

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ◆Elevation in feet (NAVD) modified
		Guadalupe River .....	Approximately .65 mile downstream of the confluence of North Guadalupe Tributary.	◆598
		New Channel Comal River	Approximately 420 feet upstream of the Union Pacific Railroad. At the convergence with Dry Comal Creek.	◆635 ◆625
		North Guadalupe Tributary	At the divergence from the Old Channel Comal River and Comal Springs. At the confluence with the Guadalupe River.	◆625 ◆602
		Old Channel Comal River	Approximately 110 feet upstream of FM 1044/Old Marion Road. At the confluence with the Comal River ...	◆678 ◆618
		South Guadalupe Tributary.	At the divergence from the New Channel Comal River and Comal Springs. At the confluence with the North Guadalupe Tributary. Approximately 100 feet upstream of FM 1044/Old Marion Road.	◆625 ◆602 ◆672

Maps are available for inspection at the New Braunfels Municipal Building, 424 South Castell Avenue, New Braunfels, Texas.

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

Dated: August 4, 2005.

**David I. Maurstad,**

*Acting Director, Mitigation Division,  
Emergency Preparedness and Response  
Directorate.*

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**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA-99-5157]

RIN 2127-AJ47

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

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

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds to petitions for reconsideration of an April 19, 2002 final rule amending Federal Motor Vehicle Safety Standard No. 217, "Bus emergency exits and window retention and release." That final rule amended the standard to reduce the likelihood that wheelchair securement

anchorages will be installed in locations that permit wheelchairs to be secured where they block access to emergency exit doors. Petitioners requested reconsideration of the final rule's use of transverse vertical and horizontal planes to define the area around the side and rear emergency exit doors where wheelchair anchorages may not be located. This request is granted. Petitioners also asked NHTSA to reconsider the "DO NOT BLOCK" warning label. This request is denied.

This final rule applies to new school buses equipped with wheelchair securement anchorages. Nothing in this final rule requires school buses to be so equipped.

**DATES:** Effective date: The effective date for the final rule is: April 24, 2006. Manufacturers are provided optional early compliance with this final rule beginning August 12, 2005. Petitions for reconsideration: Petitions for reconsideration of the final rule must be received not later than September 26, 2005.

**ADDRESSES:** Petitions for reconsideration of the final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, with a copy to Docket Management, Room PL-

401, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. Charles Hott, Office of Crashworthiness Standards at (202) 366-0247. His 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 National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

**SUPPLEMENTARY INFORMATION:**

**I. Summary of Final Rule**

Federal Motor Vehicle Safety Standard (FMVSS) No. 217, *Bus emergency exits and window retention and release*, (49 CFR 571.217), specifies requirements for the retention of windows other than windshields in buses, and requirements 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.

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<sup>1</sup> would be installed such that a wheelchair secured thereto would block access to emergency exit doors. For a side emergency exit door, the final rule restricted these 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 and a longitudinal vertical plane through the longitudinal centerline of the school bus.

For a rear emergency exit door, the final rule restricted the anchorages from being placed in an area bounded by:

(a) Longitudinal vertical planes tangent to the left and right sides of the door opening;

(b) A horizontal plane 1,145 mm (45 inches) above the bus floor; and

(c) A transverse vertical plane that is either:

(1) 305 mm (12 inches) forward of the bottom edge of the door opening (for school buses with a gross vehicle weight rating (GVWR) over 4,536 kg (over 10,000 lb), or

(2) 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)(10,000 lb or less).

The final rule also provided that in school buses with one or more wheelchair securement anchorages, emergency exit doors and emergency exit windows must bear a label stating, "DO NOT BLOCK". The agency believed that the label was needed to help ensure that access to these doors and exits is not blocked with wheelchairs or other items, such as book bags, knapsacks, sports equipment or band equipment.

