

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Les Donovan at 8:30 a.m. on February 1, 2001 in Room 245-N of the Capitol.

All members were present except: Senator Harrington

Committee staff present: Hank Avila, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian F. Holeman, Committee Secretary

Conferees appearing before the committee: Steve Kearney, Representing Collins Industries
Barbara Pringle, KS Pupil Transportation Assn.
Pat Barnes, KS Automobile Dealers Assn.
Jack Woolf, Midwest Bus Sales
Brilla Scott, United School Administrators
Kent Tyler, Collins Industries

Others attending: See attached list.

Each member received a public information flyer related to the Kansas State Trooper Safety Bill which came out of Senate Transportation Committee and became effective July 1, 2000. Copies are available from the Kansas Department of Transportation or the Kansas Highway Patrol.

SB 21: School transportation; relating to definition of buses

Prior to testimony on **SB-21** members received the Fiscal Note (Attachment 1) and absentee testimony from Don L. McNeely, President, Kansas Automobile Dealers Association, "Use of Nonconforming Vehicles for School Transportation (Attachment 2).

Steve Kearney, representing Collins Industries presented a video which graphically depicted lack of safety for students transported in non-school bus vehicles, designed for 10 to 15 passengers. Jim Elliot, Bryce Pfister and Kent Tyler from Collins Industries were also present to answer questions.

Barbara Pringle, Executive Secretary for Kansas State Pupil Transportation Association, speaking from a background of extensive experience and qualifications presented background information and materials regarding the Kansas definition of school buses. She strongly urged support of **SB 21** (Attachment 3). Ms. Pringle advised there are no special reporting requirements for accidents involving the nonconforming vehicles.

Pat Barnes, Kansas Automobile Dealers Association provided materials relating to current federal and state laws and how automobile dealers are affected by them (Attachment 4).

Brilla Scott, Executive Director, United School Administrators of Kansas advised that most are following federal guidelines, but under present Kansas school districts are free to ignore them and this does happen and they want this to not happen (Attachment 5).

Jack Woolf has spent 30 years in pupil transportation and was recently certified by the National Association as a Director of Pupil Transportation. He was the 45th individual to achieve this national recognition. From all of this experience he believes current Kansas law that permits use of nonconforming vans must be removed hence he strongly urged support for **SB 21** (Attachment 6). He asked members to pay particular attention to pages 5 through 8 of his testimony.

Kent Tyler, Collins Industries' testimony includes a description of basic differences between vans and

CONTINUATION SHEET

MINUTES OF THE SENATE TRANSPORTATION COMMITTEE at 8:30 a.m. on February 1, 2001 in Room 245-N of the Capitol.

school buses. There is also information on federal standards, laws, rules and regulations as well as details regarding safety issues (Attachment 7). Members learned that these "extended" vans are not subject to safety testing and requirements with which smaller vans, minivans, SUVs, etc. must comply. They were originally designed to haul cargo and have virtually no passenger safety features.

Approval of minutes

Senator Goodwin moved to approve minutes of the January 31, 2001 meeting. Senator Salmans seconded the motion. Motion carried.

The meeting adjourned at 9:30 a.m.

The next meeting is scheduled for February 6, 2001.



DIVISION OF THE BUDGET
State Capitol Building, Room 152-E
Topeka, Kansas 66612-1575
(785) 296-2436
FAX (785) 296-0231
<http://da.state.ks.us/budget>

Bill Graves
Governor

Duane A. Goossen
Director

January 19, 2001

The Honorable Les Donovan, Chairperson
Senate Committee on Transportation
Statehouse, Room 136-N
Topeka, Kansas 66612

Dear Senator Donovan:

SUBJECT: Fiscal Note for SB 21 by Senate Committee on Transportation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 21 is respectfully submitted to your committee.

SB 21 would prohibit school districts from using vans or other vehicles with a capacity of more than ten passengers for transporting students, if the vehicle does not meet school bus criteria. School districts would have until July 1, 2004, to continue current practice, which is a limit of 14 passengers.

The State Department of Education indicates that this bill would not require any additional state appropriation.

Sincerely,

Handwritten signature of Duane A. Goossen.

Duane A. Goossen
Director of the Budget

cc: Dale Dennis, Department of Education

SENATE TRANSPORTATION

COMMITTEE-DATE: 2-1-01

ATTACHMENT: 1

1-1



KANSAS AUTOMOBILE DEALERS ASSOCIATION

USE OF NONCONFORMING VEHICLES FOR SCHOOL TRANSPORTATION

The National Highway Traffic Safety Administration is the agency responsible for establishing Federal motor vehicle safety standards (FMVSS) to reduce the number of fatalities and injuries that result from motor vehicle crashes.

In the legislative history of the School Bus Safety Amendments of 1974, Congress stated that school transportation should be held to the highest level of safety, since such transportation involves the Nation's most precious cargo -- children who represent our future. As a result, NHTSA believes that school buses should be as safe as possible. Accordingly, we have established minimum safety standards that are over and above those for regular buses that all school buses must meet. Consistent with the 1974 Congressional mandate for school bus safety, NHTSA believes that safety standards requiring higher levels of safety performance for school buses are appropriate.

Federal requirements regulate new vehicles that carry 11 or more persons that are sold for transporting students to or from school or school related events. Those vehicles are required to meet all FMVSSs for school buses. The FMVSSs applicable to school buses require that school buses have stop arms along with many other safety features over and above those of other passenger vehicles. Under 49 U.S.C. 30101, et seq., a vehicle is regarded as being sold for use as a school bus if, at the time of sale, it is evident that the vehicle is likely to be significantly used to transport students to or from school or school related events. This statute applies to school buses sold to public as well as parochial schools. Thus, a dealer selling a new 15-passenger van to be used for school transportation must ensure that the van is certified as meeting our school bus FMVSSs.

Federal regulations do not prohibit the use of vans by schools, but require any van (with a capacity of more than 10) sold or leased for use as a school bus to meet the safety standards applicable to school buses. Federal regulations apply only to the manufacture and sale/lease of new vehicles. Each State prescribes its own regulations that apply to the use of any vehicle that is used to transport students.



DON L. McNEELY
PRESIDENT

KANSAS AUTOMOBILE DEALERS ASSOCIATION
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Telephone (785) 233-6456 •

SENATE TRANSPORTATION
COMMITTEE - DATE: 2-01-01
ATTACHMENT: 2



U.S. Department
of Transportation

**National Highway
Traffic Safety
Administration**

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

OCT 15 1997

Mr. Don L. McNeely
Executive Vice President
Kansas Auto Dealers Assoc
800 Jackson, Ste. 1110
Topeka, KS 66612

Dear Mr. McNeely:

With the beginning of the school year upon us, I am writing to request that you remind your members of the Federal requirements that apply to the sale or lease of vehicles that are to be used to transport students to and from school and school-related activities.

As you are aware, pursuant to Federal law, the National Highway Traffic Safety Administration (NHTSA), an agency of the U.S. Department of Transportation, has issued Federal motor vehicle safety standards (FMVSS) applicable to all new motor vehicles. With respect to school buses, Congress has directed NHTSA to require school bus manufacturers to meet more stringent safety standards than apply to passenger vans and other buses. In response to this mandate, NHTSA has issued standards that require school buses to be more conspicuous (e.g., they must have flashing lamps and stop arms) and that require enhanced seating systems, crashworthiness protection, mirrors, and emergency exits.

Under Federal law, it is illegal to sell or lease a new vehicle unless it complies with all applicable FMVSS. Thus, a dealer or lessor is prohibited from selling or leasing a new bus (defined as any vehicle, including a van, that has a capacity of 11 persons or more, including the driver) that is likely to be used significantly to transport students to and from school and school-related events if the bus does not meet all of NHTSA's school bus safety standards, even if it has been certified by its manufacturer as meeting the less stringent standards applicable to other types of buses.

This is not merely a technical compliance issue. School buses that comply with NHTSA's school bus safety standards are the safest form of pupil transportation. Thus, the sale of 10-15 passenger vans or non-school buses to schools could result in school children being transported in vehicles that do not provide an appropriate level of safety. NHTSA believes that, while comparably-sized school buses may be more expensive than



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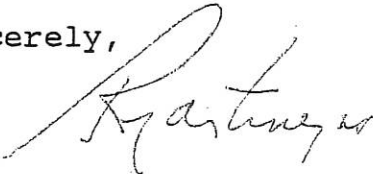
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conventional buses, the increased level of safety justifies a higher cost. Therefore, even apart from legal duties, we urge you to refrain [or remind your members to refrain] from selling or leasing buses, including large passenger vans, to schools unless they are certified as complying with all school bus standards.

We are aware that, although most States require the use of school buses to transport children to and from school and school-related events, some States do not. In addition, some States have defined the term "school bus" differently than under Federal law. It is important to remember that the State law in this area has no bearing on a dealer's duty to comply with Federal requirements applicable to the sale and lease of new school buses. A dealer selling or leasing a new bus for school use that does not meet the school bus standards would be subject to a civil penalty of up to \$1,100 per violation, and could be enjoined from further violations, regardless of what State law may allow.

For your information, I am enclosing a question-and-answer sheet about school bus issues of interest to motor vehicle dealers. In addition, the manufacturer whose vehicles you sell may have written guidelines for sales of vehicles to schools and school districts. Please contact your manufacturer for any such information. If you have any legal questions regarding Federal school bus requirements, please contact Mr. John Womack, NHTSA's Acting Chief Counsel, at (202) 366-9511.

Sincerely,



Ricardo Martinez, M.D.

Enclosure

**DEALERS' QUESTIONS ABOUT
FEDERAL SCHOOL BUS SAFETY REQUIREMENTS**

QUESTION: What is a school bus?

The National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation, defines a bus as a motor vehicle designed to carry more than 10 persons, and a school bus as a bus that is sold or introduced into interstate commerce "for purposes that include carrying students to and from school or related events." This definition does not include buses operated as common carriers in urban transportation.

QUESTION: What is a school related event?

A school related event is any activity sponsored by a school, whether on or off the school grounds, including transportation between home and school, sports events, band concerts, field trips, and competitions such as debate or chess tournaments.

QUESTION: To who do the Federal Motor Vehicle Safety Standards (FMVSSs) apply?

The FMVSSs apply to motor vehicle manufacturers and any person selling or offering for sale or lease a new motor vehicle. It is a violation of Federal law for any person knowingly to sell or lease a new vehicle for use as a school bus that does not comply with all FMVSSs applicable to school buses. The law provides substantial penalties for violation of the FMVSSs, including civil fines.

