Estimated Time per Response: 3.5 hours for FCC Form 470 (3 hours for response; 0.5 hours for recordkeeping; 4.5 hours for FCC Form 471 (4 hours for response; 0.5 hours for recordkeeping).

Frequency of Response: On occasion and annual reporting requirements, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 218–220, 254, 303(r), 403 and 405.

Total Annual Burden: 273,950 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission received approval from OMB for this information collection. On July 21, 2023, the Commission released the Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, and Changes to the Board of Directors of the National Exchange Carrier Association, Inc. Report and Order in CC Docket Nos. 02–6, 96–45, and 97–21; FCC 23–56 (Order) amending E-Rate rules. This information collection addresses program certifications in the Schools and Libraries Universal Service Description of Services Requested and Certification Forms 470 (E-Rate FCC Form 470) and 471 (E-Rate FCC Form 471), and makes other non-substantive changes to certain fields to the E-Rate FCC Form 471. Collection of the information on FCC Forms 470 and 471 is necessary so that the Commission and USAC have sufficient information to determine if entities are eligible for funding pursuant to the schools and libraries support mechanism, to determine if entities are complying with the Commission's rules, and to prevent waste, fraud, and abuse. In addition, the information is necessary for the Commission to evaluate the extent to which the E-Rate program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's performance goals established in the *E-Rate Modernization Order* and *Second E-Rate Modernization Order.*

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–24876 Filed 11–9–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2023–0043]

RIN 2127–AM58

Federal Motor Vehicle Safety Standards; Bus Rollover Structural Integrity

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

ACTION: Final rule; partial grant of petitions for reconsideration.

SUMMARY: This document grants parts of petitions for reconsideration of a December 29, 2021, final rule that established Federal Motor Vehicle Safety Standard (FMVSS) No. 227, ''Bus Rollover Structural Integrity.'' The standard is intended to enhance rollover structural integrity and reduce the likelihood of ejection from over-the-road buses (motorcoaches), and other buses with a gross vehicle weight rating (GVWR) greater than 11,793 kilograms (kg) (26,000 pounds (lb)). This final rule adjusts the definition of ''transit bus'' and revises the maximum allowable weight of objects intruding into the survival space during the rollover test. This document denies other requests in the petitions, including petitions to expand the applicability of the standard to other bus types and extend the compliance date by 2 years.

DATES:

Effective date: This final rule is effective December 30, 2024.

Compliance date: The compliance date of this final rule is December 30, 2024. Optional early compliance is permitted.

Petitions for reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by December 28, 2023.

ADDRESSES: Correspondence related to this rule, should refer to the docket number in the heading of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590. The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.*

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Mr. Dow Shelnutt, NHTSA Office of Crashworthiness Standards (telephone number is 202–366–8779). For legal issues, you may call Mr. Matthew Filpi, NHTSA Office of Chief Counsel (telephone 202–366–2992) (fax 202–366–3820). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On December 29, 2021, NHTSA published a final rule that established FMVSS No. 227, ''Bus Rollover Structural Integrity,'' (86 FR 74270, Docket No. NHTSA–2021–0088). The purpose of this safety standard is to enhance the rollover structural integrity of over-the-road buses (motorcoaches) regardless of GVWR, and other buses with a GVWR greater than 11,793 kg (26,000 lb). Issued pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP–21), this final rule requires covered buses to provide a ''survival space'' in a rollover test to protect the occupants from possible collapse of the bus structure around them. This final rule also prohibits emergency exits from opening in the rollover test to reduce the likelihood of ejection and requires no part of the vehicle originally outside the survival space pretest to enter the survival space during testing.

The test adopted in FMVSS No. 227 by the December 2021 final rule is based on the complete vehicle rollover test of United Nations Economic Commission for Europe Regulation 66 (ECE R.66), ''Uniform Technical Prescriptions Concerning the Approval for Large Passenger Vehicles with Regard to the Strength of their Superstructure,'' ECE R.66.[1] The test simulates a real-world rollover crash of a large bus. The test bus is placed on a tilting platform that is 800 mm (24 inches) above a smooth and level concrete surface. One side of the tilting platform along the length of the bus is raised at a steady rate of not more than 5 degrees/second until the vehicle becomes unstable, rolls off the platform, and impacts the concrete surface below. During this rollover test, FMVSS No. 227 requires there be no intrusion into the ''survival space'' by any part of the vehicle outside the survival space, except for minute objects weighing less than 15.0 grams, such as pebbles of glazing, bolts, or screws, which do not pose an unreasonable risk to safety for occupants. Additionally, emergency exits must not open during the movement of the tilting platform or as a result of the impact of the vehicle on the impact surface.

This final rule applies to high-occupancy vehicles, which was Congress's focus in the Motorcoach Enhanced Safety Act, part of MAP–21,[2] due to an unreasonably high involvement in fatal rollovers. After accounting for Electronic Stability Control and seat belt use in these bus types, we estimate this rule will save 2–3 lives per year. The material and fuel costs per vehicle range from approximately $2,200 to $5,400. The cost per equivalent life saved is estimated to range from $2.48 million (15 percent seat belt usage) to $6.38 million (90 percent seat belt usage).

[1] Dated February 2006, *https://unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/r066r1e.pdf* . ECE R.66 defines ''superstructure'' as ''the load-bearing components of the bodywork as defined by the manufacturer, containing those coherent parts and elements which contribute to the strength and energy absorbing capability of the bodywork, and preserve the residual space in the rollover test.'' ''Bodywork'' means ''the complete structure of the vehicle in running order, including all the structural elements which form the passenger compartment, driver's compartment, baggage compartment and spaces for the mechanical units and components.''

[2] MAP–21 Subtitle G, the ''Motorcoach Enhanced Safety Act of 2012,'' defined ''motorcoach'' as having the meaning given the term ''over-the-road bus'' in section 3038(a)(3) of TEA–21 (49 U.S.C. 5310 note) but did not include a transit bus or a school bus. Under MAP–21, an over-the-road bus is a bus characterized by an elevated passenger deck located over a baggage compartment.