The April 19, 2002 final rule specified an effective date of April 21, 2003 for the amendments. Optional early compliance with the final rule was permitted. By way of **Federal Register** documents published April 22, 2003 (68 FR 19752) and March 12, 2004 (69 FR 11815), NHTSA delayed the effective date to April 21, 2006.

## II. Petitions for Reconsideration

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 petitioners requested reconsideration of the final rule's use of transverse vertical and horizontal planes to define the area around the side and rear emergency exit doors where wheelchair anchorages may

not be located. All three petitioners stated that the area should instead be defined using "the rectangular parallelepiped fixture" described in S5.4.2.1 of the standard.

The petitioners also asked NHTSA to reconsider the "DO NOT BLOCK" warning label. They requested that the "DO NOT BLOCK" warning label be required for only emergency exit doors, and not emergency exit windows.

Both of these issues are discussed below.

### *a. Exclusion Zone at the Rear Emergency Door*

The petitioners disagreed with the agency's decision in the final rule to use transverse vertical and horizontal planes to define the area around the rear emergency exit door where wheelchair anchorages may not be located (S5.4.3.1(b) and (c)). All three petitioners stated that the area should instead be defined using "the rectangular parallelepiped fixture" described in S5.4.2.1(a)(1) of the standard. Blue Bird stated that the parallelepiped is 24 inches in width, whereas the rear emergency door opening on many (if not all) school buses exceeds 24 inches.<sup>2</sup> The petitioners believed that, by requiring that wheelchair securement anchorages must not be located such that any portion of the anchorage is within the space bounded by longitudinal vertical planes tangent to the left and right sides of the door opening, the final rule penalizes manufacturers that provide larger than required emergency door openings (*i.e.*, by limiting to a greater extent the placement of wheelchair securement anchorages). AmTran stated that FMVSS No. 217 allows manufacturers to position the rectangular parallelepiped anywhere within the rear emergency exit door opening, and that the final rule should thus specify that the clearance area can be from either the left or right side of the emergency door. Petitioners also stated that the wording of S5.4.3.1(b) and (c) is not in agreement with the diagram in Figure 6C. The figure appears to specify that the shaded region within which no anchorage can be located is 24 inches wide for buses with a GVWR of 10,000 pounds or more, and is not dependent on the distance between the left and

right sides of the emergency door opening.

Blue Bird recommended that both sections S5.4.3.1(b) and (c) be replaced by a new S5.4.3.1(b) that states:

In the case of rear emergency exit doors in school buses, no portion of a wheelchair securement anchorage shall be located within the area of the parallelepiped specified in S5.4.2.1(1) [sic] if the GVWR is more than 10,000 pounds, or specified in S5.4.2.2 if the GVWR is 10,000 pounds or less.

*Agency response:* We are granting the petitioners' requests regarding this issue, with one change.

At present, all school bus manufacturers use rear emergency exit doors that are centered in the rear of the school bus. The rear emergency exit doors are larger than the minimum opening width, to allow for different seating configurations that may change the location of the aisle leading to the rear emergency exit door. In the rulemaking creating S5.4.3.1(b) and (c), the new language referred to the longitudinal vertical planes tangent to the right and left sides of the door opening without taking into consideration that school bus manufacturers could be manufacturing the rear emergency exit doors wider than the minimum required opening. The agency does not believe there is a need to require the clearance area for anchorages to be greater than the clearance area for the exit itself.

The intent of this rulemaking action is to prohibit wheelchair securement anchorages in the rear exit staging area. According to petitioners, the larger rear emergency exit doors give manufacturers the ability to position the placement of the rear exit door in the center of the bus body and the flexibility to maintain the clearance area required by FMVSS No. 217 with different seating configurations. The agency agrees that the parallelepipeds referenced by the standard define the clearance needed to adequately use the emergency exit, and that there is not a safety benefit to require wheelchair securement anchorages to be placed outside the area bounded by the door opening. Therefore, in this final rule NHTSA is amending the language at S5.4.3.1(b) to allow the manufacturers the same flexibility for placing wheelchair securement anchorages as they currently have for maintaining the rear exit door clearance area required by FMVSS No. 217.

The agency generally agrees with the approach suggested by Blue Bird, with one exception. Blue Bird's suggested language would not prohibit wheelchair anchorages that are recessed into the school bus floor. Today's final rule

<sup>1</sup> Defined at S4 of 49 CFR 571.222.

<sup>2</sup> Blue Bird stated that the larger rear emergency door opening has provided flexibility for school bus manufacturers in meeting customer needs (regarding the location of passenger seating on the various models of school buses) to maximize passenger capacity while still maintaining the required "staging area" at the rear emergency door.

defines the staging area by referencing the parallelepipeds described in S5.4.2.1(a)(1) (for school buses with a GVWR greater than 10,000 lb) and S5.4.2.2 (for school buses with a GVWR of 10,000 lb or less). The parallelepipeds would be positioned flush with the floor, as described in S5.4.2.1(a), and with the rear surface of the parallelepiped tangent to the opening of the rear emergency exit door. Paragraph S5.4.3.1(b) is revised to prohibit the placement of any wheelchair securement anchorage both within the space occupied by the parallelepiped when it is so situated, and anywhere within a downward vertical projection of the parallelepiped. Thus, anchorages that are raised, flush, or recessed into the school bus floor beneath the parallelepiped will not be permitted.<sup>3</sup> This amendment eliminates the need for Figures 6B and 6D of the standard, and thus those figures are removed and reserved.

#### b. Do Not Block Label

##### 1. General

All three petitioners opposed the requirement that emergency exits windows be labeled with the words: "DO NOT BLOCK." The petitioners believed that the standard should include objective criteria for determining whether a window is blocked, and should state whether or to what extent blockage is permitted of an emergency exit window by wheelchairs and other items, such as child restraints, upper tether straps of child restraints, and passenger torso belts.

*Agency response:* As explained in the April 19, 2002 final rule, the "do not block" label originated in part from NHTSA's concern with track seating. With track systems, the configuration of the seats is determined by the user, not the school bus manufacturer. NHTSA was concerned about modifiers possibly installing anchorages in positions that would result in the blockage of side emergency exits by wheelchairs, so the agency adopted the warning label requirement to alert modifiers and users to the potential hazards of such installation. 67 FR at 19347.

The inadvertent or unknowing blockage of or impeding emergency

<sup>3</sup> The agency will check for compliance with S5.4.3.1(b) by positioning the parallelepiped laterally in the door exit using the procedures for evaluating compliance with the unobstructed opening requirements of S5.4.2.1 and S5.4.2.2. Thus, as long as there is a space laterally along the width of the emergency door that meets S5.4.3.1(b), the requirement is satisfied. We do not intend to restrict the placement of anchorages in any and all spaces along the width of the door that can accommodate the parallelepiped.

egress from school buses by persons other than the original manufacturer of the school bus was the potentially unsafe behavior that the label was intended to forestall. The warning label provides the public a heightened awareness about the need for keeping emergency exits clear, from persons installing items such as aftermarket wheelchair securement devices, wheelchairs, or school bus seats, to school bus drivers, monitors, and students. We do not agree with the petitioners that further clarification is needed in the standard on precisely what "do not block" means or how wheelchairs, tether straps, belts or other devices should be situated near emergency exits. The label is simple and clear. The agency believes that requiring more wording to describe how various items that are carried in school buses may or may not partially block an exit could reduce users' desire to read the label or ability to understand it.