QUESTION: Do the school bus requirements apply to sales of buses to private schools?

Yes. NHTSA looks to the nature of the particular institution purchasing the bus. If the central purpose of the institution is the education of preprimary, primary, or secondary school students, whether public or private, new buses sold to the school must comply with the FMVSSs applicable to school buses.

QUESTION: What are my responsibilities when selling a new bus to a school or school bus contract operator?

It is NHTSA's position that a dealer may not sell any vehicle capable of being used as a school bus to a school or a school bus contract operator unless it has been certified by its manufacturer as complying with all school bus standards.

QUESTION: Are college students required to be transported in school buses?

No. The school bus requirements do not apply to the transportation of post-secondary school students such as college students, adult education participants, or post-high school vocational students. The school bus requirements also do not apply to religious instruction such as Sunday school or catechism students, athletic teams that have no connection with a school, or to children in custodial facilities such as day care centers.

QUESTION: Does Federal law require school buses to be yellow?

No. Federal law applies only to safety performance standards, and not to design standards or appearance. State and local governments establish policy for school children's transportation. However, NHTSA provides recommendations to the States on operational aspects of school bus and pupil transportation safety programs, in the form of Highway Safety Program Guideline No. 17, Pupil Transportation Policy. Among other matters, Guideline 17 recommends that school buses be yellow. The States have authority to specify the color of buses.

QUESTION: Can the states change Federal requirements?

No. A State may not prescribe a standard for new vehicles covering the same aspect of performance as a Federal standard unless the State standard is identical to the Federal standard. However, a State may impose more stringent standards than Federal standards for vehicles obtained for the State's own use.

Kansas Senate Transportation Committee

**Chairman
Senator Les Donovan**

Senate Bill # 21

February 1, 2001

Presented By

**Barbara Pringle
Executive Secretary
Kansas State Pupil
Transportation Association
P. O. Box 1504
Emporia Kansas 66801
Wk 316-341-2220
Hm 316-342-4009**

SENATE TRANSPORTATION
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On behalf of the Kansas State Pupil Transportation Association I would like to express our support of Senate Bill # 21, the proposed change in the definition of a bus.

The definition of a bus was changed (1997) to exclude vehicles carrying less than 15 passengers to allow school district to purchase the 14 passenger vehicles. This was an effort to get around the Federal definition.

"A motor vehicle designed to carry more than ten (10) persons.

The district that requested the change had an offer of several new 14 passengers as a gift. They ended up refusing the gift and requesting small schools buses instead because they could not obtain insurance on the vehicles for transporting students.

It is illegal for a manufacturer or dealer to sell a new vehicle for transportation of students that does not meet school bus specifications if the capacity is over 10.

Additionally dealers that sell new non-conforming vehicles for the transportation of students are subject to civil penalty. In recent months NHTSA has been fining dealers and manufactures for those illegal sales.

The passenger van does not offer the same level of safety as a school bus. The parents of our students have the right to expect a higher level of safety when transported to and from school or school related activities.

The National Highway Traffic Safety Administration (NHTSA) states school buses are the safest form of transportation.

NHTSA strongly recommends that only vehicles that meet the stringent school bus safety standards be used to transport students to school or activities. They also caution about increased liability for school districts due to using non-conforming vehicles.

The reasons to increase the passenger capacity of vans was an attempt to cut transportation cost for school districts due to the increased budget constraints. Cutting cost at the expense of safety is not acceptable.

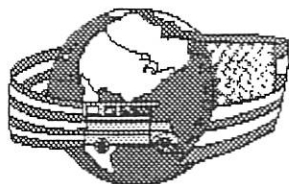
I support the National Highway Traffic Safety Administrations recommendations and I ask you to support it also.

We urge you to support Senate Bill # 21.

Thank you for allowing me to speak to you today.

Barbara Pringle
February 1, 2001

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NATIONAL ASSOCIATION OF
STATE DIRECTORS OF
PUPIL TRANSPORTATION SERVICES

POSITION PAPER

Vans Used for School Transportation

Background

In recent years, the use of passenger vans to transport children to and from school and school-related activities has become a significant issue. In an apparent effort to reduce transportation costs, some school districts across the nation have purchased or leased full-sized passenger vans with capacities of more than 10 persons, and/or mini-vans with capacities under 10 passengers, in lieu of school buses. Since drivers of these vehicles are not required to possess a Commercial Drivers License, school districts may be able to bypass a number of state/local-mandated requirements. In addition to the lack of a Commercial Drivers License, drivers of vans may not receive specialized driver training, a background check, a physical, drug and alcohol testing, or a driver record check. This is an alarming situation with potentially disastrous consequences.

Discussion

Under federal law, any motor vehicle designed to carry more than 10 persons is classified as a bus. A bus is classified as a school bus if it is used, or intended for use, in transporting students to and from school or school-related activities. At the direction of the U.S. Congress, the U.S. Department of Transportation, National Highway Traffic Safety Administration, only has authority over the manufacture and first sale of a motor vehicle. After a vehicle is sold, only state and local governments can regulate the use of motor vehicles.

