

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2005-21826]

RIN 2127-AJ55

Federal Motor Vehicle Safety Standards; Platform Lifts for Motor Vehicles, Platform Lift Installations in Motor Vehicles

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

ACTION: Denial of petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration of the October 1, 2004 final rule (69 FR 58843), which was in response to the initial petitions for reconsideration of the December 27, 2002 final rule (67 FR 79416) that established two new Federal motor vehicle safety standards (FMVSSs); FMVSS No. 403, *Platform lift systems for motor vehicles*, and FMVSS No. 404, *Platform lift installations in motor vehicles*. The purpose of these standards is to prevent injuries and fatalities during lift operation. In the October 2004 final rule the agency clarified the applicability of the standards as well as amended the definitions of certain operational functions, the requirements for lift lighting on public lifts, the interlock requirements, compliance procedures for lifts that manually deploy/stow, the environmental resistance requirements, the edge guard requirements, the wheelchair test device specifications, and the location requirements for public lift controls. The agency received petitions for reconsideration of the October 2004 final rule from a school bus manufacturer, a lift interlock/control manufacturer, a vehicle association, a school bus technical council and a dealer's association. The agency is denying the petitioners' request to require interlocks be designed to prevent "malicious" release and to place responsibility for lighting

requirements under FMVSS No. 403. The request to amend the lighting intensity requirements under FMVSS No. 404 will be addressed in a separate notice as a petition for rulemaking.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact William Evans, Office of Crash Avoidance Safety Standards at (202) 366-2272. For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366-2992. You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Background

December 27, 2002 Final Rule

On December 27, 2002, the agency published in the **Federal Register** a final rule establishing FMVSS No. 403, *Platform lift systems for motor vehicles*, and FMVSS No. 404, *Platform lift installations in motor vehicles* (67 FR 79416). These standards provide practicable performance-based requirements and compliance procedures for the regulations promulgated by the DOT under the Americans with Disabilities Act (ADA)¹. FMVSS Nos. 403 and 404 provide that lift systems and vehicles manufactured with lift systems must comply with objective safety requirements.

FMVSS No. 403 establishes requirements for platform lifts that are

designed to carry passengers who rely on wheelchairs, scooters, canes, and other mobility aids into and out of motor vehicles. The standard requires that lifts meet requirements such as minimum platform dimensions, maximum platform velocity/acceleration/noise level, maximum size limits for platform protrusions and gaps, maximum platform deflection, environmental resistance (corrosion resistance), platform slip resistance, etc. The standard also includes requirements for handrails, a threshold-warning signal, retaining barriers, platform markings, platform lighting, fatigue endurance, strength, controls and interlocks. Performance tests are specified for most requirements.

FMVSS No. 404 establishes requirements for vehicles that as manufactured, are equipped with platform lifts. The lifts must be certified as meeting FMVSS No. 403, must be installed according to the lift manufacturer's instructions and must continue to meet all of the applicable requirements of FMVSS No. 403 after installation. The standard also requires that specific information is made available to lift users.

Recognizing the different usage patterns of platform lifts used in public transit versus those of platform lifts for individual use, the agency established separate requirements for public use lifts and private use lifts. FMVSS No. 404, S4.1.1 requires that lift-equipped buses, school buses and multipurpose passenger vehicles other than motor homes with a gross vehicle weight rating (GVWR) greater than 4,536 kg (10,000 lb) must be equipped with a lift certified to all applicable public use lift requirements set forth in FMVSS No. 403. Since lifts on these vehicles will generally be subject to more stress and cyclic loading and will be used by more and varied populations, additional requirements relative to platform size, controls, handrails, platform lighting, platform markings, noise level, etc. are appropriate.

In order to provide manufacturers sufficient time to meet any new requirements established in FMVSS Nos. 403 and 404, the agency provided a two-year lead-time, which scheduled the standards to become effective on December 27, 2004.

