

described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) because it proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have federalism implications because it 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, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the Federal Government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001), because it is not a significantly regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060-0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with

applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: October 16, 2001.

David A. Ullrich,

Deputy Regional Administrator, Region V.

[FR Doc. 01-26677 Filed 10-19-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390, 391, 392, 393, 395, and 396

[FMCSA Docket No. FMCSA-2000-7174]

RIN 2126-AA53

Interstate School Bus Safety

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FMCSA requests comments on whether to extend the applicability of the Federal Motor Carrier Safety Regulations (FMCSRs) to all interstate school transportation operations (thus excluding home-to-school or school-to-home transportation) by local governmentally-operated educational agencies. This action responds to section 4024 of the Transportation Equity Act for the 21st Century (TEA-21) which directs the FMCSA to determine whether the FMCSRs should apply to these operations. The FMCSA requests comments, data, and information to assist the agency in making the determination.

DATES: Comments must be received on or before January 22, 2002.

ADDRESSES: You can mail, fax, hand deliver, or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Document Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. The fax number is (202) 493-2251. You can comment to the Web site (<http://dmses.dot.gov/submit>). You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. You may also review the docket on the Internet at <http://dms.dot.gov>. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Philip J. Hanley, Jr., Office of Bus and Truck Standards and Operations, (202) 366-6811, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., et., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The ANPRM responds to section 4024 of the TEA-21 (Pub. L. 105-128, 112 Stat. 107, at 416), which directs FMCSA to initiate a rulemaking proceeding on whether or not the FMCSRs should apply to all interstate school transportation operations by local

educational agencies. The definition of the term "local educational agency" at 20 U.S.C. 8801(18) is applicable to Sec. 4024:

(A) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(B) The term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs but only to the extent that such inclusion makes such school eligible for programs for which specific eligibility is not provided to such school in another provision of law and such school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this chapter with the smallest student population, except that such school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

The FMCSA must determine whether Federal regulatory involvement in interstate school bus transportation operations by local educational agencies is necessary to enhance the safety of those passengers and that of the general public. The FMCSA is also considering whether the interstate transportation (other than home to school and school to home) by all governmental educational entities such as public universities should be subject to the FMCSRs.

At present, there are two exceptions in the FMCSRs relating to school bus operations. The first (49 CFR 390.3(f)(1)) exempts all school bus operations, whether by a for-hire carrier of passengers operating under a contract with the educational agency or local educational agencies, that transport only school children and/or school personnel from home to school and from school to home. This exception originated from section 206(f) of the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98-554, 98 Stat. 2832) formerly codified at 49 U.S.C. 31136(e)(1) which specifically directed the Secretary of Transportation (Secretary) to waive application of the regulations issued under section 206 with respect to school buses, unless the Secretary determined that making such regulations applicable to school buses was necessary for public safety taking into account all Federal and State laws

applicable to school buses. This statutory language was subsequently repealed by section 4007(c) of the Transportation Equity Act for the 21st Century (TEA-21) in 1998. However, section 4007(d) provided that amendments made by 4007 shall not apply to or otherwise affect a waiver, exemption, or pilot program in effect on the date of enactment of TEA-21. In 1988, the agency indicated that the transportation of school children and school personnel from home to school and back again involved problems which are common to the States, and which, in accordance with the then-current Executive Order on Federalism (Executive Order 12612), could best be left to the individual States (see 53 FR 18043, May 19, 1988).

The second exception is contained in 49 CFR 390.3(f)(2), which makes transportation by a government entity exempt from the FMCSRs. This exemption also originated from section 206 of the MCSA, which specifically authorized the Secretary to waive application of the regulations to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of CMVs. Although safety on the public highways is an area that must not be compromised, the FMCSA has historically exempted some segments of transportation. Transportation by government entities has been one such segment.

Currently, some pupil transportation for school-related purposes (e.g., field trips) may be subject to the FMCSRs. One example is where a private school or contractor transports passengers in a commercial motor vehicle (CMV) across a state line outside the scope of home to school and school to home. These operations are subject to the applicable provisions of 49 CFR parts 350-399 of the FMCSRs.

At the present time, most school bus drivers, including those employed by private schools, contractors, and educational agencies, are subject to the commercial driver's license requirements in 49 CFR part 383 and the drug and alcohol requirements in 49 CFR part 382 because most medium to large school buses meet the regulatory definition of a CMV (i.e. designed to transport 16 or more passengers, including the driver). School bus drivers are required to hold a commercial driver's license, and their employers are required to have a controlled substances and alcohol testing program for the drivers.

Under this ANPRM, the FMCSA is considering holding the educational

agencies to the same standards that the private schools and contractors are required to meet when operating in interstate commerce in other than home to school and school to home-type operations. Examples of these standards include qualifications of drivers, hours of service, and maintenance of vehicles.