II. Petitions for Reconsideration

The agency received petitions for reconsideration of the December 29, 2021, final rule from five respondents: Van Hool, New Flyer of America Inc. (NFA), ABC Companies (ABC), School Bus Safety Advocates (SBSA), and DEVCO Design and Development (DEVCO). The issues raised by the petitioners are summarized below.

a. Applicable Buses

The final rule applies to over-the-road buses (OTRBs) regardless of GVWR and buses other than OTRBs (non-OTRBs) with a GVWR greater than 11,793 kg (26,000 lb) with the following exceptions: school buses, school bus derivative buses, transit buses, prison buses, and perimeter seating buses. Several commenters petitioned NHTSA to reconsider the types of buses that are subject to this final rule. SBSA requested that the rule include all medium-size buses (buses with a GVWR greater than 4,536 kg (10,000 lb) and less than or equal to 11,793 kg (26,000 lb)).[3] DEVCO also requested that tour buses be included, since it believes most tour buses are less than 26,000 lb and would therefore be excluded from the final rule. NFA requested NHTSA to clarify and refine the definition of transit bus to include physically identical buses designed, built, and marketed as transit buses, but sold to private entities or Federal agencies. Van Hool and ABC requested NHTSA to exclude privately owned non-OTRB that are equivalent in design to transit buses (with low floor construction and allowance for standing passengers).

b. Seating Systems and Floor Strength

The final rule does not expressly specify requirements related to floor or seating system strength. SBSA petitioned NHTSA to include floor strength requirements in FMVSS No. 227 and DEVCO requested including seating system strength to further control the survival space.

c. Limitations on Objects Entering Survival Space

The final rule requires that no part of the vehicle which is originally outside the survival space shall intrude into the survival space during the movement of the tilting platform or resulting from impact of the vehicle on the impact surface, except for items separated from the bus with a mass less than 15.0 grams. Van Hool and ABC petitioned that this mass limit is too low and should be increased. Van Hool and ABC also requested permitting laminated glazing to enter into the survival space, regardless of its mass.

d. Defining the Ballasting Process During Testing

The final rule outlines the ballasting procedure to prepare the bus for the rollover test in section S6.2.5. Van Hool and ABC petitioned that this procedure is not well-defined and should include more details such as where load packages will be placed, how much the load packages will weigh, where the center of gravity of each load package will be positioned, and whether any of the load packages will be restrained.

e. Lead Time

The final rule specifies a compliance date of 3 years after publication of the final rule for FMVSS No. 227 as per MAP–21.[4] Van Hool and ABC requested a lead time of 5 years, which, they stated, would allow the industry to cope with financial hardship and supply chain delays resulting from the COVID pandemic. Van Hool and ABC also argued that the additional lead time would allow them to synchronize with traditional development cycles of new OTRBs to avoid excessive development peaks as the industry recovers from the pandemic driven economic downturn in the next few years.

III. Responses to Petitions

a. Applicability of the Standard

1. Application to Transit Buses

Three respondents petitioned NHTSA to adjust the applicability of the final rule, specifically regarding the definition of transit buses. Van Hool, ABC, and NFA pointed out that under the current definition, buses that are manufactured as transit buses but sold to entities that are not State or local governments (or operated on behalf of State or local governments) are not considered transit buses. In this document, ''transit-type buses'' means buses that have features of transit buses but that are sold to entities that are not State or local governments (or operated on behalf of State or local governments). Some examples provided by NFA of transit-type buses that would not be excluded from the final rule are

[3] SBSA specifically requested NHTSA amend the applicability of the final rule by changing the minimum GVWR of non-OTRBs from 11,793 kg (26,000 lb) to 4,535 kg (10,000 lb). This change would have the effect of including all medium-size buses to the applicability of the final rule.

[4] Section 32703(e) of MAP–21 directs that any regulation prescribed in accordance with subsections 32703(a), (b), (c), or (d) shall apply to all motorcoaches manufactured more than 3 years after the date on which the regulation is published as a final rule. NHTSA issued FMVSS No. 227 in accordance with § 32703(b)(1) and (2).

National Park Service buses, private campus buses,[5] and buses sold to the General Services Administration for use on military bases. NFA stated these bus types do not fit the definition for transit bus because they are not used ''for public transportation provided by, or on behalf of, a State or local government . . . .'' Van Hool added that ''(d)ue to the low floor construction of these non-OTRBs and the fact that many passengers are standing inside the vehicle . . . we see a lot of complications in order to have FMVSS No. 227 fulfilled.'' NFA petitioned NHTSA to adjust the definition of transit bus to include buses purchased by these entities. Further, NFA noted these buses are often the same bus models purchased by State and local government agencies for public transportation, and are being used for similar fixed route, low speed service. NFA stated their ''low speed, and frequent stop duty cycle'' usage means they should be held to the same rollover standards as transit buses purchased by State and local government agencies for public transportation.

NFA noted that NHTSA calculated compliance costs in the August 6, 2014, notice of proposed rulemaking (NPRM) (79 FR 46090) and final rule under the assumption that some bus manufacturers are already building their buses to conform to ECE R.66, which results in reduced costs to comply with FMVSS No. 227 due to their similar testing methods. NFA stated there is no reason to believe any transit bus manufacturer would be manufacturing transit-type buses to comply with ECE R.66. Since they would need to develop a new design, the petitioners stated this would result in a significant cost increase for the manufacturers of transit buses to comply with FMVSS No. 227, compared to the calculations in the Final Regulatory Evaluation (FRE) and final rule.[6]

Agency Response: Based on the reasons outlined in the paragraphs below, the agency agrees in part with the requests of NFA, Van Hool, and ABC. Transit buses operated by or on behalf of Federal agencies such as the U.S National Park Service (NPS) and the General Services Administration (GSA) are likely to be operated in similar low risk driving patterns when compared to transit buses operated by or on behalf of State or local governments. The agency does not have enough data to conclude whether privately owned or operated transit-type buses operate under these same low risk driving patterns. Therefore, NHTSA will amend the transit bus definition to additionally include only buses that are operated by or on behalf of the Federal government. Any transit-type bus that is sold to operators not affiliated with a Federal, State, or local government will still need to comply with FMVSS No. 227.

