

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Environmental Impact Statement: Iron County, UT**

**AGENCY:** Federal Highway Administration (FHWA), DOT

**ACTION:** Notice of termination.

**SUMMARY:** The FHWA is issuing this notice to advise the public that the effort to prepare an Environmental Impact Statement (EIS) for transportation improvements to Cross Hollow Road, from I-15 to SR-56, located in Cedar City, Utah, will be terminated.

**FOR FURTHER INFORMATION CONTACT:**

Sandra A. Garcia-Aline, Transportation Engineer, FHWA, Utah Division, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118, Telephone (801) 963-0182; or Daryl Friant, Utah Department of Transportation (UDOT), 1345 South 350 West, Richfield, UT 84701, Telephone (435) 893-4714.

**SUPPLEMENTARY INFORMATION:** The FHWA in cooperation with the UDOT and Cedar City have elected to terminate efforts to prepare an EIS for transportation improvements on Cross Hollow Road between I-15 and SR-56. The Notice of Intent for this project was originally published on March 10, 2005. Cedar City has recently elected not to use federal funds on the project. Therefore, no federal funds or federal action will be required for the revised project. The FHWA, in conjunction with the Utah Department of Transportation, has decided to discontinue efforts on this project. If you have any questions regarding the revised Cross Hollow Road project or would like to provide scoping comments, please contact Tamerha Maxwell, UDOT Project Manager, at (435) 865-5511.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Sandra A. Garcia-Aline,**

*NEPA Manager, Federal Highway Administration, Salt Lake, Utah.*

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**BILLING CODE 4910-22-M**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Notice of Final Federal Agency Actions on Proposed Highway in Ohio**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

**SUMMARY:** This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project which would relocate U.S. 33 from Haydenville in Hocking County to Doanville in Athens County in the State of Ohio. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 31, 2006. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Snyder, P.E., Environmental Program Manager, Federal Highway Administration, 200 North High Street, Columbus, Ohio, 43215; telephone: (614) 280-6852; e-mail: [David.Snyder@fhwa.dot.gov](mailto:David.Snyder@fhwa.dot.gov); FHWA Ohio Division Office's normal business hours are 8 a.m. to 4:30 p.m. (eastern time). You may also contact Mr. Tim Hill, Ohio Department of Transportation, 1980 West Broad Street, Columbus, OH 43223; telephone: (624) 644-0377.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Ohio: U.S. Route 33, from Haydenville in Hocking County to Doanville in Athens County in the State of Ohio. The project will be a 9 mile long, four-lane divided controlled access highway on new location, also known as the Nelsonville Bypass Project. It will begin northwest of Nelsonville adjacent to Haydenville. It will then proceed in a northeasterly direction north of Nelsonville and south of Buchtel. It will end at Doanville which is located just northwest of New Floodwood, tying back into the existing 4-lane divided U.S. Route 33

approximately 1.2 miles east of SR691. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on June 30, 2005, in the FHWA Record of Decision (ROD) issued on August 19, 2005, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Ohio Department of Transportation at the addresses provided above. The FHWA FEIS and ROD can be viewed at the Nelsonville Public Library, the Athens and Hocking County Engineer's offices, the Athens and Hocking County Commissioners' offices, the Nelsonville City Manager's office, and the Hocking College President's office.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act, 42 U.S.C. 7401-7671(q).
3. Land: Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601-4604; Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), [23 U.S.C. 319]; National Forest Management Act (NFMA) of 1976 [16 U.S.C. 1600-1614].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)], Migratory Bird Treaty Act [16 U.S.C. 703-712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-111]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].
7. Wetlands and Water Resources: Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)-300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401-406; Wild and Scenic Rivers Act, 16 U.S.C.

1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(l)(1).

Issued on: January 25, 2006.

**Dennis A. Decker,**

*Division Administrator, Columbus, Ohio.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22970; Notice 2]

#### Les Entreprises Michel Corbeil Inc., Denial of Petition for Decision of Inconsequential Noncompliance

Les Entreprises Michel Corbeil Inc. (Corbeil) has determined that certain school buses that it produced in 2004 do not comply with S5.1 of 49 CFR 571.221, Federal Motor Vehicle Safety Standard (FMVSS) No. 221, “School bus body joint strength.” Pursuant to 49 U.S.C. 30118(d) and 30120(h), Corbeil has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, “Defect and Noncompliance Reports.” Notice of receipt of the petition was published, with a 30 day comment period, on November 23, 2005 in the **Federal Register** (70 FR 70914). NHTSA received no comments.