The primary goal of the FMCSRs is to promote the safe operation of CMVs. The goal of the FMCSA's Passenger Carrier Safety Program is to reduce bus crashes and thereby decrease fatalities, bodily injuries and property losses. School bus operations are distinguished from other types of passenger transportation operations because of their highly specialized type of service. For the most part, the operation of a school bus entails the transportation of school children and/or school personnel from home to school and school to home. This type of transportation generally involves the regularly scheduled operation of school buses into and through residential, rural, and business areas, which collectively encompass a relatively small geographic area within the confines of a single State. The routes are, in most circumstances, predetermined and of a "stop and go" nature during specific morning and afternoon hours. The other users of the highways have generally come to expect and accept the "stop and go" operations of school buses during those specific hours of operation.

When transporting children, school personnel and (sometimes) parents on other kinds of trips, school buses often travel the same highways "many of them high-speed arteries" that are used by large CMVs. The speeds that are maintained are considerably greater than those attained in "stop and go" pickup or drop-off operations. The actual time spent driving is generally greater, as is the possibility of fatigue.

The FMCSA is aware that some local jurisdictions and/or school systems have imposed specific requirements on drivers who transport school children. The FMCSA believes that most States have established programs to review the qualifications of school bus operators and the maintenance of school bus vehicles involved in home-to-school and school-to-home movements. The FMCSA is interested in obtaining information about the present extent of safety oversight of school bus operations by local educational agencies. The FMCSA requests States, counties, and localities to submit information about their safety standards and oversight programs to the docket. The FMCSA is primarily interested in the safety standards concerning driver qualification, vehicular parts and

accessories, hours-of-service controls, and vehicular inspection, repair, and maintenance. Public comment on the issues raised in this ANPRM will assist the FMCSA in determining whether any further regulatory action is required.

Discussion of Government Crash Data

The FMCSA has reviewed the current data from the National Highway Traffic Safety Administration's Fatal Analysis Reporting System (FARS) and General Estimates System (GES) for 1998 and 1999. The data is located in the docket for this ANPRM. The FARS shows there were 111 school buses involved in a fatal crash in calendar year 1998. There were 303 school bus occupants on these 111 school buses and 4 of these occupants were killed. The FARS shows there were 138 school buses involved in a fatal crash in calendar year 1999. There were 469 school bus occupants on these 138 school buses and 8 of these occupants were killed. As the name implies, the GES contains only estimates for the number of injuries resulting from school bus crashes. The GES indicates 15,000 estimated injuries resulting from school bus crashes in 1999. The FARS and the GES do not provide a means to separate crash statistics for interstate school bus transportation or for school buses operated by local educational agencies. The FMCSA strongly encourages the submission of crash data and information involving interstate school bus transportation by local educational agencies to the docket.

Request for Comments

The purpose of this ANPRM is to gather information, data, and recommendations from a broad spectrum of commenters to assist the FMCSA in evaluating the potential safety benefits and the potential costs of making the FMCSRs applicable to interstate school bus transportation by local educational agencies. The FMCSA requests views and supporting information about whether only certain, but not all, parts of the FMCSRs should apply to interstate school bus transportation by local educational agencies. For example, a commenter might assert that the hours-of-service limitations contained in 49 CFR part 395 should apply to the interstate school bus drivers of local educational agencies, but that the driving rules in 49 CFR part 392 should not because adequate local traffic safety laws already exist. The FMCSA requests all commenters to support their positions with data and factual information.

Commenters may include in their comments to the docket discussions of

any other issues that they believe are relevant to this rulemaking. In addition, the FMCSA encourages all interested parties to respond to the specific questions posed below:

1. How many local educational agencies that operate school buses would be impacted if the FMCSRs applied to their interstate school bus transportation (but not home-to-school or school-to-home) operations, e.g., interstate class trips? How many school buses and drivers working for local educational agencies are involved in the interstate transportation? (These questions assume that the public school students are not bused across State lines in the course of home-to-school or school-to-home transportation. It is possible, however, that school districts in rural areas of adjacent States may have reciprocal agreements to accept each other's students where the closest in-State school is much farther away than a school just across the State line. If so, we would like to know where this occurs and how many students, drivers and buses are involved.)

2. What requirements of the FMCSRs are not addressed by State or local school bus safety standards? For example, to what extent do local educational agencies require their interstate school bus drivers to undergo periodic physical examinations? Is there a systematic inspection, repair and maintenance program in place for school buses?

3. Are there limits to the number of hours that a driver may operate a school bus during school-related activities (e.g., field trips, etc.)? Are there any limitations on on-duty time by local educational agencies?

4. What would be the incremental cost (if any) for local educational agencies of complying with the FMCSRs for interstate trips, over and above the safety program and regulatory compliance costs that are already expended? Keep in mind that the FMCSRs include driver qualifications, medical qualifications, hours-of-service limits, and vehicle requirements (including inspection, repair, and maintenance provisions). Please describe the nature and extent of the impact upon operations and procedures.