Federal law prohibits dealers from selling/leasing a motor vehicle with a capacity of more than 10 persons for the purpose of transporting students to and from school or a school-related activity unless the vehicle complies with the applicable Federal Motor Vehicle Safety Standards for school buses. While there is no federal prohibition against dealers selling or leasing used full-sized vans or new/used mini-vans for the purpose of transporting students, such actions are counter to the basis for the federal law previously mentioned - students are safer in school buses. Likewise, there are no federal prohibitions against companies renting vans to schools, unless the rental company purchases a new full-sized van for the purpose of renting the van to a school.

Manufacturers of full-sized passenger vans (Chrysler Corporation, Ford Motor Company, and General Motors Corporation) have provided written notification to each of their dealers of the federal law as a reminder not to sell/lease passenger vans with seating capacities of more than 10 persons to schools. Unless the van has been modified, and certified by the manufacturer/modifier as a school bus, it is considered a "non-conforming" van, since it does not conform to the Federal Motor Vehicle Safety Standards for school buses. It is the responsibility of the seller/lessor to ascertain the intended use of the vehicle. The seller/lessor is subject to substantial penalties for knowingly selling or leasing a vehicle that does not meet the Federal Motor Vehicle Safety

Standards for school buses, including civil fines and injunctive sanctions. It is unfortunate that some sellers/lessors apparently are ignoring this information.

Full-sized passenger vans and mini-vans do not offer the same level of safety to occupants as a full-sized school bus or a school bus built on a van-type chassis. In a crash, the risk of a serious injury or fatality is significantly higher for the occupants of a van. Typically, any crash resulting in serious injuries or fatalities to school children results in lawsuits. The fact that a school used a vehicle that was not manufactured, sold, or leased in accordance with federal laws governing school transportation most likely would be a significant issue in the lawsuit. Depending upon state insurance regulations and insurance policies themselves, this fact could have an impact on the liability responsibilities of the insurance company used to insure the operations of the school.

The National Highway Traffic Safety Administration (NHTSA) has investigated and fined a number of dealers for violating the federal law. The National Association of State Directors of Pupil Transportation Services supports these actions by NHTSA, and encourages everyone to report illegal sales or leases of non-conforming vans to NHTSA. The agency maintains a toll-free Auto Safety Hotline [1-800-424-9393] that can be used to report such information to NHTSA's Office of Chief Counsel.

Conclusions

The National Association of State Directors of Pupil Transportation Services believes that it is appropriate to require higher levels of safety in vehicles that transport children to and from school and school-related activities. Accordingly, the State Directors Association supports the position that school children should be transported in school buses which provide the highest levels of safety, not in full-sized vans or mini-vans which do not meet the stringent school bus safety standards issued by the federal government and recommended by the National Conference on School Transportation, an organization of state school transportation officials.

The State Directors Association endorses the October 15, 1997, statement of Dr. Ricardo Martinez, Administrator of NHTSA at that time, -- "A school's purchase or use of 10-15 passenger vans or non-school buses could result in school children being transported in vehicles that do not provide an appropriate level of safety." The State Directors Association believes states are in the best position to ensure that vans of any size, both new and used, are not utilized in lieu of school buses. This can be accomplished by establishing strict requirements on the types of motor vehicles that can be used within a state for transporting children to and from school and school-related activities.

For that reason, the State Directors Association supports the findings and conclusions of the National Transportation Safety Board's special report, "Pupil Transportation in Vehicles Not Meeting Federal School Bus Standards," which was adopted on June 8, 1999.

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After investigating four crashes involving full-sized passenger vans and one non-school bus, which resulted in a total of eight fatalities to children, the Safety Board concluded that the children would have fared significantly better in the crashes if they had been in school buses. The Safety Board made the following Safety Recommendations:

To the U.S. Department of Health and Human Services:

"Require that Head Start children be transported in vehicles built to federal school bus structural standards or the equivalent."

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To the Governors of the 50 States and the Mayor of the District of Columbia:

"Require that all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school related activities, including, but not limited to, Head Start programs and day care centers, meet the school bus structural standards or the equivalent. Enact regulatory measures to enforce compliance with the revised statutes."

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Revised January 2000



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[Position Papers](#)



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Barbara Pringle

From: NAPT <napt@global2000.net>
To: <region4@napt.org>
Sent: Thursday, January 18, 2001 2:30 PM
Subject: HHS Issues Final Rules for Head Start Transportation

More up-to-date transportation information for our NAPT members:

HHS Issues Final Rules for Head Start Transportation

Two days before the Republican administration of President George W. Bush is set to take over, the United States Department of Health and Human Services (HHS) has issued its final rules for Head Start transportation. The release of the final rule brings to a close the arduous and at times contentious effort to establish the nation's first and only official rules for the transportation of Head Start students - an effort that began in the early part of President Clinton's first term of office.

The new rules, which were released in the January 18, 2001 edition of the Federal Register, implement the statutory provisions for establishing requirements for the safety features and the safe operation of vehicles used by Head Start agencies to transport children in Head Start programs. Since the inception of the federally funded Head Start program in the early 1980's, most Head Start agencies have routinely provided transportation for some Head Start children to and from the classroom when needed, although there has never been a requirement to do so. The program has grown dramatically in the last decade and experts estimate that Head Start grantees now transport nearly 1 million children every day.