Affected are a total of approximately 295 school buses produced between May 3, 2004 and June 4, 2004. S5.1 of FMVSS No. 221 requires that:

\* \* \* each body panel joint \* \* \* when tested in accordance with the procedure of S6, shall hold the body panel to the member to which it is joined when subjected to a force of 60 percent of the tensile strength of the weakest joined body panel determined pursuant to S6.2.

The longitudinal roof joint on some of the subject school buses fails when tested according to the requirements of S5.1.

Corbeil believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Corbeil states that during the period of production of the subject school buses, “the production used expired glue.” Corbeil estimates that 61 of the 295 buses could be affected, based on the number of expired glue cartridges that were used.

Corbeil further states:

\* \* \* repairs could affect the structural integrity of these buses’ roofs. If we proceed with repairs, we must remove the actual MS polymer strips on the roof to reach the joints. This operation requires us to preheat (300–600 °F) the MS polymer strip (will soften the MS polymer) but at the same time will cause a significant urethane chemical modification and will affect the actual joint strength. The roof joint is composed of urethane glue and this glue will be affected if the temperature is higher than 194 °F \* \* \*. If our educated estimate is that only 61 buses on (sic) the 295 buses involved in this recall are affected, however they cannot be individually identified. Also, during the test, the transverse joint succeeded at 116% of the requirement and the longitudinal joint failed only by 9% with 91% of the requirement. The objective of this recall is to increase the strength of the joint. We presently suspect that a retrofit could affect/damage the roof rather to (sic) reinforce the joint.

Corbeil states that no accidents or injuries have occurred as a result of this noncompliance.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety.

With respect to the margin of noncompliance, Corbeil argues that the failing school bus joint reached 91 percent of the load required by the standard. In the petitioner’s opinion, not meeting the requirement by 9 percent of the required load is inconsequential to motor vehicle safety. The agency disagrees. A significant injury-producing characteristic of school bus crashes is exposure to sharp metal edges that occurs when body panels become separated from the structural components to which they have been fastened. In a crash, severe lacerations may result if the occupants of the bus are tossed against these edges.

Moreover, if panel separation is extensive, the occupant may be ejected from the vehicle, significantly increasing the possibility of serious injury. This standard is intended to reduce the likelihood of this type of injury by requiring that body joints on school buses have a minimum tensile strength equal to 60 percent of the tensile strength of the weakest joined body panel. Therefore, NHTSA believes that failure to meet the performance requirements of the standard is directly consequential to the safety of our school children.

With respect to the number of vehicles that are noncompliant, Corbeil states that it believes only 61 of the 295 school buses of the model tested by the agency are noncompliant. However, 49 U.S.C. 30112 prohibits the manufacturing, selling and importing of any noncompliant vehicles. The FMVSSs are designed to afford equal protection to all who use these vehicles, and therefore the number of noncompliant vehicles is not relevant to the effect on safety.

Corbeil also states that it suspects that its proposed remedy could compromise the integrity of the roof joints due to the heating required to remove the sealant. If Corbeil’s proposed repair remedy would actually further weaken the school bus body joints, and therefore result in the vehicles still not meeting the requirements of FMVSS No. 221, it would not be an acceptable remedy under the statute. 49 U.S.C. 30120(a) requires that a manufacturer remedy a noncompliance by either repairing, replacing or repurchasing the noncompliant vehicle.

However, we think that Corbeil’s concerns about the one repair method it suggests are misplaced. The agency is aware of several cases where school bus manufacturers have brought similar noncompliant vehicles with inadequate body joint strength into compliance with FMVSS No. 221 by the addition of mechanical fasteners. In these cases, the additional fasteners brought the vehicles into compliance without reliance upon any other fastening method, such as adhesive. Corbeil is responsible for determining an appropriate remedy for the noncompliance. However, as discussed, other options may be available that remedy the noncompliance without compromising the integrity of the structure. In any event, Corbeil’s proposed remedy is not relevant to determining whether or not the noncompliance is consequential to safety.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion