

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC—Nebraska

2. In § 52.1420(e) the table is amended by:
a. Adding the entry for Nebraska Lead SIP at the end of the table, to read as follows:

§ 52.1420 Identification of plan.

* * * * *
(e) * * *

EPA-APPROVED NEBRASKA NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * *	* * *	*	*	*
Nebraska Lead Maintenance SIP	Omaha	1/18/01	4/20/01	

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

2. The table in § 81.328 entitled “Nebraska Lead” is amended to revise

the entry for Douglas County to read as follows:

§ 81.328 Nebraska

* * * * *

NEBRASKA—LEAD

Designated area	Designation		Classification	
	Date	Type	Date	Type
Douglas County (part): Portion of city of Omaha bounded by: Jones Street on the south, Eleventh Street on the west, Avenue H and the Nebraska-Iowa border on the north, and the Missouri River on the east.	4/20/01	Attainment		

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DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 571**

[Docket No. NHTSA–2001–9440]
RIN 2127–AH84

Federal Motor Vehicle Safety Standards; School Bus Body Joint Strength

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

ACTION: Final rule; delay of effective date.

SUMMARY: On November 5, 1998, NHTSA published a final rule that amended Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*, and announced an effective date of May 5, 2000 for those amendments. In a final rule published on March 6, 2000, NHTSA delayed the effective date of the November 1998 final rule to May 5, 2001, and corrected

a typographical error in the November 1998 final rule. This document delays the effective date of the final rule published on November 5, 1998 until June 1, 2002.

DATES: The final rule published November 5, 1998 (63 FR 59732) and delayed March 6, 2000 (65 FR 11751) is further delayed until June 1, 2002. This rule delaying the effective date is effective May 5, 2001. Any petitions for reconsideration of this final rule must be received by NHTSA no later than June 4, 2001.

ADDRESSES: Petitions for reconsideration should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues you may call: Mr. Charles Hott, Office of Crashworthiness Standards, at (202) 366–0247. Mr. Hott's FAX number is: (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her FAX number is: (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic

Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The purpose of Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*, (49 CFR Section 571.221) (Standard No. 221), is to reduce deaths and injuries resulting from the structural collapse of school bus bodies during crashes. Standard No. 221 establishes requirements for the strength of the “body panel joints” in school bus bodies.

Final Rule of November 5, 1998

In a final rule published on November 5, 1998 (63 FR 59732), NHTSA enhanced the applicability of Standard No. 221 and made a number of other changes. At present, Standard No. 221 applies only to school buses with a gross vehicle weight rating (GVWR) more than 4536 kg (10,000 pounds). The standard also specifies strength requirements for each “body panel joint,” currently defined as the area of contact or close proximity between the edges of a body panel and another body component, excluding spaces designed for ventilation or another functional

purpose, and excluding doors, windows, and maintenance access panels (MAPs).

The November 5, 1998 final rule extended the applicability of Standard No. 221 to school buses with a GVWR of 4536 kg (10,000 pounds) or less¹ and narrowed the exclusion of MAPs from the joint strength requirements. Except as noted below, the final rule also required panels to be attached at least at every 203 millimeters (8 inches) and required body panel joints to withstand a tensile strength of 60 percent of the tensile strength of the weakest joined body panel. The final rule excluded two groups of MAPs from these requirements: MAPs outside of the passenger area; and MAPs smaller than a specified size inside the passenger area. The final rule also excluded certain joints from the standard's tensile strength requirements, i.e., joints from which a test sample cannot be obtained because of the joint's size or the curvature of the panels comprising the joint.

The final rule also simplified the definition of "maintenance access panel" and adopted a definition of "passenger compartment" based on the definition in Standard No. 217, *Bus Emergency Exits and Window Retention and Release* (49 CFR Section 571.217). In determining minimum allowable joint strength, the final rule (reversing a 1978 interpretation letter) included a new S6.2(c) specifying that the cross-sectional area of material removed to facilitate the installation of fasteners shall be considered in determining the tensile strength of the weakest joined body panel.

NHTSA specified that the final rule would take effect 18 months after **Federal Register** publication. The agency had proposed the 18 month lead time in the notice of proposed rulemaking (NPRM). No commenter addressed the lead time issue.

Petitions for Reconsideration

NHTSA received petitions for reconsideration of the final rule from AmTran Corporation, Blue Bird Body Company, and Thomas Built Buses. The petitioners asked for reconsideration of decisions regarding issues such as whether the standard would apply to joints from which a test sample cannot be made; the number of fasteners for curved and complex joints; whether the term "automotive" type joints should be defined; whether the term "bus body" should exclude structures forward of the passenger compartment; and the degrees

of tolerance that should be permitted in a test machine's grip.