##### 2. Notice of a Window Labeling Requirement

Blue Bird believed that the NPRM did not provide notice that the agency was considering a labeling requirement for "emergency windows." We disagree. At 64 FR 10606 of the NPRM, NHTSA sought comments: on the extent to which school buses have been or are being designed so that wheelchairs can be secured so as to hinder access to any emergency exit (question 1); and on whether NHTSA should both require a warning label and prohibit the installation of wheelchair securement devices that make it possible to secure a wheelchair in an area where it will block access to an emergency exit (question 6). FMVSS No. 217 "emergency exits" includes windows as well as doors. Thus, the NPRM sought comments on labeling requirements for both windows as well as doors. Furthermore, the intent of the rulemaking was to increase the likelihood that emergency exits will not be blocked so as to hamper occupants' ability to leave the bus. Emergency egress takes place through both emergency windows and doors. Thus, improved emergency egress requirements for both windows and doors, including by way of a "do not block" label, was contemplated by the NPRM.

##### 3. Type 2 Seat Belts

Blue Bird stated that vehicles used by Head Start agencies are required to be equipped with Type 2 seat belts (if the Head Start Allowable Alternative Vehicle's GVWR is 10,000 pounds or less) at each outboard passenger seating

position. Blue Bird further stated that manufacturers may be faced with a requirement to install torso restraints at the outboard seating positions such that the belt may cross the area of a side emergency exit window, thereby potentially "blocking" access to the emergency window.

*Agency response:* If the upper torso belt would block access to an emergency window, we believe that an alternative design—one that does not block access—ought to be considered. Nothing has changed in FMVSS No. 217 concerning the blockage of access to side emergency exit windows. Manufacturers are currently required to take into account the placement of the upper torso belt so that the side emergency exit windows in buses with GVWRs of 10,000 pounds or less can meet the emergency exit-opening requirement now in FMVSS No. 217.

##### 4. Effect on Child Restraint Installations

The petitioners objected to a Do Not Block label in part due to a concern that confusion will arise as to how child restraints should be placed adjacent to an emergency exit window. Thomas Built stated that FMVSS No. 225, *Child restraint anchorage systems*, requires buses under 10,000 pounds GVWR to be equipped with at least two "LATCH"<sup>4</sup> attachments in rear seating positions in certain locations. Thomas Built believed that many customers who operate small buses for day care or Head Start will require LATCH attachments throughout the bus, and believed that customers of larger buses will order the anchorage systems throughout the bus. Blue Bird stated that although FMVSS No. 225 does not require that school buses be equipped with the upper tether anchorage of a LATCH system, several States have indicated to school bus manufacturers that they will want such tether anchorages to be installed. Blue Bird further stated that the known methods of providing tether anchorages in school buses include: (1) Anchoring the tether to the side wall behind the child safety restraint system or, (2) anchoring the tether to the lap belts of the seat behind it. Blue Bird argued that

<sup>4</sup> "LATCH" stands for "Lower Anchors and Tethers for Children," a term that was developed by child restraint manufacturers and retailers to refer to the standardized child restraint anchorage system required by Federal Motor Vehicle Safety Standard No. 225 (49 CFR § 571.225). This system has two lower anchorages, each consisting of a rigid round rod or bar onto which the connector of a child restraint system can be snapped. The bars are located at the intersection of the vehicle seat cushion and seat back. For passenger vehicles, there is also an upper tether anchor to which the top tether of a child restraint system can be hooked. However, school buses are not required to have the top tether anchorage of the LATCH system.

a tether strap in each of these scenarios could possibly constitute a blockage of the side emergency window if there is an emergency exit window at that rearward seating position.

*Agency response:* In our "Guideline for the Safe Transportation of Pre-school Age Children in School Buses," we recommend that child restraint systems not be placed next to emergency exit windows in school buses. NHTSA believes that it is possible that placement of a child restraint in the seat next to an emergency exit window could impede occupant exit in an emergency. If a Do Not Block label helps to prevent school bus users from installing child restraints such that the restraints themselves or the tether straps could impede emergency egress from the exit, the label will have achieved its purpose. Accordingly, the agency is not convinced that emergency window exits should not be labeled with the Do Not Block label due to the label's potential effect on the placement of child restraints.

Thomas Built and Blue Bird stated that there are situations where their customers require LATCH attachments at all seating positions in school buses that require emergency exit windows, and therefore, it may be necessary to place child restraint attachments next to emergency exit windows. NHTSA does not believe that there would be a huge demand from customers of the large school buses who would order LATCH in all seating positions throughout the bus. Typically, most school districts would only order school buses with a couple of rows of seating equipped with a mechanism to install child restraint systems. However, if there is a situation where the customer wants a LATCH system installed in every seating position in buses with a seating capacity greater than 46, there is an option to install side emergency exit doors in these buses instead of emergency exit windows.

#### 5. School Buses Without Wheelchair Anchorages

AmTran believes that the "DO NOT BLOCK" label should be required on emergency exits in all school buses with or without wheelchair anchorages. The agency intended this rulemaking to apply only to new school buses manufactured or sold with one or more wheelchair anchorage positions. To minimize misunderstandings about which new school buses must be labeled, this final rule clarifies S5.5.3(d) to make it clear that the label applies only to "school buses manufactured or sold as new with one or more wheelchair anchorage positions."

#### VIII. Statutory Basis for the Final Rule

We have issued this final rule pursuant to our statutory authority. Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and deaths and injuries resulting from traffic accidents. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

As a Federal agency, before promulgating changes to a Federal motor vehicle safety standard, NHTSA also has a statutory responsibility to follow the informal rulemaking procedures mandated in the *Administrative Procedure Act* at 5 U.S.C. Section 553. Among these requirements are **Federal Register** publication of a general notice of proposed rulemaking, and giving interested persons an opportunity to participate in the rulemaking through submission of written data, views or arguments. After consideration of the public comments, we must incorporate into the rules adopted, a concise general statement of the rule's basis and purpose.

The agency has carefully considered these statutory requirements in promulgating this final rule; response to petitions for reconsideration to amend FMVSS No. 217. As previously discussed in detail, this document responds to petitions for reconsideration of a final rule that we issued in April 2002. We have carefully considered the petitions before issuing today's document. As a result, we believe that this final rule reflects consideration of all relevant available motor vehicle safety information.

#### IX. Regulatory Analyses and Notices

##### A. Executive Order 12866 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 by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, we believe that this final rule; response to petitions for reconsideration will not have any cost effects on school bus manufacturers. When it amended FMVSS No. 222 to specify requirements for wheelchair securement anchorages and devices, NHTSA did not envision that the anchorages would be placed so that wheelchair securement anchorages and devices or secured wheelchairs would block access to any exit door. In analyzing the potential impacts of that rulemaking, NHTSA anticipated that vehicle manufacturers would, if necessary, remove seats to make room for securing wheelchairs in a forward-facing position and that, if necessary, additional buses would be purchased to offset the lost seating capacity.

To the extent that vehicle manufacturers have not removed any

seats and have instead installed wheelchair securement anchorages and devices in locations where the securing of wheelchairs will result in the blocking of exits, the agency overestimated the costs of that earlier rulemaking. If securement devices were being so installed, the impact of adopting the amendments made in this notice would be to conform vehicle manufacturer practices to the assumptions made in the analysis of that earlier rulemaking.

Because the economic impacts of this final rule are so minimal (i.e., the annual effect on the economy is less than \$100 million), no further regulatory evaluation is necessary.

#### B. 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” is 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 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 will 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 motor vehicle manufacturers, not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this final rule.

#### C. 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 planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It does involve decisions based on health or safety risks that disproportionately affect children on schoolbuses with wheelchair securement anchorages. However, this rulemaking serves to reduce, rather than increase, that risk.

#### D. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, “Civil Justice Reform,” we have considered whether this final rule has any retroactive effect. We conclude that it does not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State’s use.

49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) 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 would 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 would not have a significant economic impact on a substantial number of small entities.