NHTSA's proposal to apply FMVSS No. 227 to high-occupancy vehicles was based on NHTSA's and Congress's concern about the involvement of high-occupancy vehicles in fatal rollover crashes. Furthermore, NHTSA generally intended the final rule to cover the same buses covered in the agency's November 25, 2013, final rule that required lap/shoulder seat belts for each passenger seating position in over-the-road buses (FMVSS No. 208, ''Occupant crash protection,'' 78 FR 70416). The agency's general view in the FMVSS No. 227 final rule was that FMVSS No. 227 should apply to those buses with seat belts, so that a survival space could be provided to belted occupants. Transit buses were excluded from FMVSS No. 227 for the same reason they were excluded from the belt requirement. Based on the agency's analysis of the Fatality Analysis Reporting System (FARS) data, the bus type with the lowest percentage of fatalities for all buses with a GVWR greater than 26,000 lb was the transit bus.[7]

As stated in the final rule, FMVSS No. 227 will ensure that belted passengers will be significantly protected against unreasonable risk of injury in frontal crashes and significantly protected against the risk of ejection in rollovers. Hand-in-hand with the seat belt rule, FMVSS No. 227 enhances the safety of these belted passengers by providing a ''survival space'' in a rollover, a space where the belted occupants are protected from intruding structures such as a collapsing roof or a detached luggage rack. The benefits of FMVSS No. 227 are maximized when implemented in the same buses that are equipped with seat belts. The seat belt requirements in FMVSS No. 208 for large buses provided a means for belted bus occupants to remain within the survival space in a crash. Transit buses are not required to be equipped with seat belts in the absence of a safety need for the belts, and they are likewise not required to comply with the structural integrity requirements of FMVSS No. 227 in the absence of a safety need warranting coverage by the standard.

The definition of ''transit bus'' in the FMVSS No. 227 final rule is ''a bus that is equipped with a stop-request system sold for public transportation provided by, or on behalf of, a State or local government and that is not an over-the-road bus.'' This definition is also used in both FMVSS Nos. 208, ''Occupant crash protection,'' and FMVSS No. 136, ''Electronic stability control systems for heavy vehicles.''

NHTSA is denying the petition based on available use information and crash data. The exclusion of transit buses from FMVSS No. 227 is based on the safety record of buses used as transit buses. NHTSA acknowledges that there are private entities operating the same style buses that are used by public transit agencies, but ''transit buses'' are excluded because of data reflecting the lower risk of involvement in rollovers given, among other matters, the fixed-route nature of their use and how their travel is characterized by frequent bus stops. Based on the information the agency has received from manufacturers,[8] private entities make up approximately 10 percent of large transit-type bus sales, meaning the vast majority of transit-type buses on American roads are operated by or on behalf of State or local governments. The data the agency possesses indicate that the number of fatalities resulting from transit-type bus rollover crashes is lower than the number of fatalities from OTRBs. After analyzing these data and researching a number of State and local transit bus routes, the agency concluded in the final rule that public transit agencies typically operate transit buses in urban areas at low speeds over fixed routes with frequent stops, which likely explains why fatalities are lower relative to other large bus types as observed over the past 20 years. Additionally, the fact that State and local governments operate a vast majority of transit-type buses further explains why the risk of fatal rollover crashes is generally low for transit-type buses, as an overwhelming majority of transit-type buses are

[5] The petitioner also lists airport rental car shuttles. NHTSA notes that buses with 7 or fewer designated seating positions rearward of the driver's seating position that are forward-facing or can convert to forward-facing without the use of tools are excluded from the standard (S3(b)(2), FMVSS No. 227). These buses can include airport rental car shuttles.

[6] NFA submitted a subsequent memorandum (dated March 16, 2023) after calculating estimated engineering compliance costs. NFA states this information was not available to them at the time their original petition was filed in February 2022. In brief, NFA forecasted that the non-recurring engineering costs for non-exempt transit buses would be so large that they would stop offering such transit buses to private entities and to the federal government. NHTSA has placed a copy of the memorandum in the docket for the December 29, 2021 final rule (Docket No. NHTSA–2021–0088). This topic is discussed later in this section.

[7] 78 FR 70437.

[8] New Flyer Response to NHTSA Questions.pdf, NHTSA has placed a copy of the document in the docket for this final rule.

operated on low speed, fixed route, frequent stop service by trained drivers familiar with the routes.

On the other hand, privately owned or operated bus services may use transit-type buses for higher risk driving practices that deviate from the typical low speed, fixed route, frequent stop service. When analyzing use by State and local governments, the agency accessed and analyzed route descriptions on local and State transit authorities' websites. The agency simply does not have access to that kind of information for buses used by private entities. Without sufficient data about typical operating practices of private operators, NHTSA cannot confirm whether the risk of a fatal rollover crash is as low as it is for the operating environment of public transportation provided by or on behalf of State or local governments. Excluding all transit-type vehicles from compliance with FMVSS No. 227 would not be in the best interest of safety since these private operators may use the buses for higher risk driving than the typical public transportation service provided by or on behalf of State or local governments.

Based on sound inferences made from the data, the agency can say with confidence that the rollover fatality risk is low when a transit-type bus is being operated by or on behalf of a State or local government. Without sufficient, specific use-based data, the agency cannot say the same about transit-type buses operated by private entities. If sufficient data were provided to the agency showing private transit-type bus operators use the buses in the same low-risk manner, the agency would take it under consideration for future updates to FMVSS No. 227.

Conversely, there are data about transit-type bus use in National Parks that support NHTSA's partial granting of the request to consider buses sold to the Federal government as transit buses. NPS offers public transportation in the form of shuttle buses at many National Parks. These buses are often used to transport passengers throughout the parks and to neighboring park-and-ride locations or visitor centers.[9] [10] [11] [12] [13] These applications are typically on fixed routes at low speeds. Buses operated by the NPS are not likely to be used for any purposes other than their intended shuttle routes. Further, NHTSA would consider transportation provided to patrons of a National Park to be public transportation as National Parks are open to the general public. However, buses operated by NPS, which is a Federal agency, or its contractors, are not operated ''by, or on behalf of, a State or local government.'' These buses are often operated by contractors on behalf of the NPS, so an amendment to include ''Federal'' in the transit bus definition is warranted to include these NPS buses as transit buses.

As mentioned by petitioner NFA, GSA purchases buses for various uses, including transit-type buses for use on military bases. The GSA's Ground Transportation Services provide time-definite pickup and delivery of government personnel in a variety of applications.[14] According to NFA, they expect to sell transit-type buses to the GSA ''for lease to various federal agencies, as on military bases or national parks.'' The most likely use for a transit-type bus on a military base would be operating a bus on fixed routes at low speeds with frequent stops, which is similar to the use by public transportation agencies in other urban areas. The agency acknowledges that it is possible that the military may use transit-type buses for purposes other than the fixed route style service listed above, but the agency did not uncover any data indicating higher rates of rollover crashes for military operated transit-type buses. Additionally, NHTSA explicitly states that no standard applies to a vehicle manufactured for, and sold directly to, the Armed forces of the United States in conformity with contractual specification.[15] Because the regulations are clear when it comes to regulating vehicles produced for use by the military, the agency believes including Federal government in the transit bus definition is consistent with NHTSA's regulations and the Safety Act.