5. What are the potential safety benefits of applying all or selected FMCSRs to interstate school bus transportation by educational agencies? Please provide data and information to support your position.

6. Should the FMCSA require that States receiving Motor Carrier Safety Assistance Program (MCSAP) funds adopt State laws and regulations that are compatible with the FMCSRs for

intrastate school bus transportation by educational agencies?

7. If the States adopt safety standards that are equivalent to the FMCSRs for interstate school bus transportation by local educational agencies, how would they enforce them? Would more personnel be required? Please provide cost estimates if available.

8. Should the FMCSRs be applied uniformly for all providers of transportation whether they are local educational agencies, private schools, or contractors?

9. Should the FMCSRs be made applicable to all educational institutions beyond the secondary level that transport students to after-school type activities?

10. Should the FMCSA apply the FMCSRs to all interstate transportation of school children, even school-to-home and home-to-school? (see Question 1)

Rulemaking Analyses and Notices

We will consider all comments received before the close of business on the comment closing due date indicated above. We will file comments received after the comment closing date in the docket and will consider them to the extent possible.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This ANPRM is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Regulatory Flexibility Act

Due to the preliminary nature of this document and the lack of necessary information on costs, the FMCSA is unable at this time to evaluate the effects of the potential regulatory changes on small entities. Based on the information received in response to the ANPRM, the FMCSA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612) to carefully consider the economic impact of these potential changes on small entities. The FMCSA solicits comments, information, and data on these potential impacts.

Unfunded Mandates Reform Act

The FMCSA will analyze any proposed rule to determine whether it would result in the expenditure by

State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13045 (Protection of Children)

This publication is not a covered regulatory action under Executive Order 13045 because it would not affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety of State, local, or tribal governments or communities.

Executive Order 12630 (Taking of Private Property)

This publication will not affect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action will be analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, to determine if this action has federalism implications. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.

Paperwork Reduction Act

This action, if taken beyond the ANPRM stage, could have an impact on existing collection of information requirements for the purposes of the Paperwork Reduction Act of 1995 (49 U.S.C. 3501–3520). Office of Management and Budget (OMB) reviews and approvals would be required if regulatory changes were proposed and promulgated.

National Environmental Policy Act

The FMCSA is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We

expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order will be consistent with and reflect the procedures for considering environmental impacts under DOT Order 5610.1C. Due to the preliminary nature of this document and the lack of necessary information, the FMCSA is unable to evaluate the effects of the potential regulatory changes on the environment at this time.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revoked Executive Order 13084 (Tribal Consultation) as of that date. E.O. 13175 requires the DOT to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." At this time, we are only soliciting data to develop a rulemaking. Due to the preliminary nature of this document and the lack of necessary information, the FMCSA is unable to evaluate the effects of the potential regulatory changes on Indian Tribal Governments.

Issued on: October 16, 2001.

Brian M. McLaughlin,

Associate Administrator, Policy and Program Development.

[FR Doc. 01–26562 Filed 10–19–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–1999–5572; Notice 2]

RIN 2127–AG51

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

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

ACTION: Request for comments.

SUMMARY: This notice is a request for comments to assist NHTSA in upgrading the requirements of Federal Motor Vehicle Safety Standard No. 216, "Roof Crush Resistance," to reduce

injuries and fatalities in passenger cars, pickup trucks, vans and multipurpose passenger vehicles resulting from roof intrusion during rollover crashes. It asks the public for its views and comments on what changes, if any, are needed to the roof crush resistance standard. NHTSA will consider all such comments in deciding what regulatory changes, if any, may be appropriate for upgrading the standard. Concerns presented in a petition for rulemaking from the law firm R. Ben Hogan, Smith and Alspaugh requesting that dynamic testing be used to validate the strength of vehicle roof structures, instead of the current quasi-static procedure, are also addressed in this notice.

DATES: Comments on this notice must be received no later than December 6, 2001.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) website at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590: *For technical and policy issues:* Mr. Maurice Hicks, Office of Crashworthiness Standards, NPS–11, telephone (202) 366–6345, facsimile (202) 366–4329, electronic mail: maurice.hicks@nhtsa.dot.gov *For legal issues:* Ms. Nancy Bell, Office of the Chief Counsel (202–366–2992), facsimile (202) 366–3820, electronic mail: nancy.bell@nhtsa.dot.gov

SUPPLEMENTARY INFORMATION: You may read the materials placed in the docket for this notice (e.g., the comments submitted in response to this notice by other interested persons) by going to the DMS at the street address given above under **ADDRESSES**. The hours of the DMS are indicated above in the same location.

You may also read the materials on the Internet. To do so, take the following steps:

(1) Go to the Web page of the Department of Transportation DMS (<http://dms.dot.gov/>).

(2) On that page, click on "search" near the top of the page or scroll down to the words "Search the DMS Web" and click on them.