

and Regulations section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Electric utility steam generating units, Industrial-commercial-institutional steam generating units, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 3, 2001.

Christine Todd Whitman,

Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket NHTSA-99-5119, Notice 1]

RIN 2127-AH57

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards Hydraulic and Electric Brake Systems, Air Brake Systems

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

ACTION: Denial of petition for rulemaking.

SUMMARY: Schmitt and Sons School Buses (Schmitt) submitted a petition for rulemaking requesting the agency amend the Federal Motor Vehicle Safety Standards on brake systems to require that school buses with automatic transmissions that do not have a "park" position be equipped with a parking brake warning system that activates when the school bus engine is turned off, the transmission is in neutral, and the parking brake has not been applied. Based on its concern that these school buses could begin to roll while unattended if the parking brake were not engaged, the petitioner argued that such a warning system could reduce or eliminate this hazard.

We are denying the petition. Information available to the agency indicates that unattended school bus rollaways are very rare. Further, the agency believes that a warning would not likely be effective and that any risks of such incidents can best be reduced or controlled through driver training.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590:

For non-legal issues: For non-legal issues: Mr. Jeff Woods, Office of Safety Performance Standards (NPS-22), NHTSA, 400 Seventh St., SW, Washington, DC, 20590. Mr. Woods' telephone number is (202) 366-6206; facsimile (202) 366-4329, e-mail: jwoods@nhtsa.dot.gov.

For legal issues: Mr. Otto G. Matheke, III, Office of the Chief Counsel (NCC-20), NHTSA, 400 Seventh St., SW, Washington, DC, 20590. Mr. Matheke's phone number is (202-366-5263), e-mail: omatheke@nhtsa.dot.gov

SUPPLEMENTARY INFORMATION:

I. Background of Petition

On June 23, 1998, Schmitt and Sons School Buses, a company that operates school buses, submitted a petition requesting that NHTSA initiate rulemaking to require that automatic transmission-equipped school buses whose transmissions do not have a park position be equipped with a warning device to alert the driver when the parking brake is not activated, the bus is stopped with its engine off, and the transmission is in neutral. Citing several crashes in Minnesota involving school buses, two of which occurred in that company's fleet, and one of which occurred in another bus company's fleet, Schmitt contended that the risk of unintended rollaways in buses without a park position warranted the mandatory installation of warning devices to alert an operator when the parking brake is not engaged.

Prior to filing its petition, the petitioner contacted Blue Bird Body Company, a school bus manufacturer, to determine if such a system could be made available. A copy of a response from Blue Bird was enclosed with the petition. Blue Bird indicated that the warning system concept appeared to have merit.

However, that manufacturer cited several concerns with the concept. Its primary concern was that incorporation of the warning system on (new) vehicles would result in inconsistencies in the fleet; i.e., newer vehicles would prompt the driver to apply the parking brake, while older ones would not. Blue Bird suggested that if a driver became accustomed to being prompted to apply the parking brake in a vehicle equipped with the warning system, the driver might forget to apply the parking brake when operating a vehicle not equipped with the warning system. Blue Bird's reply also mentioned other potential problems, including the increasing proliferation of warning devices, which could result in driver dependence and/or confusion; difficulties with integrating the proposed system with

other warning devices; and the need to deactivate the system after some preset time to prevent battery drain. In addition, Blue Bird indicated that implementation of the warning system would also need to be accompanied by an extensive publicity and driver training program to familiarize drivers with the new system.

Blue Bird stated that, because of these concerns, it would not make such a warning system available as standard equipment or as optional equipment. Blue Bird suggested that the school bus operator petition NHTSA to require such a system on all medium and heavy vehicles, so that appropriate research and study could be conducted, and public comment could be obtained prior to such a system's being introduced.