In their petition for reconsideration, NFA challenged NHTSA's cost estimates in the FRE based on the number of ''non-exempt transit buses.'' Specifically, NFA stated that NHTSA underestimated the costs to comply with FMVSS No. 227 because the FRE did not include costs incurred by transit bus manufacturers to update their ''non-exempt transit buses'' to meet the structural integrity requirements.[16]

NHTSA developed the cost estimations in the FRE to determine the costs that would result from updating the applicable buses to comply with the requirements of FMVSS No. 227. Since transit buses are excluded from compliance with FMVSS No. 227, they were not included in the cost estimations. NHTSA did not include cost estimations in the FRE for updating bus types other than the bus types that are required to comply with FMVSS No. 227. As discussed in the FRE, NHTSA estimated a market size of 2,200 buses sold annually that are applicable to FMVSS No. 227. These buses include all OTRBs and other large buses operated by both public and private entities. NFA estimated there are approximately 80 to 120 ''non-exempt transit buses'' per year that are sold to private entities or the Federal Government that would not fit the definition of transit buses. After revising the transit bus definition to include buses operated by or on behalf of the Federal Government, there are even fewer ''non-exempt transit buses,'' representing less than 3 to 5 percent of the estimated 2,200 applicable buses sold annually. Therefore, the cost estimations in the FRE do not need to be adjusted to account for transit buses as requested by NFA.

NFA stated in their March 16, 2023, memo, they estimate it would be cost-prohibitive for them to manufacture transit buses that comply with FMVSS No. 227 due in part to the small market size of ''non-exempt transit buses.'' Further, NFA stated that if their petition is not granted, they will not sell transit buses to private parties due to high engineering and tooling costs, and ''[t]here is no reason to believe that other manufacturers will reach a different conclusion.'' In response, if bus manufacturers decide not to reconfigure transit buses to comply with FMVSS No. 227, the buses would be noncomplying and could not be sold to

[9] ''Yosemite—Public Transportation.'' *National Parks Service,* U.S. Department of the Interior, *https://www.nps.gov/yose/planyourvisit/publictransportation.htm,* Last accessed January 12, 2023.

[10] ''Grand Canyon—South Rim Shuttle Bus Routes: Winter 2022–23.'' *National Parks Service,* U.S. Department of the Interior, *https://www.nps.gov/grca/planyourvisit/shuttle-buses.htm,* Last accessed January 12, 2023.

[11] ''Zion—Zion Canyon Shuttle System.'' *National Parks Service,* U.S. Department of the Interior, *https://www.nps.gov/zion/planyourvisit/zion-canyon-shuttle-system.htm,* Last accessed January 12, 2023.

[12] ''Rocky Mountain—Shuttle Buses and Public Transit.'' *National Parks Service,* U.S. Department of the Interior, *https://www.nps.gov/romo/planyourvisit/shuttle-buses-and-public-transit.htm,* Last accessed January 12, 2023.

[13] ''Acadia—Island Explorer.'' *National Parks Service,* U.S. Department of the Interior, *https://www.nps.gov/acad/planyourvisit/island-explorer.htm,* Last accessed January 12, 2023.

[14] ''Ground Transportation Services.'' *U.S. General Services Administration,* GSA, *https://www.gsa.gov/buy-through-us/products-services/transportation-logistics-services/transportation/transportation-and-logistics-services-schedule/ground-transportation-services,* Last accessed January 12, 2023.

[15] 49 CFR 571.7(c)

[16] Based on the information provided by OTRB manufacturers, the FRE estimated approximately 30 percent of the large bus market consists of buses with superstructures that currently comply with ECE R.66.

private bus operators as currently configured. The buses do not provide the requisite level of safety that is needed to protect occupants of high occupancy vehicles from unreasonable risks of injury and fatality in crashes. When the buses are subject to non-transit use, the standard ensures the occupants are protected from risks associated with such use. However, there are alternative bus options for private entities seeking to purchase a high occupancy bus, such as a school bus derivative bus,[17] an over-the-road bus, or a bus type with a GVWR less than or equal to 26,000 lb. Additionally, it is possible that a transit-style bus manufacturer may decide to produce a new complying bus in the future, as meeting the standard is practicable. Given the safety need for FMVSS No. 227, NHTSA believes it is consistent with the Safety Act and the public interest for the agency not to establish a carve-out that could potentially exclude every non-OTRB as a ''transit bus,'' regardless of the party to whom the bus is sold. Therefore, NHTSA will not further adjust the definition of transit bus to include private operators.

2. Application to Medium-Size Buses and School Buses

SBSA requested NHTSA to increase the scope of applicability of the final rule to include all buses with a GVWR greater than 4,536 kg (10,000 lb). This increase in scope would result in the inclusion of all buses with a GVWR greater than 4,536 kg (10,000 lb), without any exclusion for school buses, transit buses, and prison buses. The agency's response to including transit buses is discussed above. SBSA's request was specifically to adjust the discussion in the summary of the final rule, without mentioning any of the details to be altered in the remainder of the preamble or the regulatory text. SBSA did not provide any data to support their request.

Agency Response: NHTSA's proposal to apply FMVSS No. 227 to high-occupancy vehicles was based on NHTSA's and Congress's concern about the involvement of high-occupancy vehicles in fatal rollover crashes. Furthermore, NHTSA intended the final rule to cover the same buses covered in the agency's November 25, 2013, final rule, which required lap/shoulder seat belts for each passenger seating position in over-the-road buses. The agency's view in the NPRM and final rule was that FMVSS No. 227 should apply to those buses with seat belts, so that a survival space could be provided to belted occupants.

In the final rule, NHTSA stated FMVSS No. 227 shall not be applicable to medium-size non-OTRB buses. NHTSA based the decision on an analysis of crash data for medium-size buses. Examining FARS data from 2006–2019, there were 136 occupant fatalities in non-OTRBs with a GVWR between 4,536–11,793 kg (10,000–26,000 lb), of which 50 fatalities were a result of 24 rollover crashes. Over the 14-year period between 2006–2019, medium-size buses were associated with an average of 1.7 rollover crashes per year and 3.6 fatalities due to rollover crashes per year. These numbers are small when compared to large buses. Comparing to large buses and OTRBs, data from FARS 2006–2019 shows there was an annual average of 3.7 fatal rollover crashes involving large buses (GVWR greater than 11,793 kg (26,000 lb)) (including OTRBs), resulting in an average of 11.9 occupant fatalities per year. Additionally, there are an estimated 2,200 large buses (including OTRBs) produced annually, compared to an estimated 16,000 medium-size buses produced annually.[18] Table 1 below summarizes these data.

SBSA did not provide any data or information with their petition requesting that new medium-size buses meet the rollover structural requirements of FMVSS No. 227. Therefore, the agency reiterates the conclusion stated in the final rule that the data do not support a finding of a safety need to warrant application of FMVSS No. 227 to medium-size buses.[19] For the reasons above and in the final rule, NHTSA denies the petition to extend FMVSS No. 227 to medium-size buses.

TABLE 1—SUMMARY STATISTICS FOR FATAL ROLLOVER CRASHES AND OCCUPANT FATALITIES FOR LARGE BUSES (INCLUDING OTRBS) AND MEDIUM-SIZE BUSES

[FARS 2006–2019]

Bus size	Average annual rollover crashes	Average annual rollover fatalities	Average annual fleet sales
Large Bus (greater than 26,000 lb GVWR) and all OTRBs	3.7	11.9	2,200
Medium-Size Bus (GVWR of 10,000–26,000 lb)	1.7	3.6	16,000

Although not specifically stated in their petition, SBSA implied that school buses also be included in the scope of FMVSS No. 227. School buses are already required to meet roof strength requirements stated in FMVSS No. 220, ''School bus rollover protection'' (49 CFR 571.220[20]). NHTSA stated in the final rule for FMVSS No. 227 that since school bus derivative buses already meet the roof crush resistance requirements in FMVSS No. 220, it would be redundant to require those buses to also meet FMVSS No. 227.[21]

3. Application to Tour Buses

DEVCO stated that only including buses with a GVWR greater than 26,000 lb excludes most tour buses from this rule. DEVCO requested NHTSA include these bus types in the applicability of FMVSS No. 227, but did not provide any data to support its request.

Agency Response: FMVSS No. 227 is applicable to all over-the-road buses, regardless of GVWR, as well as all large buses with a GVWR greater than 11,793 kg (26,000 lb), except school buses, school bus derivative buses, transit buses, and prison buses. Also excluded from FMVSS No. 227 are buses with 7 or fewer designated seating positions rearward of the driver's seating position that are forward-facing or can convert to forward-facing without the use of tools. The FARS database does not define or use the term ''tour bus'' in reference to

[17] A school bus derivative bus means a bus that meets the Federal Motor Vehicle Safety Standards for school bus emergency exits, rollover protection, bus body joint strength, and fuel system integrity. (S4, FMVSS No. 227).

[18] Medium-Size Bus Roadway Departure, Return, and Rollover Bryce Canyon City, Utah September 20, 2019. Accident Report NTSB/HAR–21/01 PB2021–100917. Last accessed October 26, 2022.

[19] 86 FR 74282–74284.

[20] *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-V/part-571/subpart-B/section-571.220,* Last accessed January 17, 2023.

[21] 86 FR 74286–74287.

a bus body type.[22] However, the FARS database does include a bus use category for ''Charter/Tour.'' The term ''tour bus'' is not explicitly defined and could be described as different types of buses in different contexts. An internet search for ''tour buses'' includes results of traditional motorcoaches, double decker buses, and open-top buses for sight-seeing tours. Traditional motorcoaches would be included within the scope of FMVSS No. 227 due to their categorization as an OTRB. Double decker buses are generally much heavier than standard buses. Listed GVWRs for Volvo,[23] Wright Bus,[24] and Guleryuz [25] double decker buses range from 18,100 kg to 26,300 kg (40,000 lb to 58,000 lb). Therefore, these would be included within the scope of FMVSS No. 227 due to their GVWR being greater than 11,793 kg (26,000 lb). As stated in the final rule, ''(t)he standard would not apply to a level of a bus that does not have a permanent roof over the level, such as the upper level of a double-decker bus that does not have a permanent roof over the upper level.'' However, any portion of an open-top bus that does have a permanent roof, for example, the lower level of a double-decker open-top bus, is subject to the requirements of FMVSS No. 227.

The other type of bus that could be described as a tour bus is a van-based bus or body-on-frame bus that is less than 26,000 lb. These bus types are not included in the scope of this final rule because they are neither OTRBs nor with a GVWR greater than 11,793 kg (26,000 lb). Due to the reasons discussed above, there is not a safety need to extend applicability to medium-size buses. Therefore, NHTSA does not find any need to adjust any criteria of applicability for bus types based on DEVCO's suggestions.

b. Requirements for Floor Strength and Seating Systems

SBSA requested that FMVSS No. 227 include requirements for increased floor strength to improve safety. They stated that ''[s]ince roof and wall strength is also applicable to floor strength for controlling the survival space, improved floor strength should be added.'' SBSA did not provide any minimum strength requirements, suggested procedures, or data to justify their request. DEVCO requested that NHTSA modernize the seating systems in buses in order to control survival space not only during rollovers, but also in other types of bus crashes. To specify the recommended updates, DEVCO suggested adjustments to FMVSS No. 207, ''Seating Systems,'' to increase the scope of applicability to include all buses and seating orientations.

Agency Response: NHTSA is denying these requests. The agency agrees that both floor strength and seating system strength are an integral part of protecting occupants within a bus. However, the rulemaking did not include specific floor strength requirements in FMVSS No. 227, so SBSA's suggestion to add specific floor strength requirements appears beyond the scope of the issues appropriate for a petition for reconsideration. In any event, NHTSA believes there is no need for specific floor strength requirements as the current standard accounts for floor strength. Under the requirements of FMVSS No. 227 the entire bus shell must have sufficient strength to keep the sidewall and roof from intruding into the survival space during the rollover test. Specifically, this means the lower corners where the sidewall connects to the floor, the upper corners where the sidewall meets the roof, the floor, and the roof itself will contribute to the survival space of the bus during vehicle rollovers. Thus, as a practical matter, the test of FMVSS No. 227 addresses floor strength, and bus designers will have to ensure the floor is sufficiently strong to work with the strengthened bus roofs and side wall panels to provide the survival space required by the standard.