There are several notable provisions in the new regulations. Included among them is a section that requires all Head Start agencies to use either a school bus or an "allowable alternate vehicle" to provide transportation services within 5 years (January 18, 2006). The term "allowable alternate vehicle" is defined as a vehicle designed to carry eleven or more people - including the driver - and is used to describe a vehicle which complies with the FMVSS applicable to school buses relating to crash survivability and mirrors, but does not meet the other FMVSS which apply to crash prevention, such as flashing lights or stop arms. Also excepted is the industry standard for vehicle color.

All vehicles used in Head Start transportation are now required to have a communication system to call for assistance in case of an emergency, safety equipment for use in an emergency, including a fire extinguisher, a first aid kit and a seat belt cutter for use in an emergency evacuation.

In addition to these provisions, the new regulations also require all children who weigh 50 pounds or less to be seated in child restraint systems designed in accordance with FMVSS 213. The regulation provides that within

3 years (by January 20, 2004), all vehicles used to transport Head Start children must be equipped to use child restraint systems. The agency specifically says "while the regulation allows up to 5 years to use school buses or 'allowable alternate vehicles', the full five years will not be available if vehicles are being used that cannot accommodate, or be safely retrofitted to accommodate, child restraint systems."

Other sections provide that all drivers must have a CDL and undergo appropriate criminal history and background checks as well as appropriate physical ability requirements. The drivers must also receive proper training, including a combination of both classroom and behind the wheel instruction. In addition, all Head Start vehicles must have at least one bus monitor on board at all times beginning on January 20, 2004.

Finally, the new regulations require each Head Start agency to provide pedestrian safety training for both parents and children. The regulation specifically states that "the need for an adult to accompany a preschool child while crossing the street must be emphasized in the training provided to parents and children" and that the parent training emphasize the importance of "reinforcing the training provided to children regarding vehicle safety". This training must be provided within the first 30 days of the program year.

The new regulations are contained in the January 18, 2001 issue of the Federal Register (Volume 66, Number 12, pages 5295 to 5135) and are cited as 45 CFR Part 1310. They can be found online by visiting:
<http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=4836028512+0+0+0&WAIAction=retrieve> (This document is approximately 40 pages and may take a few minutes to download.)

Sincerely,

Michael J. Martin
Executive Director
NAPT

3-7

BEFORE THE SENATE COMMITTEE ON TRANSPORTATION

RE: Senate Bill No. 21 Concerning School Transportation/School Buses

DATE: Thursday, February 1, 2001

Mr. Chairman, members of the committee, I am Pat Barnes, general counsel for the Kansas Automobile Dealers Association. I am here today in place of our President, Don McNeely, who regrets being unable to appear before you this morning, but has been called out of state for business purposes which could not be rescheduled. We appreciate the opportunity to appear before you on behalf of our members and offer our comments and observations regarding Senate Bill No. 21.

Our understanding of the Bill is that if a school wants to transport students in a vehicle designed for 11 occupants or more then they must meet school bus standards. However, if you already have a vehicle designed for 10 to 15 passengers which isn't a school bus, you can continue to use that for approximately 3 more years.

The purpose of our appearance is to help provide some understanding of these laws and how automobile dealers are affected by them. Presently, dealers must comply with Federal Regulations administered by the National Highway Traffic Safety Administration (NHTSA) which regulates new vehicles that carry 11 or more people that are sold for transporting students to or from school or school

SENATE TRANSPORTATION
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related activities. A dealer cannot sell a vehicle which does not comply with federal school bus standards, whether it be a van or other type of vehicle, if at the time of sale it is evident the vehicle is likely to be significantly used to transport students to or from school or school related activities.

In contrast, Federal Regulations do not prohibit the use of nonconforming vehicles by schools, but merely require that any vehicle sold or leased for use as a school bus must meet safety standards applicable to them. The regulations apply only to the manufacture, sale and lease of new vehicles. Each state sets its own rules as to the **use** of vehicles to transport students and that is where Senate Bill 21 comes into play.

At present, there aren't any regulations that are governed by federal law that prohibit the use of such items as vans to transport students if that is what the school district chooses to use. Thus, a dealer who has a 12 or 15 passenger van that has not been certified as complying with federal school bus safety standards and sells that vehicle to a school district would be considered by NHTSA to have violated federal standards with the sale of the vehicle, but not if it had no knowledge of the intended use of the vehicle and the school district chose to use it for transportation of students in school activities.

This has been the subject of some confusion and debate,

quite understandably, for quite some time. The rules are quite circuitous and in some instances are simply confusing, particularly when state rules and regulations are added. Attached hereto is a response by NHTSA to a letter by former Senator Don Montgomery from back in 1988. Also attached is a letter in response to an inquiry by Congressman Fred Upton as well as a brief NHTSA commentary on the Use of Nonconforming Vehicles for School Transportation which is what this Bill directly addresses.

The policy choice of this Bill is whether or not in all cases you want students transported in vehicles deemed to be "school buses." With federal requirements and additional state requirements on how those buses must be marked and the equipment they must carry, it is important to note that your policy considerations will want to include whether or not you truly believe that the use of something such as a van transporting between 10 and 15 passengers is not sufficiently equipped for that purpose without this law. Federal law is not going to make you cease using that van for transportation, but this Bill will because at present state law is going to allow school districts to transport students in vehicles that are designed to carry 14 or fewer students without requiring them to be classified as "school buses" and so utilized.