II. Existing Federal Brake Requirements

A number of Federal motor vehicle safety standards establish requirements for brakes, parking brakes, and brake controls and warning systems. Standard No. 105, Hydraulic and Electric Brake Systems, requires each vehicle with a gross vehicle weight rating (GVWR) of 10,000 lbs. (4536 kg) or less, and each school bus with a GVWR greater than 10,000 lbs., to be equipped with a friction-type parking brake system, with a solely mechanical means to retain engagement (S5.2). The standard requires the parking brake for a passenger car or a school bus with a GVWR of 10,000 lbs. or less to hold the vehicle on a 30 percent grade (up to the limit of traction on the braked wheels). As an option, the standard permits a passenger car or school bus with a GVWR of 10,000 lbs. or less, equipped with a transmission that includes a parking mechanism, to rely on the parking mechanism in meeting the 30 percent grade holding requirement for the vehicle, if the parking mechanism must be engaged to enable the ignition key to be removed (S5.2.2.1). If this option is used, there is a separate requirement for such vehicles to meet a 20 percent grade holding requirement with the parking brakes engaged and the parking mechanism disengaged (S5.2.2.2). The transmission parking mechanism is then subjected to a 2½-mph barrier impact test on level ground, which requires that the parking mechanism not become disengaged or fractured. In the context of these tests and requirements, the parking mechanism is a supplemental parking aid and is not the primary source of grade holding ability.

The parking brake system on a school bus with a GVWR greater than 10,000 lbs. must be capable of holding the vehicle stationary for five minutes on a

20 percent grade (S5.2.3). This grade holding requirement also applies to trucks, multipurpose passenger vehicles, and buses, other than school buses, with a GVWR of 10,000 lbs. or less.

There is a supplemental requirement in Standard No. 114, Theft Protection, that requires passenger cars, trucks, and buses with a GVWR of 10,000 lbs. or less, equipped with an automatic transmission with a park position, to meet a 10 percent grade holding test (S4.2.1(b)) when the key has been removed and the transmission is locked in the park position. Standard No. 135, Light Vehicle Brake Systems, which is currently optional and will be mandatory for all multipurpose passenger vehicles, trucks, and buses with a GVWR of 7,716 lbs. (3500 kg) or less, manufactured on or after September 1, 2002, requires a 20 percent grade holding ability using the parking brake with the vehicle at GVWR, and does not address the use of transmission parking mechanisms.

Standard No. 121, Air Brake Systems, which applies to trucks, buses (including school buses), and trailers equipped with air brakes, requires a 20 percent grade holding ability with the vehicle both empty and at GVWR or, optionally, a static retardation force test may be used which incorporates requirements based on GVWR or gross axle weight rating (GAWR) depending on vehicle type. This standard also does not address the use of transmission parking mechanisms.

Additional requirements are included in Standard Nos. 105 and 135 for visual warning indicators (brake light) to indicate that the parking brake is engaged. Both standards include requirements for maximum force levels in applying the parking brake mechanism for the grade holding tests. Standard No. 121 includes requirements for parking brake application controls that are separate from the service brake control, and includes parking brake application and release timing requirements. It also specifies parking brake performance requirements with certain system failures.

Standard No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect, requires that, if a park position is included in the automatic transmission shift lever sequence, the park position shall be located at the end of the shift lever sequence adjacent to the reverse drive position (S3.1.1). This shift pattern is provided universally on light vehicles equipped with automatic transmissions, either using a steering column shifter or a shifter located on the floor console.

III. Request For Comments

To assist in evaluating the Schmitt petition, NHTSA published a Request for Comments in the **Federal Register** on March 1, 1999 (64 FR 9961) (DOT docket #99-5119) indicating that the agency wished to obtain further information on the magnitude of the safety problem and the potential effectiveness of a warning system. The Notice outlined the parking brake and related requirements in Standard No. 105, Standard No. 121, Standard No. 114, and Standard No. 135, and included an analysis of data available to NHTSA regarding the frequency and safety consequences of rollaways. Questions seeking responses on the frequency of rollaway incidents, the increased use of automatic transmissions, the availability of park gears or automatic parking brakes, driver training, and the efficacy and design of warning systems were incorporated in the notice.

IV. Comments

Eight comments were submitted in response to the March 1, 1999 notice. These comments were submitted by: two school bus operators, Katy Independent School District (Katy) and Rochester City School District (Rochester); three vehicle manufacturers, Thomas Built Buses (Thomas), Navistar International Corp. (Navistar) and General Motors (GM); two trade associations, the Truck Manufacturers Association (TMA) and the American Trucking Association (ATA); and one brake system manufacturer, AlliedSignal Truck Brake Systems Co. (AlliedSignal).

