heavy construction equipment," and that vehicles like its "Flash micro electric pickup truck" are "sufficiently unique and useful as to warrant a change in the wording." The Solectria truck, according to its manufacturer, is "suitable" for such uses off the public roads as on airport property, college campuses, in "environmentally sensitive national parks and recreation areas," and for "virtually any other use which requires a small pickup truck with modest payload for short trips." To require this light truck to meet Federal motor vehicle safety standards for side impact, and front impact testing and air bags, would, in its manufacturer's opinion, require such re-engineering and development costs as to render the vehicle unsuitable for its intended applications. Solectria therefore asked that we amend the definition of LSV to exclude trucks with "a maximum allowable curb weight" of more than 1,000 kg. (2,200 lbs.). Eventually, Solectria intends to offer a micro van version of the vehicle. Because the micro van meets the definition of LSV, Solectria argued that "it is inconsistent that the pickup truck version be excluded merely because it would be carrying goods in an outside container, rather than carrying passengers in an enclosure."

In our January 1997 proposal (see 62 FR at 1086), we defined the term "low-speed vehicle" without reference to whether the LSV was a passenger car, multipurpose passenger vehicle, or truck. However, a "low-speed vehicle with work performing features" would have been excluded from the equipment requirements of Standard No. 100 (as Standard No. 500 was then numbered). This would have had the unintended result that these vehicles would have been relieved of the necessity of complying with the Federal standards they were already meeting. In short, an excluded vehicle would not have been required to meet any Federal motor

vehicle safety standard at all. None of the commenters addressed this issue.

In issuing the final rule, we decided that an LSV with "work performing features" should continue to be treated as a truck, and that there was no reason to include low-speed trucks in a rule intended to relieve restrictions on low-speed passenger cars. Thus, instead of relieving low-speed trucks of the need to meet any Federal motor vehicle safety standard as the January 1997 NPRM would have done, Standard No. 500 ensures that such trucks must continue to meet the Federal standards that have always applied to trucks with a maximum speed of more than 20 miles per hour. We considered this decision to be "consistent with the rationale of this rulemaking, which is to eliminate a regulatory conflict involving passenger-carrying vehicles" (63 FR at 33198), and concluded that "the truck FMVSSs remain appropriate for trucks with a speed capability between 20 and 25 miles per hour and that these standards have not inhibited their introduction in the past."

We are still considering this petition, and have not reached a decision whether to grant or to deny it. Our decision will be reflected in the notice of proposed rulemaking under consideration for establishing performance requirements for safety equipment on LSVs that we discuss below.

2. Whether the Required Safety Equipment Should Have Performance Specifications; Whether Such Specifications Should be Promulgated by NHTSA or by the States.

Connecticut asked us to reconsider our issuance of a Standard No. 500 devoid of performance requirements for the "lighting, mirrors, brakes and reflectors," and asked that we incorporate "at least minimum performance standards" for those items of equipment. It commented that our decision not to adopt any performance requirements was "troubling * * * due to both policy considerations and the creation of a possible conflict with" state statutes that specify requirements for those items of equipment. Florida's comment was similar. As an example, both states cited their local statute requiring any vehicle operated on the highway to be equipped with red taillamps that can be seen from a distance of 1,000 feet. Florida requires that such vehicles have multiple beam headlamps capable of illuminating persons or vehicles at least 450 feet ahead on upper beam and 150 feet ahead on lower beam. Connecticut stated that the lack of specifications and

its inability to promulgate them because it is preempted from doing so by Standard No. 500 creates "an apparent dilemma" for any state that "does not now permit LSVs to engage in general highway use but may wish to consider doing so." If NHTSA issues performance requirements, "Connecticut could then assess [them] and use as benchmark to make decisions regarding the extent to which highway operation of LSVs will be permitted." Both states comment that "the decision in the final rule not to include performance standards does not appear to us to be a prudent exercise of federal preemption authority."

AAMVA, "on behalf of the motor vehicle community," submitted a similar comment. It believes that without standards, "manufacturers are free to install any color or candlepower on headlights, any braking capacity no matter how minimal, etc." In AAMVA's view, "this seems to contradict the rule's apparent intention to make such vehicles road-worthy." Accordingly, it asks NHTSA either to "set federal standards for safety equipment or else allow jurisdictions to set their own." It also asked NHTSA to "postpone the effective date of the final rule to accommodate legislative changes needed," so that "safety equipment issues [can be] addressed and state legislatures have sufficient time to make any necessary changes to their laws and regulations."