The agency Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that, as noted immediately above, NHTSA is not aware that any school bus manufacturer, or any small school bus manufacturer, is presently manufacturing school buses with wheelchair securement anchorages or devices that may result in blocking access to an emergency exit, or that any small school or school district has school buses with wheelchair securement anchorages or devices that may result in blocking access to an emergency door. Accordingly, the agency believes that this final rule will not affect the costs of the manufacturers of school buses considered to be small business entities. A small manufacturer could meet the new requirements by placing a wheelchair securement anchorage or device in a location other than in an exit aisle. Changing the placement of a wheelchair securement anchorage or device in this fashion might necessitate the removal of a seat in some cases. In those instances, there will be a small net loss of passenger capacity.

#### F. National Environmental Policy Act

We have analyzed this rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

#### G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (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. This final rule does not impose new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained. The term “collection of information” does not include the “public disclosure of information originally supplied by the

Federal government to the recipient for the purpose of disclosure to the public.” (See 5 CFR 1320.3(c)(2).) Since NHTSA is specifying the exact language with which school bus manufacturers must label their emergency exit doors and emergency exit windows, the labels are not collections of information and do not need clearance from OMB.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have determined that there are not any voluntary consensus standards that we can use in this final rule. We have searched the SAE’s Recommended Practices applicable to buses, and have not found any standards prohibiting placement of wheelchairs in front of emergency exit doors. We have also reviewed the National Standards for School Buses and School Bus Operations (NSSBSBO)(1995 Revised Edition). The NSSBSBO includes a subsection under “Standards for Specially Equipped School Buses” called “Securement and Restraint System for Wheelchair/Mobility Aid and Occupant.” Paragraph 1.k. of this provision (on page 61) states: “The securement and restraint system shall be located and installed such that when an occupied wheelchair/mobility aid is secured, it does not block access to the lift door.” Since this provision does not address blocking access to an emergency exit, we have decided not to use it in the rulemaking at issue.

I. 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 rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make this rulemaking easier to understand?

In the March 5, 1999 (64 FR 10604)(DOT Docket No. NHTSA-99-5157) and April 19, 2002 (67 FR 19343)(DOT Docket No. NHTSA-99-5157) final rule, we raised the plain language issues stated above. None of the public commenters addressed plain language concerns in their NPRM comments.

K. 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.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR part 571) are amended as set forth below.

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; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.217 is amended by revising in S5.4.3.1, paragraph (b); removing, in S5.4.3.1, paragraph (c); revising in S5.5.3, paragraph (d); and removing and reserving Figures 6B and 6D of this section.

§ 571.217 Bus emergency exits and window retention and release.

\* \* \* \* \*
S5.4.3.1 \* \* \*
\* \* \* \* \*

(b) In the case of rear emergency exit doors in school buses, using the parallelepiped described in S5.4.2.1(a)(1) (for school buses with a GVWR greater than 10,000 lb) or S5.4.2.2 (for school buses with a GVWR of 10,000 lb or less), when the parallelepiped is positioned, as described in S5.4.2.1(a), flush with the floor and with the rear surface of the parallelepiped tangent to the opening of the rear emergency exit door, there must not be any portion of a wheelchair securement anchorage within the space occupied by the parallelepiped or within the downward vertical projection of the parallelepiped, as shown in Figure 6C.

\* \* \* \* \*
S5.5.3 School Bus.
\* \* \* \* \*

(d) On the inside surface of each school bus with one or more wheelchair anchorage positions, there shall be a label directly beneath or above each “Emergency Door” or “Emergency Exit” designation specified by paragraph (a) of S5.5.3 of this standard for an emergency exit door or window. The label shall state in letters at least 25 mm (one inch) high, the words “DO NOT BLOCK” in

a color that contrasts with the  
background of the label.

\* \* \* \* \*

Issued on: August 8, 2005.

**Jeffrey W. Runge,**

*Administrator.*

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