The majority of the commenters said that no real safety need for such a warning system presently exists. In addition, the commenters were concerned that the addition of another warning system would not necessarily be beneficial or effective and could lead to driver confusion. The commenters indicated that the number of school buses equipped with automatic transmissions that do not have the "park" position found in automobiles, light trucks and MPVs, would continue to increase. Most commenters believed, however, that the risk of rollaway incidents would better be met through increased driver training.

Four of the commenters provided information on the frequency and consequences of roll aways. Katy indicated that one school bus roll away occurred in 1989. In that case, a parked and empty bus rolled down a grade and crashed into a guard shack. There were

no injuries. Thomas reported that it was aware of two crashes involving school buses rolling due to their parking brakes not being set. In one case, it was reported that a passenger released the parking brake. In the other case, no additional information was provided. Navistar stated that it has no knowledge of vehicles, either school buses or medium trucks, rolling away due to the driver neglecting to set the parking brake after shutting off the engine. No other commenters reported any roll away incidents.

Other comments were related to the increasing use of automatic transmissions in school buses and the potential consequences of this trend. Rochester indicated that its school bus fleet is entirely equipped with automatic transmissions and it has not had any roll away incidents. Thomas indicates that over the last five years, 95 percent of their school bus production has been equipped with automatic transmissions without a park feature. Thomas believes that the trend away from manual transmissions has not increased roll away incidents. Navistar stated that it appears the use of automatic transmissions has not spurred a trend toward roll away incidents. ATA stated that although they do not address school bus operations, many of the vehicles used in general trucking have engines, transmissions, and brakes similar to those used for school buses. The organization opined that the very fact that motor carriers have no statistics on this type of crash is an indication that there are very few such crashes, and that their members say that such problems are very rare. ATA also argued that the trend toward automatic transmissions will not significantly affect the likelihood of roll away incidents, as drivers that switch from manual to automatic transmissions would be required to learn the new system including how to properly park the vehicle.

All of the commenters indicated that the installation of automatic transmissions is likely to continue to the point at which manual transmission equipped buses will become a rarity. Rochester indicated that all of its buses are equipped with automatic transmissions. In addition to the comments noted above, GM reported that for its B7 bus chassis, which is produced with a GVWR range of 23,100 to 29,000 lbs., approximately 80 percent of the vehicles produced in the last three years have been equipped with automatic transmissions without parking pawls. GM expects this number to hold fairly steady in the foreseeable future. Navistar stated that

approximately 91 percent of its school bus chassis are equipped with automatic transmissions. The commenters indicated that while the number of school buses equipped with automatic transmissions was increasing, it was not likely that these transmissions would incorporate a park position. Rochester said it believed that the addition of a parking pawl in heavy-duty transmissions would be extremely difficult. The heavy vehicle weight would require a large pawl, and there is no room inside existing transmissions for such a pawl. Thomas indicated that one automatic transmission manufacturer, Allison, is developing heavy-duty transmissions with parking pawls. However, Thomas does not currently use any in production. Thomas further stated that it manufactured over 200 buses with a system that automatically shifted the transmission into neutral and applied the parking brake when the gear selector was placed in the "park" position; however, this system had many service problems and was removed from the marketplace.

GM stated that it will begin offering, as an option, an automatic transmission which incorporates a parking pawl on some chassis with a GVWR of up to 26,000 lbs. However, GM submitted that the majority of chassis used in completing buses are over 26,000 lbs. GVWR. Thus, a relatively small percentage of its buses will be equipped with parking pawls in the foreseeable future. GM does not have any plans to offer automatic parking brake application systems in school buses. Navistar indicated that it is not considering incorporating parking pawls in large automatic transmissions. It also stated that automatic parking brake systems are currently available with a dual neutral automatic transmission design; however, this option is rarely used. Other variations on these types of systems are being considered.

ATA indicated that a park feature will be incorporated in larger, torque converter equipped automatic transmissions, but not for automatic transmissions used in the heaviest trucks. According to ATA, parking pawls are not practical for heavy truck use since they would be required to resist "tens of thousands of pounds" of force when a truck is parked on a grade, which also would make them difficult to release. ATA provided other reasons why parking pawls cannot or should not be relied upon for parking trucks including combination vehicles (tractor-trailers).