We explained in the preamble of the June 1998 final rule that we were not, at that time, issuing performance specifications for equipment required on LSVs, but would consider what might be appropriate after we monitor their safety records.

In our January 1997 proposal, we discussed the safety record of small vehicles in low-speed environments and an appropriate safety standard (62 FR 1081-83). Because of the scarcity of four-wheeled limited-speed vehicles in operation in the United States, virtually no data were available concerning crashes that had unmistakably occurred on the public roads. Comments indicated that safety had not been a problem. Data from Palm Desert, which had had the most experience with on-road golf cars, indicated that the safety record of these slow-moving vehicles was exemplary when they were operated on the city streets in environments with heavier and faster-moving vehicles. In our opinion, the lack of crashes was attributable in part to the roadway schemes and operating restrictions that Palm Desert had established. We commended those schemes and restrictions to other jurisdictions considering permitting on-

road use of golf cars. While recognizing that the safety record of low-speed vehicles might change with increases in their numbers, we tentatively concluded on the basis of the existing safety record that safety would be met by proposing that LSVs be furnished with safety equipment meeting the Palm Desert requirements. We also tentatively concluded that motor vehicle safety did not necessitate, "for the present, a comprehensive and detailed regulatory scheme under which LSVs must comply with the full range of Federal motor vehicle safety standards that apply to faster vehicles" (62 FR 1082). Comments by two manufacturers of neighborhood electric vehicles (NEVs) indicated that their vehicles were already equipped in accordance with Palm Desert's requirements.

With one exception, State officials responding to the proposed rule supported it, commenting on the beneficial effects it would have on the environment. However, Iowa Department of Transportation listed, without discussion, 13 concerns that it had, one of which was "administration of state safety standards." (Comment 022, D.I. MacGillivray, P.E., Director, Engineering Division). It was not until after the final rule that state concerns came to the forefront as represented by the comments of AAMVA, Connecticut, and Florida.

We recognize that a requirement for LSVs to be equipped with an item of equipment without specifying its performance can result in the introduction of LSVs by different manufacturers whose safety equipment would not perform in an identical manner. We also recognize that allowing a manufacturer total freedom in the choice regarding the performance of equipment could result in its installation of equipment that might not be satisfactory. However, without first providing notice and opportunity to comment, we cannot now respond to the petitions for reconsideration by amending Standard No. 500 to specify performance requirements for lighting equipment, mirrors, the parking brake, or any other equipment that the commenters desired or deemed necessary. For these reasons, we have decided to treat the petitions for reconsideration by Connecticut, Florida, and AAMVA as petitions for rulemaking and are granting them. We will begin to develop appropriate performance specifications for LSVs, with the intent of proposing and adopting them.

Until performance requirements can be proposed and adopted, the states could be faced with a continuation of the status quo to which they objected in

their petitions for reconsideration. AAMVA's alternative request was that the states be allowed to set their own performance requirements for LSVs. This raises the question of the extent to which state action is allowable by the preemption provisions of 49 U.S.C. Chapter 301. 49 U.S.C. 30103(b) provides as follows:

PREEMPTION—(1) When a motor vehicle safety standard is in effect * * *, a State or political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the [Federal] standard * * * *

In adopting the final rule, we commented that this language precluded states, for example, from requiring additional types of lamps to those specified in Standard No. 500. We went on to say that since we had not "specified performance requirements for any of the required lights, state and local governments may not do so either" (p. 33215), and that we were not aware of any aspects of existing state laws that might be regarded as preempted by issuance of the final rule, as "those laws do not contain performance requirements for the items of equipment required by Standard No. 500."

In light of the petitions, we have re-examined our statements about preemption in the preamble of the final rule. In those statements, we explained that, in view of our conscious decision not to adopt any performance requirements for most of the types of equipment required by Standard No. 500, the states were preempted from doing so. This is known as "negative preemption." Except in the relatively rare situations that an agency "occupies the field" under the regulatory statute that it administers, negative preemption only applies when it is clear that the decision not to regulate is meant to preclude state regulation of the matters in question. As a result of re-examining our views, we have concluded that we should not assert negative preemption in this particular situation. Accordingly, we agree that the states may adopt and apply their own performance requirements for required LSV lighting equipment, mirrors, and parking brakes until we have established performance requirements for those items of equipment. However, the states remain precluded from adopting *additional* equipment requirements in areas covered by Standard No. 500.