Petitions for Reconsideration to the December 27, 2002 Final Rule

In response to the December 27, 2002 final rule, the agency received six petitions for reconsideration from platform lift manufacturers, vehicle manufacturers, and a transportation safety research organization. The agency

¹Pub. L. 101-336, 42 U.S.C. 12101, *et seq.* The ADA directed the DOT to issue regulations to implement the transportation provisions that pertain to vehicles used by the public.

responded to these petitions in a final rule published in the **Federal Register** on October 1, 2004 (69 FR 58843). In the October 2004 final rule the agency amended FMVSS Nos. 403 and 404 to clarify the applicability of the standards so that they do not apply to special purpose lifts and lifts installed on ambulances, redefined the terms "deploy" and "stow" to be less design restrictive, established the lighting requirements as a vehicle requirement, permitted lift manufacturers to rely on existing vehicle components to comply with the interlock requirements, excluded lifts that manually deploy and stow from certain lift performance requirements, permitted a wider range of platform lift designs to comply with environmental resistance (corrosion resistance) requirements for internally stowed lifts, provided more flexibility in the degree of platform deflection between the unloaded platform and the vehicle floor, reduced the required extension of continuous edge guards to the inner platform edge, established a performance based alternative to the continuous edge guard requirement, established further specifications for the wheelchair test device, clarified the term "control system," provided flexibility in the placement of the control system panel, and made several editorial corrections to the regulatory text adopted by the final rule.

Petitions for Reconsideration to the October 1, 2004 Final Rule

In response to the October 2004 final rule, the agency received timely petitions from Safety Systems and Controls, Inc. (SSC), an interlock manufacturer; the Adaptive Driving Alliance, a dealer/manufacture industry organization; the School Bus Manufacturers Technical Council (SBMTC), a technical advisor to the school bus industry; the Manufacturers Council of Small School Buses (MCSSB), an affiliate of the National Truck Equipment Association; and Blue Bird, a bus manufacturer.

The petitions requested (A) a change in the wording in S6.10.2.1 of FMVSS No. 403 to state that the design of the interlock should be such that it discourages "malicious" release rather than "accidental" release; (B) that the responsibility of platform lighting for public use lifts be moved from the vehicle manufacturer (FMVSS No. 404) back to the lift manufacturer (FMVSS No. 403); (C) a delay in the compliance date of the platform lighting requirements; (D) clarification of FMVSS Nos. 403 and 404 relative to modifiers installing used non-403 compliant lifts manufactured before the

FMVSS No. 403 compliance date in vehicles manufactured after the FMVSS No. 404 compliance date; and (E) that the platform illumination requirements be reduced from the NHTSA minimum of 54 lm/m² or 54 Lux (5 lm/ft² or 5 foot-candles) to the ADA and Federal Transit Administration minimum² of 22 lm/m² or 22 Lux (2 lm/ft² or 2 foot-candles). This notice addresses these issues, which were included in the petitions for reconsideration to the October 1, 2004 final rule.

December 23, 2004 Interim Final Rule

During the months preceding the scheduled December 27, 2004 effective date of FMVSS Nos. 403 and 404, the agency received numerous communications and petitions for reconsideration to the October 1, 2004 final rule requesting that the compliance date of the standards be delayed. Vehicle manufacturers stated that there would be a disruption in vehicle production lines due to the unavailability of lifts on the compliance date. Vehicle manufacturers also stated that the compliance dates for FMVSS Nos. 403 and 404 should have been staggered so that FMVSS No. 404 became effective after FMVSS No. 403. Vehicle manufacturers also indicated that lift manufacturers were not making several popular low-end and specialty lifts compliant with FMVSS No. 403 and that the purchasers of these lifts needed time to find suitable FMVSS No. 403 compliant substitutes. Bus manufacturers requested a delay in the lighting requirements portion of FMVSS No. 404 as they felt that the minimum required platform illumination was too intense and the responsibility for the requirement should be shifted back to FMVSS No. 403, where it would again be the responsibility of lift manufacturers. Numerous inquiries and complaints indicated that there was significant confusion relative to the requirements, the test procedures, the application of the standards and how the compliance date applied to multi-stage vehicles. On December 23, 2004, NHTSA published an interim final rule in the **Federal Register** (69 FR 76865) delaying the compliance date of FMVSS No. 403 from December 27, 2004 to April 1, 2005 and delaying the compliance date of FMVSS No. 404 from December 27, 2004 to July 1, 2005.