Thank you and I would be happy to answer any questions that I may.

USE OF NONCONFORMING VEHICLES FOR SCHOOL TRANSPORTATION

The National Highway Traffic Safety Administration is the agency responsible for establishing Federal motor vehicle safety standards (FMVSS) to reduce the number of fatalities and injuries that result from motor vehicle crashes.

In the legislative history of the School Bus Safety Amendments of 1974, Congress stated that school transportation should be held to the highest level of safety, since such transportation involves the Nation's most precious cargo -- children who represent our future. As a result, NHTSA believes that school buses should be as safe as possible. Accordingly, we have established minimum safety standards that are over and above those for regular buses that all school buses must meet. Consistent with the 1974 Congressional mandate for school bus safety, NHTSA believes that safety standards requiring higher levels of safety performance for school buses are appropriate.

Federal requirements regulate new vehicles that carry 11 or more persons that are sold for transporting students to or from school or school related events. Those vehicles are required to meet all FMVSSs for school buses. The FMVSSs applicable to school buses require that school buses have stop arms along with many other safety features over and above those of other passenger vehicles. Under 49 U.S.C. 30101, etseq., a vehicle is regarded as being sold for use as a school bus if, at the time of sale, it is evident that the vehicle is likely to be significantly used to transport students to or from school or school related events. This statute applies to school buses sold to public as well as parochial schools. Thus, a dealer selling a new 15-passenger van to be used for school transportation must ensure that the van is certified as meeting our school bus FMVSSs.

Federal regulations do not prohibit the use of vans by schools, but require any van (with a capacity of more than 10) sold or leased for use as a school bus to meet the safety standards applicable to school buses. Federal regulations apply only to the manufacture and sale/lease of new vehicles. Each State prescribes its own regulations that apply to the use of any vehicle that is used to transport students.

The Honorable Don Montgomery
Senator, Twenty-First District
1218 Main
Sabetha, Kansas 66534-1835

Dear Mr. Montgomery:

Senator Kassebaum has asked me to respond to your February 12, 1988 letter to her. In your letter, you expressed concerns about a problem that has arisen in connection with using "van type buses designed to carry 10 or less passengers, without meeting all the requirements of a school bus." You state that there is a problem with using these vehicles to transport students because "federal law classifies the vans by weight and calls them twelve passenger vehicles, which calls for the van to meet all school bus regulations." As a solution, you suggest a change in Federal law might be appropriate to exempt the vehicles you describe "from the weight classification in determining how many passengers they would be capable of carrying."

As I understand your letter, there appears to be a misunderstanding about how Federal law operates with respect to school buses. There may also be a misunderstanding about whether it is a Federal or state definition that determines which vehicles may be used to transport school children in Kansas.

Under Federal regulations, there is no vehicle classification called "van." Instead, a passenger van is classified as either a "multipurpose passenger vehicle" (MPV) or a "bus," depending primarily upon its seating capacity. An MPV is a motor vehicle designed to carry a driver and 9 or fewer passengers, and either constructed on a truck chassis or equipped with features for off-road operation. A bus is a motor vehicle designed to carry a driver and 10 or more passengers.

Given these definitions, a van with 9 or fewer designated seating positions for passengers cannot, regardless of its weight or gross vehicle weight rating (GVWR), be a bus within the meaning of Federal law and regulation. (GVWR is the manufacturer's determination of a vehicle's loaded weight, i.e., the weight of the vehicle plus its designed capacity to carry people and cargo.) On the other hand, if a van is manufactured with 12 or 15 designated seating positions as you stated, then the vehicle is a bus. The number of passengers that such a van may actually carry on any given trip does not affect its classification as a bus.

If that vehicle is manufactured and sold to carry school children, then the vehicle is not just a bus, but a school bus. The National Traffic and Motor Vehicle Safety Act and regulations issued thereunder define a school bus in terms of (1) the vehicle's designed capacity for carrying people, and (2) the vehicle's intended use. More specifically, a school bus is a motor vehicle designed for carrying a driver and 10 or more passengers, and sold for transporting students to and from school or school-related events.

Gross vehicle weight rating (GVWR) is used in some safety standards to differentiate between smaller and larger school buses in the application of those standards. For example, Safety Standard No. 222, School bus passenger seating and crash protection, specifies one set of requirements for school buses with a GVWR of 10,000 pounds or less and another for those with a GVWR of greater than 10,000 pounds.

NHTSA's definition of school bus is used by the agency in regulating the manufacture and sale of new vehicles. New vehicles which are classified as school buses must meet the FMVSSs for school buses. A school bus manufacturer must certify that its vehicles meet all applicable Federal safety standards, and a commercial seller must sell only a complying vehicle as a school bus. Thus, a dealer who has a 12 or 15 passenger van that has not been certified as complying with the Federal school bus safety standards and sells that vehicle to a school district has, in all likelihood, violated the statutory prohibition against the sale of a noncomplying vehicle. (Title 49 of the Code of Federal Regulations (CFR) Part 571 contains the

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Federal safety standards applicable to school buses and other vehicles.)

