Wisconsin believed the proposed rule was workable for intersections and grade crossings controlled by traffic signals, but not for crossings near intersections that are controlled by stop or yield signs. Wisconsin suggested postponing the effectiveness of the rule until the Manual on Uniform Traffic Control Devices (MUTCD) was changed to address the issue of traffic signals at such intersections/crossings. Nevada said all but one its grade crossings are in rural areas, and all but two are poor candidates for traffic signals. Nevada said signalization for the crossings was probably five to ten years in the future and that relocating the railways or closing the crossings was not feasible. Nevada said relocation of roadways is limited by geography and economic development and that truck advisory signs would be more appropriate for the affected crossings, thus limiting overall improvements to installation of signage.

New Jersey said replacing stop signs with traffic signals would further impede traffic flow already interrupted by many signals, but agreed that it is feasible and desirable to interconnect traffic signals and adjust timing where signals already exist.

Pennsylvania said it might be possible to locate a stop sign or traffic control device in some locations so that vehicles encounter it before entering the crossing. However, Pennsylvania noted that apart from these potential solutions, safety improvements become very expensive or politically difficult to enact.

Economic Impact of the Proposed Rule

Oklahoma and California argued that Federal funding was necessary to implement the rule. Connecticut believed manpower requirements for design and construction of crossing improvements, including the financial impacts, would likely exceed resources available to State and local agencies and private owners. The State estimated the cost of installing signals that would be activated by the approach of a train at approximately $280,000 (per crossing, presumably). Connecticut suggested instituting a Federal program with a funding source dedicated exclusively to the problem of limited storage distance at grade crossings.

Burden and Costs of Compliance Far Exceed the Anticipated Benefits

Kansas said it did not have adequate information to identify accidents related to insufficient storage space. The State said that its accident statistics for the previous eight years revealed 109 CMV-train accidents, or 13.6 per year, and that even if all of these accidents were caused by the problem of inadequate storage space, the proposed rule would be addressing a relatively minor problem. Indiana believed storage space was not a significant factor in its accident record. The State said that, in the past five years, only 6.4 percent of train-vehicle collisions (78 out of 1,213) involved truck-trailer combination vehicles, and, of those, only 38 accidents (3.1 percent of the total) were at a highway-railroad grade crossing near an intersection. Indiana said even if all 38 accidents were due to storage problems, which it called unlikely, they would still represent only a small part of the State's overall accident exposure.

Pennsylvania said there were 692,138 accidents in the State from 1993 through 1997, but only 31 involved CMVs and trains and none of those accidents involved vehicles approaching a highway-railroad intersection where traffic was stopped at a traffic control device. Pennsylvania did not believe that the proposed rule would have a major impact on safety or that it would be appropriate to initiate a labor-intensive, field inventory effort to collect the information requested.

Wisconsin said it averaged one fatal train-truck accident every five years, or about 3 percent of total train-vehicle fatal accidents.

The Public Meeting

The DOT OMCS held a public meeting on November 9, 1999, which generated extensive testimony and discussion regarding the issue of highway-rail grade crossing safety. A transcript of the meeting is in the docket for this rulemaking. The discussion focused on initiatives that could be taken to prevent train-vehicle collisions at grade crossings, but not on the feasibility or advisability of the proposed rule. The potential options discussed involved changes to the grade crossing environment, such as changes to traffic control devices near grade crossings; policy changes, such as developing programs that would allow CMVs to select routes to avoid grade crossings near traffic control devices; and educating CMV operators on actions to take if a CMV becomes incapacitated on a crossing.

FMCSA Decision

After reviewing the comments to the NPRM and the transcript of the public meeting, FMCSA has concluded that this rulemaking has created a great deal of misunderstanding and should be terminated.

FHWA asked the States for information on the number and location of highway-railroad grade crossings with inadequate storage space—and on alternative crossings—as the first step in estimating the costs and benefits of the rule required by Section 112. In view of the expected complexity of that analysis, the Agency needed as much information as possible. Many State agencies, however, seem to have assumed that they were required to provide the information; that the final rule would then require them to reconstruct, rewire, reroute or otherwise correct every inadequate crossing; and that the Agency was indifferent to the costs of such an undertaking. In fact, the time, difficulty and cost involved in collecting reliable data on highway-railroad grade crossings became a primary focus of the comments.

Section 112 requires a rule applicable to motor carriers, not to States. If the regulatory requirement prevented some motor carriers from using a particular crossing because the storage space is too short for their normal vehicles, several options are available (such as switching to shorter trucks or using alternate crossings) before any reconstruction efforts suggested by the State commenters need to be considered. And even then, significant civil engineering projects are likely to have a low priority. Consultations among government entities, truckers, and the shippers they serve might produce quick and simple solutions.

Therefore, FMCSA terminates this rulemaking and will open a new one less burdened by previous misunderstandings. An NPRM to address the requirements of Section 112 will be published when additional analysis of grade crossing problems, which is now under way, has been completed.

In view of the foregoing, this rulemaking proceeding is terminated.

Issued on: April 24, 2006.

Warren E. Hoemann,

Acting Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2006–24390]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. James E. Hofferberth asking the agency to take a variety of steps related to incorporating dummies representing three-year-old, six-year-old and ten-year-old children and 95th percentile adult males into the agency's frontal crash test programs.

FOR FURTHER INFORMATION CONTACT:

For Non-Legal Issues: Ms. Catherine Carneal, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–1284, Facsimile: (202) 366–7002.