Regarding the request to strengthen seating systems, as stated in the final rule notice promulgating FMVSS No. 227, ''NHTSA has decided that the primary purpose of this rulemaking is to establish a roof strength and crush resistance standard that improves the resistance of roofs to deformation and intrusion, *i.e.,* by providing a survival space to occupants in rollovers.'' [26] With that determination, the agency decided not to adopt proposed requirements that each anchorage of the seats not completely separate from its mounting structure in the test. DEVCO did not provide any data in its petition to argue against this determination. With regard to seatbacks, DEVCO's request to modify seating systems by requiring strengthened seatbacks for all buses and seat belts for school buses is not within the scope of the rulemaking. For these reasons, NHTSA is denying the request to adjust the final rule to further account for floor strength and seating systems based on SBSA's and DEVCO's comments.

c. Limitations on Objects Entering Survival Space

Van Hool and ABC requested that NHTSA revisit the mass of an object that is allowed to enter the survival space during the rollover test. Van Hool commented that the fact that something as small as a plastic cap weighing 20 grams would cause a rollover test to fail is out of balance with the consequences of the failure. Additionally, Van Hool and ABC expressed that the 15-gram criterion is too severe and unbalanced with real life situations, due to the fact that small items weighing 15 grams or more ''will cause no or minimal bodily harm to occupants.'' Van Hool also stated that ''(d)ue to the deformation of the upper body (of the vehicle) at impact, the glazing at the front and end of the vehicle cracks diagonally due to shear forces, often ejecting greater parts of glass than allowed by the 15-gram criterium.'' Therefore, they requested NHTSA exclude laminated glass from the 15-gram criterion, increase the maximum allowed weight up to a ''more realistic level,'' and consider a separate test methodology to determine whether intrusion into the survival space causes a failure.

Agency Response: The ECE R.66 rollover test, the standard on which this final rule is based, specifies that *no* part of the vehicle that is outside the survival space at the start of the test shall enter the survival space during the test. There is no specification for minimum size, which implies any object entering the survival space, regardless of mass, would cause a bus to fail the minimum survival zone requirements of the test. NHTSA believes such would not be a practical requirement, since it is likely for the bus to have small broken pieces of glazing, nuts, bolts, screws, etc., entering the survival space during a bus rollover. Further, none of the aforementioned objects would be likely to cause serious injury to passengers during a rollover unless they were sufficiently heavy. Therefore, in the final rule, NHTSA adopted a test procedure that permitted objects to enter the survival space if each object weighs an amount that is not likely to cause injury to passengers.

[22] FARS body types related to buses include ''large van'', ''school bus'', ''cross country/intercity bus'', ''transit bus (city bus)'', ''van-based bus'', ''other bus'', and ''unknown bus''.

[23] ''Specifications.'' *9700 Double Decker Specifications | Volvo Buses,* AB Volvo, *https://www.volvobuses.com/en/coaches/coaches/volvo-9700-dd/specifications.html,* last accessed May 13, 2022.

[24] ''Meet the UK's Favourite Bus.'' *StreetDeck Ultroliner EU6 | Wrightbus, https://wrightbus.com/en-gb/diesel-bus-streetdeck-ultrolinerEU6,* last accessed May 13, 2022.

[25] ''Dynabus Top Open Double Decker Low Floor.'' *Guleryuz Technical Specification of Top Open Double Decker Bus, https://www.dynabus.gr/wp-content/uploads/2010/02/460069777.pdf,* last accessed May 13, 2022.

[26] 86 FR 74272.

The 15-gram criterion stemmed from the maximum allowable mass of glazing to be separated from the laminate during the 227 g (0.5 lb), 9.14 m (30 feet) ball drop impact test as defined in ANSI Z26.1–1996.[27] Referring to ANSI Z26.1 provided a method to quantify the weight of small pieces of glazing material that could be expected to separate after an impact. However, as Van Hool mentions in its petition, there are objects other than small fasteners and pieces of glazing that may enter the survival space which ought not result in the failure of the rollover test. These objects may have a greater mass than the 15.0 grams calculated based on shards of glass, but still would not present a risk of injury to the occupants.

The purpose of the requirement is to not allow items large enough to injure occupants, such as glazing panels, handrails, or luggage racks, or a sufficiently heavy portion of these items, to enter the survival space.[28] NHTSA has estimated the approximate mass of fasteners and plastic trim pieces, such as end caps, that are likely to be used in areas of a motorcoach subjected to the impact force during the rollover test. Most plastic end caps are constructed of low-density polyethylene (LDPE) and are offered in a wide range of sizes and styles. Based on the common offerings of online end cap manufacturers and the sizes and styles of handrails, luggage racks, or seat frames likely to require use of plastic end caps, NHTSA has determined that the largest end caps are generally 30 grams or less. Most non-structural bolts and screws used on the interior of a bus would be small and would have to shear off in order to enter the survival space. NHTSA estimates a large, unbroken bolt likely to be used in a bus interior to be no more than 45 grams.[29]

In contrast, a hard object greater than this mass has the potential to harm bus occupants if it impacts them at sufficient velocity, which is foreseeable in a bus rollover event. Further, metal fittings or brackets are typically used to anchor sizable components such as handrails or stanchions to the bus structure. These fittings, depending on geometry and manufacturer, can have a mass from approximately 55 grams [30] to over 200 grams. If a heavier bracket or fitting such as this breaks off the bus structure, not only can it injure an occupant, but its failure significantly increases the risk of the more massive component, which the bracket or fitting secured, intruding into the survival space. Factoring in a 5-gram tolerance due to the variability in weights and the use of different brackets and fittings by bus manufacturers, NHTSA is amending the test procedure adopted in the final rule, and the amended test procedure will permit individual objects with a mass less than 60 grams (0.13 lb) to enter the survival space.

One of the purposes of this rule is to prevent injurious objects from entering the survival space. Objects less than 60 grams (*e.g.,* fasteners, small glazing pieces, broken pieces of plastic trim, plastic caps) that separate from the bus are not likely to cause injury to the bus occupants. Objects with a mass greater than or equal to 60 grams (*e.g.,* handrail securement brackets, metal fittings, large sections of glazing panels) that break away from the bus are much more likely to result in occupant injury, either by striking an occupant or by failing to keep the more massive component from entering the survival space. Thus, for the reasons stated above, NHTSA will adjust the regulatory text of the final rule to increase the mass limit from 15 grams to 60 grams.