However, this agency can not regulate the purchase or use of a vehicle, and consequently can not require a school district to purchase or use only those vehicles that comply with the Federal school bus safety standards. A State may do so by adopting appropriate vehicle definitions and requirements. To determine whether a local Kansas school district may purchase or use a noncomplying vehicle as a school bus, you must look to the laws of the State of Kansas, not the Federal laws and regulations.

On the other hand, I must emphasize NHTSA's position that a vehicle meeting Federal school bus regulations is the safest way to transport students, and encourage you to give this your most careful consideration.

I hope you find this information helpful. If you have further questions, please contact Joan Tilghman of my staff at this address or by telephone at (202) 366-2992.

Sincerely,

Erika Z. Jones Chief Counsel

cc: The Honorable Nancy Landon Kassebaum United States Senator Washington, DC 20515

ref:VSA#102#571 d:4/15/88

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The Honorable Fred Upton
U. S. House of Representatives
Washington, DC 20515-2206

Dear Congressman Upton:

Thank you for your letter asking for information about the use of buses and other vehicles to transport Michigan's school children. Your letter was referred to my office for reply, because the National Highway Traffic Safety Administration (NHTSA) is responsible for administering Federal programs relating to school bus safety.

You state that "Federal law prohibits the use of school vehicles to provide transportation to eleven or more students, unless it meets the safety standards of a school bus." You inform us that many Michigan school districts use vans to transport smaller student groups and would like to continue using vans.

As explained below, there is no Federal prohibition directed against schools or school districts which prevents them from using vans carrying 11 or more persons. Federal law does, however, affect the sale of buses to schools. NHTSA has the authority, under 49 U.S.C. §30112 et seq. (Chapter 301) to regulate the manufacture and sale of new motor vehicles. In 1974, Congress directed NHTSA to issue motor vehicle safety standards on specific aspects of school bus safety and apply those standards to all "school buses." The school bus standards we issued became effective April 1, 1977, and apply to each school bus manufactured on or after that date.

The parties subject to Chapter 301 are the manufacturers and sellers of new school buses. Chapter 301 requires each person selling a new "school bus" to ensure that the bus complies with our school bus safety standards. By regulation, a van designed for 11 or more persons (driver included) is a "bus," and is a "school bus" if intended for transporting students to and from school or related events. A person may sell a new bus (including a van designed to carry 11 or more persons) to a school or school district provided that the vehicle meets our motor vehicle safety standards for school buses.

In the event a Michigan school district decides to buy a new school bus, we would like the district to keep in mind that the seller would be obligated under Federal law to sell complying school buses. The seller should know that he or she risks civil penalties if a noncomplying bus is sold for pupil transportation.

Each State has the authority to set its own standards regarding the use of motor vehicles. Michigan state law would thus establish the requirements for how schools must transport school children. For further information, please contact Michigan's State Director of Pupil Transportation:

Claudette Nelson, Supervisor
Michigan Department of Education
P.O. Box 30008
Lansing, MI 48909
Telephone: (517) 373-8374

In closing, I wish to emphasize that school buses are one of the safest forms of transportation in this country, and that it is therefore strongly recommended that all buses that are used to transport school children be certified as meeting NHTSA's school bus safety standards. Further, using buses that do not meet NHTSA's school bus standards to transport students could result in increased liability in the event of a crash. Since such liability would be determined by State law, your constituents may wish to consult with their attorneys and insurance carriers for advice on this issue.

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I hope this information is helpful. For more information about the safety features of a school bus, I am enclosing NHTSA's publication: "School Bus Safety: Safe Passage for America's Children." If you have any further questions please feel free to contact me.

Sincerely,
Frank Seales, Jr.
Chief Counsel
Enclosure
ref: VSA#571.3
d.6/11/99

4-8

Highfill Scott
Executive Director
bhsusa02@ink.org

M. Katharine Weickert
Director of
Administrator Services
usak01@ink.org

Don Knowles
Professional Development
Coordinator



Kansas Association of
Elementary
School Principals
(KAESP)

Kansas Association of
Middle School
Administrators
(KAMSA)

Kansas Association of
School Administrators
(KASA)

Kansas Association of
School Business
Officials
(KASBO)

Kansas Association for
Supervision and
Curriculum Development
(KASCD)

Kansas Association of
Special Education
Administrators
(KASEA)

Kansas Association of
Secondary School
Principals
(KASSP)

Kansas Council of
Vocational
Administrators
(KCVA)

Kansas School
Public Relations
Association
(KanSPRA)

SB 21: School Transportation, Relating to Buses

Testimony presented before the Senate Transportation Committee

by

Brilla Highfill Scott, Executive Director
United School Administrators of Kansas

February 1, 2001

Mister Chairman and Members of the Senate Transportation Committee:

United School Administrators of Kansas is supportive of **SB 21** which states that when a school district is transporting more than 10 students, those students must be transported in a school bus.

In addition, any motor vehicle owned by the school district, which is not a school bus, and is designed to transport more than 10 passengers, but less than 15 passengers, shall not be used after July 1, 2004.

This bill brings the Kansas statutes into line with federal regulations. In checking with school administrators across the state, most are following the federal guidelines at the present time.

United School Administrators of Kansas appreciates your concern for the safety of Kansas school children and asks that you favorably report **SB 21**.