For Legal Issues: Mr. Chris Calamita, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–2992, Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Summary of Petition

On September 9, 2005, Mr. James E. Hofferberth submitted a petition for rulemaking asking the agency to require additional safety measures related to protection of child and large adult male occupants. He stated that the likelihood and severity of injuries to vehicle occupants is strongly dependent on their size, and noted that the agency's frontal crash test standard specifies test requirements using only 50th percentile adult male dummies and 5th percentile adult female dummies. The petitioner stated that dummies representing three-year-old, six-year-old and ten-year-old children and 95th percentile adult males are in existence and should be incorporated into the agency's frontal crash test programs.

More specifically, Mr. Hofferberth's petition made four requests. The first was that any motor vehicles certified for compliance with the crash test requirements of FMVSS No. 208, ''Occupant crash protection,'' also be required to ''have a permanent, prominently displayed: (a) Notice that specifies the occupant sizes for which the vehicle is not in compliance with the crash test performance requirements of FMVSS No. 208, and (b) warning that such persons, other than small children using a child restraint system certified for compliance with FMVSS No. 213, ''Child restraint systems,'' are not protected by FMVSS No. 208, ''Occupant crash protection,'' and may be exposed to a higher risk of injury and fatality when riding in the vehicle.'' Second, the petitioner requested an ''order that vehicles claimed by the manufacturer to be in compliance with the performance requirements of FMVSS No. 208 for occupant sizes other than fifth percentile adult female and fiftieth percentile adult male be incorporated in the compliance test program to verify the manufacturer's claim.'' Third, he asked ''that crash testing using anthropomorphic dummies representing three-year-old children, six-year-old children, ten-year-old children, and ninety-fifth percentile adults be routinely included in the New Car Assessment Program (NCAP).'' Finally, the petitioner asked that the agency amend FMVSS No. 208 to add crash test requirements using dummies representing three-year-old children, six-year-old children, ten-year-old children, and ninety-fifth percentile adults.

Mr. Hofferberth did not submit any data in support of his petition.

Analysis and Decision

We begin by noting that the protection of children in motor vehicle crashes is one of our agency's highest priorities. We have taken a number of actions in recent years to improve child safety, and have a number of ongoing actions.

For example, on June 24, 2003, we published in the **Federal Register** (68 FR 37620) a final rule making a number of revisions in our safety standard for child restraint systems, including amendments for incorporating improved test dummies, updated procedures used to test child restraints, and an extension of the standard to apply it to child restraints recommended for use by children up to 65 pounds (30 kilograms). Child restraints will be tested using the most advanced test dummies available today and tested to conditions representing current model vehicles.

On August 31, 2005, we published in the **Federal Register** (70 FR 51720) a notice of proposed rulemaking (NPRM) to further expand the applicability of our safety standard on child restraint systems to restraints recommended for children up to 80 pounds. That proposal would require booster seats and other restraints to meet performance criteria when tested with a crash test dummy representative of a 10-year-old child.

NHTSA has also been evaluating the merits of including child dummies in the NCAP program pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Section 14(b) of this Act directed the Secretary of Transportation to determine ''whether to include child restraints in each vehicle crash tested under NCAP.'' Two notices have been published on the agency's efforts in this area: Notice of final decision on the NCAP programs for child safety, published in the **Federal Register** (70 FR 29815) on May 24, 2005, and response to comments, notice of decision for NCAP, published in the **Federal Register** (70 FR 75536) on December 20, 2005. These documents discuss the agency's decision to maintain the current frontal impact test procedures while conducting the necessary research to evaluate if and how the program could be modified to include child dummies. Concurrently with that effort, the agency is conducting a special comprehensive review of the entire NCAP program, which is expected to be completed later in 2006.

All of Mr. Hofferberth's various requests relate to incorporating additional dummies to the agency's frontal crash test programs. Implementation of any of his requests would require substantial agency resources. Extensive research and testing would be needed to support a rulemaking and/or develop a rating program which incorporates child and/or large size dummies. Among other things, the agency would need to thoroughly review equipment and test procedures for validity and reliability with respect to real-world collisions. NHTSA currently has an insufficient amount of data on child dummies in a FMVSS No. 208 crash environment to conduct a thorough crash test analysis. Also, the agency has not conducted rulemaking to include the 95th percentile adult male dummy in the Code of Federal Regulations, nor conducted the research and testing that would be needed to add this dummy to NCAP or to propose to use it as part of the Federal motor vehicle safety standards.

These same issues are also relevant to the petitioner's request relating to requiring manufacturers to provide labels as to whether a vehicle would pass the crash test requirements of FMVSS No. 208 with dummies other than those specified by the standard.[1] To enable a determination to be made as to whether a vehicle would pass these requirements, the agency would need to conduct the necessary research and analyses to standardize test procedures, injury criteria, and performance limits for these dummies in these tests.

Finally, if the agency were to propose adding new test requirements to FMVSS

[1] We note that the agency has not conducted an assessment as to its authority to issue this type of requirement, and it is unnecessary to do so in order to respond to this petition.

No. 208 or other requirements that manufacturers would be required to meet, it would also need to carefully assess costs and benefits.

After carefully considering Mr. Hofferberth's petition, the agency has decided to deny it. NHTSA has limited resources, and, for the reasons discussed above, rulemaking to implement the petitioner's requests would require substantial agency resources. While the agency may in the future consider adding additional dummies to its frontal crash test and/or other programs, the petitioner did not provide any data or supporting documentation that convinced us that we should change our current priorities and devote additional resources in this area.

In accordance with 49 CFR part 552, this completes the agency's review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

Issued on: April 24, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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