The manufacturers stated the greatest cost effect would result from the final rule's rescinding a November 28, 1978 interpretation letter that addressed the issue of how to compute the area of a sample of a body panel when testing for Standard No. 221 compliance. In the letter, NHTSA stated that in its compliance testing, it would determine the net cross-sectional area of a body panel sample by multiplying the width of the sample by its thickness and then subtracting the area of each "discreet fastener hole." Rescinding the letter means that when testing for compliance with Standard No. 221, NHTSA would no longer subtract the area of each discreet fastener hole when determining the net cross-sectional area of the sample. The practical effect of that change is that school bus manufacturers would have to use more fasteners in order to meet the standard. The final rule included a new provision, S6.2(c), making it clear that the cross-sectional area of material removed to facilitate the installation of fasteners shall be considered in determining the tensile strength of the weakest joined body panel.

All three petitioners asked that S6.2(c) be removed, and the November 28, 1978 interpretation letter be reinstated. Blue Bird stated that the interpretation letter has been the basis for determining minimum allowable tensile strength for FMVSS certification and NHTSA compliance purposes since it was issued. Blue Bird informed the agency that approximately half of the joint designs used in manufacturing Blue Bird school buses use discrete fasteners, the majority of which will require redesign and retesting. Other school bus manufacturers may use non-discrete fasteners such as welds and adhesives, which may also have to be redesigned and retested. If the November 28, 1978 interpretation letter is not reinstated and if S6.2(c) takes effect, Blue Bird estimated that there will be an increase of 12 to 25 percent in the number of required fasteners. Blue Bird indicated that the new method of calculating joint strength would result in hard tooling (i.e., dies, which are tools for manufacturing materials) with long lead times, and increased material and labor costs. Blue Bird did not provide dollar estimates of the increased costs.

Thomas Built stated that most of its cost increases would be incurred when providing the extra fasteners needed when the change in the joint strength calculation procedure (in S6.2(c)) becomes effective. Thomas estimated that the increase in costs for a school

bus to meet the final rule's maintenance access panel changes only, (including labor, fasteners, tooling and fixtures), would be \$157. The cost per school bus of meeting maintenance access panel changes and S6.2(c) would be \$352. Thomas also estimated that the total cost to modify its plant (which would be necessary to meet the new final rule) would be \$313,000 if the maintenance access panel changes only take effect and \$1,388,000 if the maintenance access panel changes and S6.2(c) take effect.

Grant of Petition for Extension of Compliance Date

In a letter dated September 28, 1999, Blue Bird asked that NHTSA defer its November 5, 1998, final rule to "a minimum of 18 months following publication of an amended final rule, or to May 5, 2002, whichever is later." Blue Bird cited the expense involved in pursuing redesign, testing, tooling and manufacturing changes that would result when the final rule takes effect. Blue Bird noted that these retooling and other changes would not be necessary if the changes requested by the petitioners are made to the November 5, 1998 final rule. Blue Bird asked that if granted, the petition for extension of the compliance date be issued as soon as possible. Blue Bird said that it and other school bus manufacturers already have had to make preparations with tooling and die manufacturers to produce machining that would enable the production (in May 2000) of school buses that meet the November 5, 1998 final rule.

In a **Federal Register** publication of March 6, 2000 (65 FR 11751), we delayed the effective date of the final rule published on November 5, 1998 to May 5, 2001. The effective date of the March 6, 2000 action was April 5, 2000.

Agency Decision To Delay Effective Date Again

We are in the process of completing review of the petitions for reconsideration of the November 1998 final rule. One possible outcome of that review would be a decision to grant the petitioners' request to remove S6.2(c) and reinstate the November 28, 1978, interpretation letter permitting subtraction of holes in calculating joint strength. If we were to remove S6.2(c) and reinstate the letter, the expensive die and tooling changes cited by school bus manufacturers in their petitions for reconsideration would be unnecessary. Therefore, while we are deciding whether to grant the petitions for reconsideration, we are preserving the status quo by delaying the effective date for the November 1998 final rule until

¹ Referred to below as small school buses.

June 1, 2002. We expect to issue a new document addressing the issues raised in the petitions for reconsideration well before June 1, 2002. We will address the issue of lead time, as necessary, in that document.

