

commenters responded to FMCSA's specific questions. Most merely stated that they were either for or against LEAs being subject to the FMCSRs.

Beyond the information provided in the comments, FMCSA gleaned little specific data from the answers supplied. Some commenters stated that much of the information the agency requested was not readily obtainable, or that States do not maintain such information. The major points of the substantive responses are summarized below.

Summary of comments in favor of applying the Federal safety regulations to LEAs:

1. Many of the commenters simply stated that the Federal safety regulations should apply equally to all passenger-carrying vehicles, regardless of controlling entity. These commenters believe that if a contractor is subject to the safety regulations, then LEAs also should be subject to them. Commenters expressing this view included the National School Transportation Association, the Montana School Boards Association, the American Bus Association, the United Motorcoach Association, and Advocates for Highway and Auto Safety.

2. The United Motorcoach Association (UMA) expressed concern that there are no universal minimum standards applicable to every school bus operation, leaving safety decisions to each State or local district. Nonetheless, UMA acknowledged that "We can cite no circumstances where school bus providers—either contracted or governmentally-owned—have demonstrated anything less than the highest standards of and attention to safety. Many States have implemented greater safety oversight on the school bus community than they have on the commercial operators."

3. Several commenters, including the National School Transportation Association and the New Jersey Department of Transportation, noted that, among the FMCSRs, hours-of-service regulations are least likely to be replicated at the State level. These commenters envisioned potential safety benefits from applying the hours-of-service regulations to all interstate school transportation.

Summary of comments in opposition to applying the safety regulations to LEAs:

1. Since the current LEA exemption (at 49 U.S.C. 31136) applies to all government-owned and -operated vehicles, any proposal to apply the safety regulations to LEAs should include all government vehicles operated in interstate commerce. The

governmental exemption has not compromised safety.

2. Virtually all commenters who opposed the proposed regulatory action agreed that most States impose vehicle inspection and maintenance requirements on all school buses, regardless of type of operation. The Colorado Department of Education stated that Colorado already has and is continuing to revise "tough regulations for the safety of our children we transport, including when we transport these children into other states." Subjecting Colorado LEAs to the Federal safety regulations would introduce "problems of overlapping regulations."

3. There is a lack of specific data indicating that LEA pupil transportation is unsafe. The National Association of State Directors of Pupil Transportation Services reinforced the point by adding that any change to the FMCSRs should be based on data.

#### FMCSA Decision

FMCSA finds a lack of identifiable data indicating that this segment of transportation is unsafe. The evidence shows that not a single fatal crash in the past 10 years would have been avoided had this proposed rule change been in existence. Since the major source of safety benefits is potential fatal crashes avoided, FMCSA believes that the benefits of imposing the FMCSRs on all interstate school transportation operations would be extremely low. Even though the costs of compliance would be modest, potential benefits would not appear to outweigh those costs.

Further, Executive Order 13132, dated August 4, 1999, dealing with Federalism, states that "the national government should be deferential to the States when taking action that affects the policymaking discretion of the States \* \* \*." and "[i]ntrusive Federal oversight of State administration is neither necessary nor desirable." A 1988 Federal Highway Administration final rule, "Federal Motor Carrier Safety Regulations; General" (53 FR 18042, May 19, 1988), invokes this principle with regard to school bus transportation operations. The rule's preamble states, at 53 FR 18043, that "the transportation of school children and school personnel from home to school and back again involves problems which are common to the States, and which, in accordance with the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987), can best be left to the individual States \* \* \*." FMCSA has reached the same conclusion in this rulemaking proceeding.

Although FMCSA has decided not to pursue this regulatory action, the agency is committed to continuing to work with school bus associations and local school districts to maintain the safety of school bus transportation. We are working closely with two school bus associations to learn the extent to which school buses and school bus operations are regulated at the State level. We recently launched an outreach program, "Moving Kids Safely," that provides guidance to school officials responsible for the transportation of school children. As an integral part of this program, FMCSA assists the school-system decision maker in selecting a safe transportation company and the appropriate type of vehicle for the trip.

For these reasons, FMCSA has decided not to extend the applicability of the FMCSRs to all interstate school transportation operations (excluding home-to-school or school-to-home transportation) by local governmentally operated educational agencies. The ANPRM of October 22, 2001 (66 FR 53373) is withdrawn.

Issued on: March 11, 2004.

**Warren E. Hoemann,**

*Deputy Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 2004-17365]

RIN 2127-AG87

#### Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

**ACTION:** Notice of withdrawal of proposed rulemaking.

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**SUMMARY:** This document withdraws a 1998 notice of proposed rulemaking (NPRM) that would have amended the Federal motor vehicle safety standard on lighting to reorganize the sections related to headlighting. The intention of the rulemaking was to remove inconsistencies and to facilitate easy reference to the standard, in an effort to improve its comprehensibility. We have decided to terminate the rulemaking for the administrative rewrite of headlighting requirements, due to other regulatory priorities and limited agency resources.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

For non-legal issues, you may call Mr. Richard VanInderstine, Office of Crash Avoidance Standards (Telephone: 202-366-2720) (Fax: 202-366-7002).

For legal issues, you may call Mr. Eric Stas, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*, establishes performance requirements for lighting-related equipment on new motor vehicles, as well as their location. The standard also covers replacement lighting equipment. The present version of FMVSS No. 108 represents over 30 years of accumulated amendments to the standard and the incorporation of numerous industry consensus standards. Consequently, the standard is lengthy, and requirements concerning a particular lighting device are sometimes found at different places within the standard, with the result being a heavy demand for interpretation of the standard by vehicle and equipment manufacturers, inventors, vehicle owners, and State agencies.

In order to simplify FMVSS No. 108 for users, NHTSA published an NPRM

on November 12, 1998 proposing to reorganize the headlighting requirements under the standard (*see* 63 FR 63258; *see also* 64 FR 6021 (February 8, 1999) (notice extending comment period)). The proposed amendments were not intended to change the requirements of the standard, except in a few minor instances that were clearly identified and discussed. The NPRM included a set of "Drafting Guidelines" which discussed the rubric for the proposed administrative simplification, including inclusion of relevant lighting requirements in the text of the standard (*i.e.*, minimizing incorporation by reference to outside standards), updating references to the most current version of the Society of Automotive Engineers (SAE) standard (whenever appropriate), elimination of past effective dates, and use of a single, consistent numbering scheme. A similar administrative rewrite for the non-headlighting provisions of FMVSS No. 108 was contemplated at a future point.

NHTSA received 13 comments on the 1998 NPRM. Most commenters were supportive of the agency's efforts to conduct an administrative rewrite of FMVSS No. 108's headlighting provisions, and numerous technical recommendations were provided.

**II. Reason for Withdrawal**

Our review of the public comments on the NPRM revealed that unexpected issues, substantive in character, would

have to be addressed prior to publication of a final rule, and, as a result, significant additional analyses would be required. Consequently, completion of a final rule to simplify the headlighting provisions of FMVSS No. 108 would be more complicated and resource-intensive than previously anticipated. Although NHTSA continues to believe that an administrative rewrite of FMVSS No. 108 would be beneficial, we have concluded that, after a careful review of regulatory priorities, limited agency resources should be expended on other projects likely to produce a greater safety benefit.

The agency receives numerous congressional mandates and petitions for rulemaking from outside parties each year, so it is not possible to undertake all of the discretionary rulemaking activities that we identify. Accordingly, for the reasons discussed above, we are terminating this rulemaking activity at the present time and withdrawing the associated NPRM for a reorganization of the headlighting provisions of FMVSS No. 108.

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

Issued: March 19, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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