² Federal Transit Administration, Guideline Specifications for Passive Lifts, Active Lifts, Wheelchair Ramps and Securement Devices, September 1992, DOT-T-93-03.

II. Petitions for Reconsideration

A. Change the Wording in S6.10.2.1 of FMVSS No. 403 To State That the Design of the Interlock Should Be Such That It Discourages "Malicious" Release Rather Than "Accidental" Release

A petition for reconsideration was received from SSC, in which it requested that the interlock required by S6.10.2.1 of FMVSS No. 403 be designed in a way that discourages "malicious" release rather than "accidental" release. S6.10.2.1 requires interlocks that prevent forward or rearward mobility of the vehicle unless the platform is stowed. SSC stated that if the interlock were designed to discourage "malicious" release, the driver would be more likely to leave the engine running when leaving the drivers compartment to operate a lift or attend to passengers. SSC stated that leaving the engine running would allow the driver to keep the heat or air conditioning running which would provide passengers with a more stable and comfortable environment and that such a requirement would also support efforts in California to permit drivers to leave the engine running when they momentarily leave the driver's compartment to perform other duties. The petition provided an example of an interlock that meets the requirements of S6.10.2.1 and is designed to prevent "malicious" release. Such an interlock would be engaged with a key. If the driver's safety belt was unlatched and the interlock was disengaged (a position that would permit vehicle movement), a warning signal would alert the driver. As an attachment to a separate letter, SCC submitted an article to NHTSA that it claims supports the need to design the interlock in a way that discourages "malicious" release. The article describes a situation where a student got off the bus at the wrong stop. When the driver and attendant left the bus to retrieve the student, the student doubled-back, boarded the bus, locked the door and drove the bus for several blocks knocking down mailboxes and striking a pole. Apparently there were no injuries, just property damage. The article, however, did not mention anything about a lift being deployed, a lift interlock, etc.

Agency response: The agency is denying petitioner's request to require that interlocks be designed to prevent "malicious" release. In the supplemental notice of proposed rulemaking (SNPRM) published on July 27, 2000 (65 FR 46228), the first interlock which inhibits forward or rearward mobility of the vehicle unless the platform is stowed (presently

S6.10.2.1) did not specify any special design characteristics. Public comments to the SNPRM, which the agency responded to in the preamble of the final rule published December 27, 2002 (67 FR 79416), suggested that the requirement specify that the interlock be designed in such a way as to prevent "accidental" or "malicious" release. In its response, the agency required that interlocks be designed to prevent "accidental" release only. There was no data indicating that "malicious" release of the interlock was a safety problem and requiring manufacturers to design for "malicious" release would impart additional costs. In responding to comments requesting that the standard require interlocks to be designed to prevent "malicious" release, the agency stated that the second interlock (presently S6.10.2.2), which prevents operation of the platform lift from the stowed position unless forward or rearward mobility of the vehicle is inhibited, already requires that the vehicle transmission be in Park or Neutral and either the parking brake or the service brakes be applied (the service brakes, if applied, must be applied by means other than the driver pressing the service brake pedal). The information supplied by SCC article did not include any descriptions of a deployed lift or the "malicious" release of an interlock designed to prevent vehicle movement when the lift is not stowed. Such a case would not be adequate justification to initiate a change in the regulation.