A large number of the commenters also considered the effectiveness and

potential consequences of a parking brake application warning signal. Katy stated that a visual or auditory signal would be just one more addition to a bus environment that has too many distractions.

Thomas also indicated a concern that an additional warning device could cause driver confusion due to the multiple warning devices already present in school buses. In addition, Thomas was concerned that this confusion would be magnified when drivers switch between vehicles having a warning system and vehicles lacking one. In its comments, GM voiced doubts that drivers would rely on the warning system. However, GM stated that proliferation of warning devices is not an issue and further indicated if an identified safety justification for the parking brake warning system exists, then a warning device would be suitable for school buses equipped with either automatic or manual transmissions. Unlike GM, Navistar stated that there is the possibility of confusion if a vehicle contains several warning systems. Also, Navistar warned that even if a vehicle equipped with the parking brake warning system were not shifted into neutral, the warning system would not activate, allowing rollaway to occur. The company stated that the potential to forget to apply the parking brake is probably equal for either a manual or automatic transmission. AlliedSignal indicated that warning systems can confuse drivers because of the variants in warning systems of different vehicles and noted that many vehicles with hydraulic brakes are already equipped with a visual indication that the parking brake has been applied. Therefore, an additional warning for the parking brake warning system would need to be both visual and audible. ATA argued that the proposed warning system would not always be effective, such as when the vehicle is parked with the engine running, and stated that if a driver becomes accustomed to the warning system, then there is the possibility that it will lose effectiveness.

The commenters were nearly unanimous in their view that driver training is an effective means for addressing unintended roll aways. Rochester stated that driver training is the area that needs attention. Thomas indicated that unless there is a large population of roll away cases that can be used to define the issue in detail, driver training would be an important countermeasure. Navistar submitted that greater emphasis on the driver training aspects of parking brake application could have some unmeasured benefit. AlliedSignal suggested that an

informational campaign could help vehicle operators understand that the park position on an automatic transmission is not the parking brake. ATA stated that training is important regardless of whether there is a parking-brake-off warning system or not.

However, GM indicated that it did not believe that training would be a useful countermeasure. In GM's view, school bus drivers in the U.S. receive extensive training including annual training updates and capability assessments. Therefore, GM suspects that drivers who neglect to apply the parking brake do so through forgetfulness instead of lack of knowledge.

A number of commenters voiced their opposition to augmenting or replacing a warning system with a system that automatically applies the parking brake on school buses whenever the ignition is turned to "lock" or the key is removed. Thomas stated that such a system would not be a fail safe system, and a system that would be activated when the key is removed would be difficult to design and build. Thomas was concerned that an automatic parking brake system could malfunction at the worst time, for example, on a railroad crossing. Also, if such a vehicle were equipped with an override system, that feature could defeat the purpose of the automatic system. GM indicated that it would not support a requirement for an automatic parking brake system. GM believes that there are practicality, durability, performance and cost reasons for not adopting any requirement for automatic parking brakes on school buses. Navistar was concerned that an automatic parking brake system could accidentally activate while the vehicle is in motion, resulting in a loss of vehicle control. AlliedSignal stated that an automatic parking brake system would be acceptable, provided that the system could not activate while the vehicle was in motion. ATA indicated that an automatic parking brake system would not be acceptable. In the case of hydraulic-braked vehicles, a series of wires, switches, linkage, and a motor would be needed to activate the mechanical parking brake, which would add to vehicle complexity and reduce reliability. Also, an automatic parking brake system would not permit the driver to park intentionally without applying the parking brake, as is sometimes done in freezing weather when brake components are wet to prevent parking brake freeze-up. An override switch would be needed with an automatic parking brake system to prevent the freeze-up problem, to permit towing, and to perform brake system maintenance.

In response to an agency inquiry regarding expanding the application of a warning system requirement to include vehicles other than school buses, Thomas stated that the roll away problem is so small that it was difficult to determine if such an expansion could be justified. TMA believed that sufficient data do not exist to justify a warning system requirement for either school buses or medium and heavy-duty trucks. GM submitted that NHTSA's regulatory decision-making should be driven by objective data and any warning system requirement should be instituted only if data show a safety need and the warning system is demonstrated to be an effective countermeasure. ATA stated that parking-brake-off warning system should not be mandated for medium and heavy-duty commercial vehicles.