AAMVA also asked NHTSA to "postpone the effective date of the final rule to accommodate legislative changes needed," so that "safety equipment issues [can be] addressed and state

legislatures have sufficient time to make any necessary changes to their laws and regulations." AAMVA, in effect, was asking us to suspend Standard No. 500 (we cannot "postpone" the effective date since that was the date on which the standard was published). This request appears related to the request that states be allowed to adopt their own requirements. We believe that we have responded to that concern by changing our position on negative preemption. We therefore deny its petition to "postpone" the effective date of Standard No. 500.

We reiterate that our action in creating the LSV category does not in any way affect the rights of a state to establish its own registration and operating requirements for LSVs or even to forbid their use on the public roads of the State.

3. Request for Assistance

Subsequent to the comment period, Global e-mailed the agency requesting assistance and clarification, but not petitioning for rulemaking. Global had three requests.

The first request was for "NHTSA assistance in informing state DOT officials of the new LSV ruling and development of recommendations regarding registering and licensing of the vehicle." Through our Regional Administrators, we are providing copies of this notice to state Departments of Motor Vehicles ("DMVs") so to assist the states in accommodating the new vehicle category within their regulatory framework. Because vehicle registration and licensing are exclusively within the authority of each state, we decline Global's request that we develop recommendations on registering and licensing of LSVs for those states that have not moved to allow LSVs on their roads.

The second request was for us to provide "Recommendations on sources of technical assistance that could help [Global] promote examples of model legislation or rulemaking controlling vehicle usage that could be adopted by the states to establish a more or less uniform code throughout the country." We recommended in the preamble to the final rule that states might wish to review the plan of Palm Desert for suitability to local needs. For a more uniform national code of registration and usage, we recommend that LSV manufacturers and states work with AAMVA to develop model legislation.

The third request was for "A thorough explanation of the implications of the LSV ruling for [Global's] internal use in order for [it] to be able to more effectively work with states and

localities that are reluctant to allow [its] vehicle to be registered and licensed for use on roads and streets, although they have not taken action to disallow that use." We interpret this as a request for advice on how a manufacturer should approach those states whose laws neither specifically permit or prohibit LSVs on their roads, in short, a regulatory limbo. This situation can only be resolved on a state-by-state basis. We repeat that it is for each individual state to decide whether LSVs should be registered and licensed for use on state roads, and the conditions under which this should occur.

Corrections

Two comments were received correcting information contained in the preamble to the final rule. At 63 FR 33196, we observed that the City of Palm Desert estimates "that it has achieved an emissions reduction of 16 tons of carbon monoxide annually since implementing its program allowing golf cars to use the public streets." Jacques Leslie, Contributing Writer, *Wired Magazine*, cites the relevant report by Robert Bein, William Frost & Associates for the City of Palm Desert, which concluded that the reduction of pollutants in the first year of the program (1996) was "nearly 4 tons," because of the substitution of use of golf cars for passenger cars, and that this was the "worst case as emission factors

would decrease in later years due to controls." Also, at 63 FR 33197, based on industry sources, we stated that "1 percent of Club Car's fleet golf cars * * * have a top speed between 15 and 20 miles per hour." Club Car's Washington attorney, Eileen P. Bradner, has informed us that none of Club Car's fleet golf cars are manufactured with top speeds exceeding 15 miles per hour.

Issued on: August 22, 2000.

L. Robert Shelton,

Executive Director.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered Species; Establishment of Manatee Protection Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Fish and Wildlife Service (Service) is considering the preparation of a draft rule that would establish additional protection areas for the endangered West Indian manatee

(*Trichechus manatus latirostris*) within the area of the species' range. These protection areas would be either refuges, areas where waterborne activities are restricted, or sanctuaries, areas where waterborne activities are prohibited. The Service is considering this action as a means to reduce the level of watercraft-related incidental take of manatees.

DATES: We must receive your comments regarding this proposed rulemaking on or before October 16, 2000.

ADDRESSES: Submit written comments to the Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216 or via electronic mail to fw4_es_jacksonville@fws.gov.

Comments and materials received in response to this proposal will be available for public inspection at this address during normal working hours from 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Peter Benjamin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216, Telephone: (904) 232-2580 extension 106, Facsimile: (904) 232-2404, or Electronic Mail: fw4_es_jacksonville@fws.gov.