B. Move the Platform Lighting Requirements for Public Use Lifts From FMVSS No. 404 Where It Is the Responsibility of Vehicle Manufacturers Back to FMVSS No. 403 Where It Would Be the Responsibility of Lift Manufacturers

Petitions from SBMTC, MCSSB and Blue Bird requested that the platform lighting requirement be moved from FMVSS No. 404 to FMVSS No. 403, under which it would be the responsibility of lift manufacturers. The petitioners stated that the October 2004 final rule moved this requirement from FMVSS No. 403 to FMVSS No. 404 three months before the effective date, which gave vehicle manufacturers little time to react. The petitioners noted that while NHTSA stated in its October 1, 2004 final rule that bus manufacturers already provide some lighting in order to comply with ADA requirements, school bus manufacturers are not obligated to comply with ADA. The petitioners explained that school bus manufacturers have not traditionally provided lighting. Petitioners stated that

if the platform lighting requirements were not amended, then the compliance date of the platform lighting portion of FMVSS No. 404 should be delayed.

Agency response: NHTSA is denying the petitioners request to move the platform lighting requirements to FMVSS No. 403 and has determined that the December 2004 interim final rule has made the petitioners request for a delay of the compliance date moot.

Under the December 27, 2002 final rule, manufacturers of public use platform lifts were required to either provide platform lighting incorporated into the lift or to provide separate platform lighting hardware along with the lift which includes detailed installation instructions that addressed the mounting, powering, location and positioning of platform lighting, as well as an operational test procedure. FMVSS No. 403 originally required that upon a lift being installed in accordance with the lift manufacturer's installation instructions, the illumination on all portions of the platform must be at least 54 lm/m² or 54 Lux (5 lm/ft² or 5 foot-candles) and the illumination on all portions of the passenger-unloading ramp would be at least 11 lm/m² or 11 Lux (1 lm/ft² or 1 foot-candle) throughout the range of passenger operation.

A petition for reconsideration to the December 27, 2002 final rule was received from Braun Corporation. Braun stated that identical lift products might be installed on a wide variety of vehicles. Braun claimed that although lift manufacturers can easily provide the method of interfacing platform lighting with the lift, they would have difficulty in determining the amount of lighting that will be required for each lift/vehicle application. Braun stated that the level of light intensity required to meet the standard is application-specific and should be determined at the time of lift installation. Braun further stated that public use vehicle manufacturers have already accepted responsibility for complying with the lighting requirements of 36 CFR 1192.31.³ Thus, Braun requested that the lighting requirements be the responsibility of vehicle manufacturers. NHTSA agreed with Braun and in the October 2004 final rule, moved the requirements for platform lighting from FMVSS No. 403 to FMVSS No. 404. Even though school buses are not required to comply with ADA requirements, there remains a large number of motor coaches and transit buses that already comply with

ADA requirements and who routinely provide lighting for doorways, step wells, lifts and ramps.

Under FMVSS Nos. 403 and 404 as established December 2002, vehicle manufacturers were responsible for installing lighting in accordance with the lighting requirements then in FMVSS No. 403. The difference under the October 2004 final rule is that lift manufacturers are not required to supply the lighting hardware.

Despite removal of the lighting requirements from FMVSS No. 403, lifts currently are available with platform lighting incorporated on the lift. Vehicle manufacturers who traditionally have not provided lift lighting may purchase lifts that incorporate the lighting into the lift. By maintaining the platform lighting requirement in FMVSS No. 404 bus manufacturers that are already required to supply lighting under the ADA requirements will not need to purchase lifts equipped with lighting hardware that may be redundant. We note that as the FMVSS No. 404 lighting requirements are more stringent than the ADA requirements, existing vehicle lighting may need to be supplemented. Bus manufacturers that are not required to provide lighting under the ADA may purchase lifts that have lighting incorporated into the platform lift system, and thereby comply with FMVSS No. 404. In this respect, the cost of lighting for vehicle manufacturers should be the same as if the lighting requirement were under FMVSS No. 403.