Effective Date of This Document

Because the effective date for the November 1998 final rule (May 5, 2001) is fast approaching, NHTSA finds that this action delaying the effective date must take effect on May 5, 2001, which is less than 30 days after publication of this document. As a result, school bus manufacturers will not be required to comply with the November 1998 final rule requirements for a brief period in May 2001, as they would if a 30-day, delayed effective date were used.

Rulemaking Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, "Regulatory Planning and Review." Further, we have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979).

In its Final Regulatory Evaluation for the November 5, 1998 final rule, NHTSA estimated that the total cost for implementing the final rule would be approximately \$8,500,000 per year. This rule delays the compliance date of that final rule to June 1, 2002. Thus, it delays the incurring of those costs. Until June 1, 2002, manufacturers will continue to meet the same requirements (and incur the same costs) resulting from the existing rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In the November 5, 1998 final rule, the agency certified that that rule would not have a significant economic impact on a substantial number of small entities. Accordingly, I certify that this final rule, which delays the compliance date of that earlier final rule, will not have a significant economic impact on a substantial number of small entities.

As noted in the November 5, 1998 final rule, the SBA defines a motor vehicle retailer with less than \$11,500,000 in annual receipts as a small business. There are approximately 465 school bus dealers and distributors in the United States. The average sales of school buses from 1995 to 1999 was about 40,000 per year, representing an average of less than 100 buses per dealer. In order to reach the threshold of \$11,500,000 in annual sales receipts, the average dealer would have to sell a much larger number (270) of large school buses annually, assuming a cost of \$45,280 per unit. Thus, most school bus dealers are probably small businesses. Because of the negligible cost impact on manufacturers, the agency also anticipates little measurable

impact on retailers' revenue levels, profitability, or employment.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), we note that there are no collection of information requirements associated with this final rule.

D. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act. We have determined that implementation of this action will not have any significant impact on the quality of the human environment.

E. Executive Order 13132, Federalism

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule 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 responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to manufacturers of school buses and to school buses, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

H. Executive Order 13045

Executive Order 13045 (62 *Fed Reg* 19885, April 23, 1997) applies to any rule that: (1) is determined to be

“economically significant” as defined under Executive Order 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental, health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. It does not involve decisions based on health risks that disproportionately affect children.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50.

Issued on: April 13, 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 697

[Docket No. 010125024-1089-02; I.D. 121500D]

RIN 0648-A088

American Lobster; Interstate Fishery Management Plans; Cancellation of Moratorium

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

ACTION: Cancellation of Federal moratorium.

SUMMARY: NMFS announces the cancellation of the Federal moratorium on fishing for American lobsters in the State of Rhode Island waters. NMFS canceled the moratorium, as required by the Atlantic Coastal Fisheries Cooperative Management Act (Act), based on the determination that Rhode Island is now in compliance with the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for American lobsters.

DATES: Effective April 17, 2001.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Chief, Staff Office

for Intergovernmental and Recreational Fisheries, NMFS, 301-427-2014.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2000, NMFS determined that Rhode Island was not in compliance with Amendment 3 to the Commission's ISFMP for American lobster and that the measure Rhode Island failed to implement and enforce is necessary for the conservation of the American lobster fishery. Rhode Island was notified by letter on December 18, 2000, of this determination, and that NMFS required additional time to analyze the timing and impacts of the moratorium's implementation before publishing a declaration of a moratorium, as required by law. The Act allows the effective date of the moratorium to be delayed for up to 6 months from the date on which the moratorium is declared.

On March 6, 2001 (66 FR 13443), NMFS declared a Federal moratorium on fishing for American lobsters in Rhode Island waters effective May 1, 2001, if Rhode Island has not complied with the Commission's ISFMP for American lobster by that date. Details were provided in the March 6, 2001, **Federal Register** document and are not repeated here.

The Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary of Commerce (Secretary) is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan. If the State is determined to be in compliance, the moratorium shall be terminated. The Secretary's decision-making authority under the Act has been delegated to NMFS.

Activities Pursuant to the Act

On April 6, 2001, the Secretary received a letter from the Commission prepared pursuant to the Act. The Commission's letter stated that Rhode Island has taken corrective action to comply with Amendment 3 to the Commission's ISFMP for American lobsters by implementing and enforcing the nontrap gear limit of no more than 100 lobsters per day (based on a 24-hour period) up to a maximum of 500 lobsters per trip, for trips 5 days or longer as required by Amendment 3. The Commission found Rhode Island in compliance with the ISFMP for American lobster and withdrew its determination of noncompliance.