V. Analysis

Examination of agency data and the comments submitted in response to the March 1, 1999 notice indicate that school bus roll away incidents are very rare. The petitioner submitted evidence of two roll aways in its petition. Comments received in response to the March 1999 notice refer to two additional roll away incidents, with no specific details on whether the involved school buses were equipped with air or hydraulic brakes, or manual or automatic transmissions. The coding schemes for the General Estimates System (GES) and Fatality Analysis Reporting System (FARS) databases of property damage and injury-or fatality-producing crashes are not suitable for identifying roll away crashes due to failure to apply the parking brakes. However, a search of the NHTSA's defects investigation complaint database revealed one complaint involving a roll away that may have been related to a failure to engage the parking brake. Therefore, there are five reported roll away incidents dating back to 1989. One of these incidents resulted in unspecified injuries to students.

The small number of reported incidents over the past decade indicates that the safety risk posed by school bus roll aways stemming from failure to use the parking brake is very small. The agency believes that there is not a safety need sufficient to justify adopting a requirement that all school buses be equipped with a parking brake warning system. Moreover, the effectiveness of a parking brake warning system has not been demonstrated. As indicated by several commenters, there is a potential for the system not to be effective in certain situations, such as when parking when the engine is running. The

petitioner did not provide any information regarding data or studies that show such a warning system would be effective, and the agency is not aware of any research on this issue.

The agency is also concerned that requiring either an audible or visual warning or both would not be the most effective countermeasure. As one of the commenters indicated, the effectiveness of any warning is affected by operator training. The commenters suggested that driver training would be a more effective countermeasure than warnings. In the absence of training, warnings may simply be disregarded or unconsciously ignored.

In 1999, NHTSA's Office of Traffic Safety Programs released an extensive school bus driver training program to assist school bus operators in training their drivers. The program was developed with the expertise and support of fifteen groups including federal agencies, pupil transportation providers, and school districts. There are seven training modules in the program, including Driver Attitude, Student Management, Highway-Rail Grade Crossing Safety, Vehicle Training, Knowing Your Route, Loading and Unloading, and Transporting Infants and Toddlers. In the Vehicle Training module, there is an entry entitled "Manual versus Automatic," which, in a properly-administered training program, would include a thorough discussion of the lack of a parking position on large school bus automatic transmissions. Part 5 of the module, or *If no lookout is available*, includes the sequence of actions to be taken by the driver before backing up a bus: first, set the parking brake; second, turn off the motor and take the keys with you; and third, walk to the rear of the bus to determine whether the way is clear. The agency believes that administration of such a training program would provide adequate information to the driver to learn how to properly use the parking brake.

The agency notes that GM provides such a warning system for customers who rent trucks to the general public. This feature was provided in response to many of its customers desiring this feature. However, NHTSA notes that the rental vehicles in question are below the 26,001 lbs. GVWR limit above which a commercial drivers license (CDL) is required. Thus, the operators of these vehicles, the general public, have not received the extensive training that a CDL vehicle operator must undergo. In addition, drivers of school buses that have a seating capacity of more than 16 passengers are required to have not only a CDL, but also a passenger vehicle

endorsement. Further, those drivers of school buses equipped with air brakes are also required to have an air brake endorsement on their license. Because of these substantial differences, the agency believes the benefits of a parking brake warning system would be higher for rental vehicles operated on an occasional basis by the general public than for school buses that are operated only by trained and specially-licensed school bus drivers.

VI. Conclusion

For the reasons given above, we conclude that Schmitt and Sons has not justified the need for rulemaking. The safety risk posed by the failure to use the parking brakes on school buses, which may result in unintended movement of the vehicle, is very small. The risk does not justify requiring that all school buses have a warning system to remind drivers to use the brake.

This completes the agency's review of the petition, in accordance with 49 CFR part 552. Based on the available information, we believe that there is no reasonable possibility that the actions requested by Schmitt would be taken at the conclusion of a rulemaking proceeding and that the problem alleged by Schmitt does not warrant the expenditure of agency resources to conduct a rulemaking proceeding. Accordingly, we deny Schmitt's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: April 4, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 032001C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.