C. Delay the Compliance Date of the Platform Lighting Requirements in FMVSS No. 404

Petitions from the SBMTC, MCSSB and Blue Bird requested that NHTSA delay the compliance date of the portion of the standards relating to the platform lighting requirements on public use lifts. A delay was requested as the petitioners disagreed with the transfer of the platform lighting requirements for public use lifts that occurred in the October 2004 final rule. The petitioners stated that a delay in the platform lighting portions of the standards would provide the time needed to address the change in the responsibility for the lighting requirements as well as various other concerns, including the required intensity.

Agency response: As explained above, NHTSA published an interim final rule in December 2004, which delayed the compliance date of FMVSS No. 403 from December 27, 2004 to April 1, 2005 and delayed the compliance date of FMVSS No. 404 from December 27, 2004 to July 1, 2005. As the original

³ Section 1192.31 of the ADA adopts the lighting standards set forth in the ATBCB's Accessibility Guidelines for Transportation Vehicles.

effective date was approaching, the delay requested by this petition was granted before the publication of this response to petitions for reconsideration. The agency believes that no additional delay is necessary, and that further delay could renew confusion within the industry.

D. Clarify FMVSS Nos. 403 and 404 Relative to Modifiers Installing Used Non-403 Compliant Lifts Manufactured Before the FMVSS No. 403 Effective Date in Vehicles Manufactured After the FMVSS No. 404 Effective Date

The Adaptive Driving Alliance submitted a request for clarification regarding the applicability of FMVSS Nos. 403 and 404 as applied to modifiers⁴ installing lifts manufactured before the FMVSS No. 403 effective date on vehicles manufactured after the FMVSS No. 404 effective date. The request stated that such clarification is needed to address the situation where vehicle owners want to transfer existing non-403 compliant lifts from their old vehicles to new vehicles that were manufactured after the FMVSS No. 404 effective date. The Adaptive Driving Alliance also requested clarification as to the applicability of FMVSS Nos. 403 and 404 to modifiers installing their

existing inventory of non-403 compliant lifts into vehicles manufactured both before and after the FMVSS No. 404 effective date.

Agency response: In general, on and after April 1, 2005, all platform lifts manufactured for installation in motor vehicles that are intended to assist persons with limited mobility in entering and exiting a vehicle must comply with FMVSS No. 403. All vehicles manufactured on and after July 1, 2005 that are equipped with such lifts at first retail sale must comply with FMVSS No. 404. At any time a new or used non-403 compliant lift manufactured before April 1, 2005 may be installed on any vehicle manufactured before July 1, 2005 and on vehicles manufactured on or after July 1, 2005 provided that the vehicle was not equipped with a Standard No. 403-compliant lift at first retail sale.

The clarifications requested by the Adaptive Driving Alliance have been addressed in detail through interpretation letters issued by the agency. These documents may be obtained by searching the interpretation files (key words: platform lift) at <http://www.nhtsa.dot.gov>. Specifically, interpretations provided to The Braun Corporation, Prevost Car, Inc. and Mr. Jacques Bolduc address the issues raised in the Adaptive Driving Alliance's request.

E. Reduce Platform Illumination Requirements of FMVSS No. 404

Petition for reconsideration of the October 2004 final rule from Blue Bird, SBMTC, and MCSSB also requested that the required intensity of the platform lighting be reduced to the levels specified by the ADA and FTA. However, the issue of the required level of luminance on the lift platforms was not raised in the October 2004 final rule or the petitions that prompted the October 2004 final rule. With regard to the lighting requirements, the October 2004 final rule only addressed under which standard the lighting requirements would be established. In the December 23, 2004 interim final rule the agency recognized the petitioners concern with lighting levels and noted that this concern was outside the scope of the October 2004 final rule. The agency has decided to address this issue as a petition for rulemaking in a separate notice.

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Issued on: July 11, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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⁴ A modifier under NHTSA regulations is an auto repair business that alters a vehicle after first retail sale.