We disagree with the request to exempt large pieces of laminated glazing from the small object weight limit for items entering the survival space. First, as explained above, the large pieces of laminated glazing are massive and would likely injure an occupant when they fell into the survival space. Second, a purpose of FMVSS No. 227 is to ensure that buses maintain their structural integrity in a rollover to better retain ejection mitigation glazing in a rollover.[31] Under Van Hool and ABC's petition, a manufacturer choosing to use laminated glazing for side or roof windows would not be required to keep those large heavy panes of glazing from entering the survival space or from popping out. Accordingly, NHTSA is denying this request.

d. Defining the Ballasting Process During Testing

Van Hool and ABC state ''(t)he final rule has no unambiguous definition of the installation of additional loads inside a vehicle to bring the vehicle weight up to its GVWR . . . .'' They request details for the ballasting during the rollover test procedure such as specific locations where load packages will be placed, how much the load packages will weigh, where the center of gravity of each load package will be positioned, and whether any of the load packages will be restrained. They requested that NHTSA add a more precise procedure for the loading of the bus up to its GVWR prior to performing the rollover test. Van Hool also requested load package weight be reduced to 20 percent of its original mass to compensate for the fixation of load packages.

Agency Response: Section S6.2 of the regulatory text contains the preparations and procedures for the bus prior to NHTSA performing the rollover test. Section S6.2.5 describes the ballasting procedure, including where the load packages are placed in the bus, how much each load package weighs, and how they are restrained to the seats and bus frame. This section answers each of the questions Van Hool and ABC presented about the ballasting procedure, except the precise location of the center of gravity for each load package. Under the current procedure's terminology, the physical sizes of the load packages are not defined. For example, the load packages could be steel plates placed horizontally in the seat, resulting in a lower center of gravity, or they could be weighted anthropomorphic ballasts (commercially available ''water dummies''), resulting in a higher center of gravity. NHTSA indicated in both the final rule and NPRM that the method of ballasting or type of ballast used are not of importance, as those factors will not markedly alter the forces imposed on the vehicle structure or the seat anchorages during compliance testing, so long as the ballast is 68 kg (150 lb) at each designated seating position (DSP). Additionally, in other Federal motor vehicle safety standards, such as FMVSS No. 214 ''Side impact protection,'' NHTSA does not specify the type of ballast that must be used in the applicable test. Therefore, NHTSA is

[27] ANSI/SAE Z26.1 is incorporated by reference into FMVSS No. 205, ''Glazing materials.'' ANSI/SAE Z26.1–1996 permits pieces of laminated glazing of 1935 mm^2 (3 in^2) to separate (break off) in the 227 g (0.5 lb) 9.14 m ball drop impact test. We estimate that laminated glazing has a glass thickness of approximately 2.5 mm for each glass layer, and a glass density of about 0.00251 g/mm^3 (1.445 ounce (oz)/in^3). Thus, a piece of laminated glazing of 1935 mm^2 (3 in^2) has a mass of approximately 12 grams (g) (0.43 oz). Factoring in a 3 g (0.11 oz) tolerance, this is the origin of the 15.0 gram (0.53 oz) mass limit that is prohibited to intrude into the survival space as stated in the final rule.

[28] 86 FR 74290. Another purpose to the requirement that prevents bus components from intruding into the survival space is to better ensure the glazing is retained as an ejection mitigation countermeasure. ''FMVSS No. 227's survival space requirement would improve the structural integrity around window frames and prevent glazing from popping out or otherwise detaching from its window mount in a rollover.'' Id. at 74292.

[29] A hex head fully threaded M10 x 60mm bolt weighs 53.59 grams, including the nut, which weighs approximately 10 grams. *https://itafasteners.com/weight-chart.php* Last accessed March 6, 2023.

[30] The lightest such bracket readily available has a product weight of 0.12 lb (55 grams). *https://www.austinhardware.com/fitting-fixed-base-no-insert.html.* Last accessed March 9, 2023.

[31] 86 FR 74271, col. 3.

remaining consistent with other standards and testing procedures by not specifying the type of ballast that must be used in the compliance test, as the type of ballast used does not affect test outcome.

Van Hool and ABC expressed specific concerns that if the ballasts are not restrained to the bus structure during testing, the tests would be non-reproducible due to many uncertainties.[32] As described in the final rule regulatory text and preamble,[33] all ballasts must be securely attached to the seat frames in order to replicate the forces imparted to the seat anchorages during a crash. The ballasts should be restrained to the seat frames regardless of the type of ballast used, so long as the ballast weight, including any attachment mechanisms, is 68 kg (150 lb) at each DSP.

Regarding Van Hool's request to reduce the ballast weight to 20 percent of its original mass, NHTSA is denying this request. NHTSA responded to similar requests in the final rule (86 FR 74293–74294). NHTSA explained that, as discussed in the NPRM (79 FR 46106), an Australian study that utilized bus section testing and computer simulations estimated that 93 percent of a lap/shoulder belt-restrained occupant mass, 75 percent of a lap belt-restrained occupant mass, and 18 percent of an unrestrained occupant mass are effectively coupled to the vehicle structure during a rollover. Further, a European Commission sponsored study in 2003 found that the percentage of occupant mass coupled to the vehicle structure during a rollover is 90 percent for lap/shoulder belted occupants and 70 percent for lap belted occupants. Available studies now uniformly agree that more than 90 percent of the occupant mass is coupled with the bus during a rollover crash. Therefore, we do not find any need to adjust the final rule or ballasting procedure based on Van Hool's petitions for reconsideration.

e. Implementation Lead Time

NHTSA adopted a compliance date of 3 years after publication of the final rule for FMVSS No. 227. Van Hool and ABC requested a lead time up to 5 years to adjust their developmental processes to account for a more stringent set of requirements than the ECE R.66 rollover requirements, align design improvement times with existing developmental cycles for their buses, and avoid unnecessary development peaks. Van Hool and ABC believed that a longer lead time was needed due to financial hardship, supply chain delays, and increase in material cost during the pandemic.

Agency Response: NHTSA is denying this request. The 2021 final rule adopted the 3-year compliance date as required by MAP–21. MAP–21 (in section 32703(e)) directs that the rulemaking shall apply to all motorcoaches manufactured more than 3 years after the date on which the regulation is published as a final rule. NHTSA evaluated and proposed a 3-year compliance date in the October 2014 NPRM and adopted it in the December 2021 final rule. To enable manufacturers to certify to the new requirements as early as possible, optional early compliance with the standard is permitted.

NHTSA believes that manufacturers whose buses do not already meet ECE R.66 will need to make structural design changes to their large bus models either by changing the strength of the sidewall and glazing frame material or the material's physical properties or dimensions (*i.e.,* thickness or width). Per the results of our test program conducted in support of this rulemaking, newer buses may need stronger side pillars to meet the glazing retention requirements, and redesigned latch mechanisms on roof exits and side window exits to ensure that they do not release during the impact. However, Van Hool already manufactures buses for the European market, therefore Van Hool should already have a good foundation for the ECE R.66 requirements. Research and development time should be less for manufacturers who already have a solution developed for the ECE R.66 requirements. No other bus manufacturer requested an extension for the compliance date, including manufacturers who do not currently produce buses for the European market or comply with ECE R.66. NHTSA is not convinced by ABC and Van Hool's argument for a later compliance date due to financial hardship and supply chain delays during the COVID pandemic because no other manufacturer requested such an extension in the compliance date, even though they were also affected by the pandemic. We believe that any design and manufacturing changes to comply with FMVSS No. 227 can be done within 3 years. Therefore, NHTSA declines to extend the lead time for the final rule.

IV. Correction

While reviewing the final rule, NHTSA noticed a section reference in the regulatory text that needs to be updated. During development of the final rule, paragraph S6.3 of the regulatory text was renamed S7. Subsequently, S6.3.1 through S6.3.6 were renamed S7(a) through S7(f). In S6.1.4, there is a reference to what was originally named S6.3.1 but was not updated to reference the newly named S7(a). The agency is correcting S6.1.4 to change a reference from S6.3.1 to S7(a).

V. Rulemaking Analyses and Notices

Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Rulemaking Procedures

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's administrative rulemaking orders and procedures. This rulemaking was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has also been determined to be not of ''special note to the Department'' under DOT Order 2100.6A.

This document makes a minor adjustment to the definition of ''transit bus,'' and slightly revises the maximum allowable weight of objects intruding into the survival space during the rollover test. The minimal impacts of today's amendment do not warrant preparation of a regulatory evaluation.

Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of E.O. 13609 provides, in part: The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent

[32] The uncertainties that Van Hool listed in their petition include coefficient of friction between load packages and vehicle construction, coefficient of friction between load packages, load package storage conditions, stability of stacked load packages, impact uncertainties of load packages during the test, and size/form/hardness of the load packages.

[33] 86 FR 74293.

unnecessary differences in regulatory requirements.

As mentioned in this preamble, the agency has considered regulatory approaches taken by foreign governments (namely, the European Union in ECE R.66) and decided to base FMVSS No. 227 on ECE R.66. In addition to the goal of reducing unnecessary differences in regulatory requirements between the U.S. and its trading partners, the agency has found the ECE R.66 test to be the most suitable test available for ensuring a minimum reasonable level of protection for passengers traveling in buses that are associated with the highest crash risk. While NHTSA has determined that it is not able to adopt the entirety of ECE R.66 and has adjusted the weight of objects allowed to enter the survival space, which is not in ECE R.66, the agency has explained its rationale for its decisions in the relevant sections of the December 29, 2021, final Rule (86 FR 74270).

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). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Per 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, manufacturers of the vehicles covered by this rule fall under North American Industry Classification System No. 336111, Automobile Manufacturing, which has a size standard of 1,000 employees or fewer. NHTSA estimates that there are 26 manufacturers of these types of vehicles in the United States (including manufacturers of motorcoaches, cutaway buses, second-stage motorcoaches, and other types of large buses covered by this rule). Using the size standard of 1,000 employees or fewer, we estimate that approximately 10 of these 26 manufacturers are considered small businesses.

I certify that this final rule will not have a significant economic impact on small entities. The amendments made to the original final rule do not directly result in any increased costs to the manufacturers. The amended transit bus definition results in fewer buses needing to comply with the final rule, but NHTSA believes the number of affected buses would be small. Increasing the mass limit of objects permitted to enter the survival space from 15 grams to 60 grams permits more fragments to enter the survival space, but the 60-gram limit still ensures that injurious items are not permitted in the survival space.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to E.O. 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant either consultation with State and local officials or preparation of a federalism summary impact statement. The rule does not have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government.''

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision that when a motor vehicle safety standard is in effect under this chapter, a State or a 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 standard prescribed under the chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State common law tort causes of action by virtue of NHTSA's rules—even if not expressly preempted.

This second way that NHTSA rules can preempt is dependent upon the existence of an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer—notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to E.O. 13132, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation.

To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this final rule and does not foresee any potential State requirements that might conflict with it. NHTSA does not intend that this final rule preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by this rule. Establishment of a higher standard by means of State tort law would not conflict with the standard issued by this final rule. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Unfunded Mandates Reform Act (UMRA)

The UMRA of 1995 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 annually (adjusted annually for inflation, with base year of 1995). This final rule will not result in expenditures by State, local or Tribal Governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act (NEPA)

NHTSA has analyzed this final rule for the purposes of the NEPA. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of E.O. 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Paperwork Reduction Act (PRA)

Under the PRA of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This rulemaking action would not establish any new information collection requirements.

National Technology Transfer and Advancement Act (NTTAA)

Under the NTTAA of 1995 (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.

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 International Organization for Standardization and the Society of Automotive Engineers. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no voluntary consensus standards applicable to this final rule that have not been previously discussed in the December 29, 2021 final rule.

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 isn't 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 the rule easier to understand?

If you have any responses to these questions, please write to us with your views.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements, Rubber and rubber products.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

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 1.95.

■ 2. Section 571.227 is amended by:
■ a. Revising the definition of ''Transit bus'' in S4;
■ b. Revising S5.1(a); and
■ c. Revising the introductory text of S6.1.4.

The revisions read as follows:

§ 571.227 Standard No. 227; Bus rollover structural integrity.

* * * * *

S4. * * *

Transit bus means a bus that is equipped with a stop-request system sold for public transportation provided by, or on behalf of, a Federal, State, or local government and that is not an over-the-road bus.

* * * * *

S5.1 * * *

(a) Items separated from the vehicle and with a mass less than 60.0 grams that enter the survival space will not be considered for this evaluation of survival space intrusion.

* * * * *

S6.1.4 The tilting platform is equipped with rigid wheel supports on the top surface as illustrated in Figure 3 of this section (figure provided for illustration purposes only). At each vehicle axle, the wheel closest to the platform's axis of rotation is supported. The rigid wheel supports are positioned to make contact with the outboard tire sidewall of the supported wheels with the vehicle positioned as specified in S7(a) to prevent sliding of the vehicle during the test. Each rigid wheel support has the following dimensions:

* * * * *

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.95.

Ann Carlson,

Acting Administrator.

[FR Doc. 2023–24381 Filed 11–9–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230316–0077; RTID 0648–XD519]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; 2023 Management Area 1A Possession Limit Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and