(w:legis:SB21 2001)

SENATE TRANSPORTATION
- COMMITTEE - DATE: 2-1-01 -
ATTACHMENT: 5

5-1

SCHOOL TRANSPORTATION NEWS

We are the Gateway to the World of School Transportation

A Position Paper of the National Association of State Directors of Pupil Transportation Services



Passenger Vans Used as School Buses

In recent years, the use of passenger vans with capacities of more than 10 passengers to transport children to and from school and school-related activities has become a significant issue. In an apparent effort to save money, some school districts have purchased or leased passenger vans in lieu of school buses. This is an alarming situation with potentially disastrous consequences to everyone.

Under Federal law, any motor vehicle designed to carry more than 10 persons is classified as a bus. They classify a bus as a school bus if it is used, or intended for use, in transporting student to and from school or school-related activities. Federal law prohibits dealers from selling/leasing a motor vehicle with a capacity of more than 10 persons for transporting students to and from school or a school-related activity, unless the vehicle complies with the applicable Federal Motor Vehicle Safety Standards for school buses.

In fact, each manufacturer of full-sized passenger vans (Chrysler Corporation, Ford Motor Company, and General Motor Corporation) has provided written notification to each of its dealers of the Federal law as a reminder not to sell/lease passenger vans to school with seating capacities of more than 10 persons. It is the responsibility of the seller/lessor to ascertain the intended use of the vehicle. The seller/lessor is subject to substantial penalties for knowingly selling or leasing a vehicle that does not meet the Federal Motor Vehicle Safety Standards for school buses, including civil fines and injunctive sanctions. It is unfortunate that some seller/lessors are apparently ignoring this information.

A passenger van does not offer the same level of safety to its occupants as a full-sized school bus or a school bus built on a van-type chassis. In a crash, the risk of a serious injury or fatality is significantly higher for the occupants of a passenger van. Since it would be expected that any crash resulting in serious injuries or fatalities to school children would ultimately result in lawsuits, the fact that a school was using a vehicle that was not manufactured, sold, or leased in accordance with Federal laws governing school transportation would most likely be a significant issue in the lawsuit. This fact could also have an impact on the liability responsibilities of the insurance company used to insure the operations of the school.

The National Association of State Directors of Pupil Transportation Services believes that it is appropriate to require higher levels of safety in vehicles that transport children to and from school and school-related activities. Accordingly, the Association supports the position that school children should be transported in school buses which provide them with the highest levels of safety, not in vans which do not meet the stringent school bus safety standards issued by the Federal government, and recommended by the National Standards Conference on School Transportation, an organization of state school transportation officials.

[Back to Top](#) | [State Directors](#) | [Home Page](#)

Kansas State Pupil Transportation Association

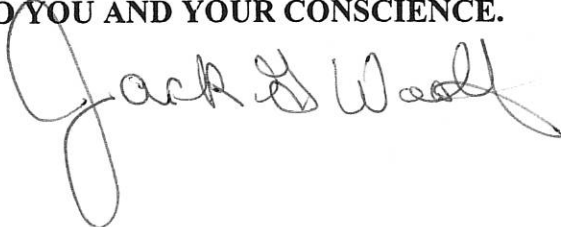
TO: KANSAS SENATE TRANSPORTATION COMMITTEE
SUBJECT: NONCONFORMING VANS (more than 10 passengers)

MR. CHAIRMAN, LADIES AND GENTLEMEN OF THE TRANSPORTATION COMMITTEE, I WANT TO TAKE THIS OPPORTUNIT TO ADDRESS YOU REGARDING MY CONCERNS ABOUT NONCONFORMING VANS. MY NAME IS JACK WOOLF. I HAVE SPENT 30 YEAR OF MY PROFESSIONAL CAREER IN PUPIL TRANSPORTAION IN KANSAS, MISSOURI, AND FLORIDA. DURING THIS TIME I HAVE OCCUPIED POSITIONS AS TRANSPORTAION DIRECTOR FOR SCHOOL DISTRICTS, SALESMAN, AND HAVE AS AN OFFICER OF KANSAS STATE PUPIL TRANSPORTATION ASSOCIATION – INCLUDING PRESIDENT. I HAVE MANAGED OVER 500 SCHOOL BUSES AS AREA MANAGER FOR A SCHOOL BUS CONTRACTOR AND SOLD OVER 1,400 BUSES IN FLORIDA IN ONE YEAR. THE NATIONAL ASSOCIATION RECENTLY CERTIFIED ME FOR PUPIL TRANSPORTATION AS A DIRECTOR OF PUPIL TRANSPORTATION. I WAS THE 45TH INDIVIDUAL TO ACHIEVE THIS NATIONAL RECOGNITION. “ IF YOU WERE TO CUT ME, I WOULD BLEED SCHOOL BUS YELLOW”.

I BELIEVE WITH ALL MY EXPERIENCE AND HEART THAT WE MUST REMOVE THE STATE LAW THAT PERMITS SCHOOLS AND INSTITUTIONS TO OWN A NON-CONFORMING VAN. QUITE HONESTLY, IT IS A BOMB THAT WILL EXPLODE IF WE DON'T CHANGE THE WAY WE ARE HEADED. SEVERAL YEARS AGO WHEN I HEARD MRS STREBLER (who lost her son in a nonconforming van) TESTIFY, I WAS SHOCKED TO LEARN THAT THE FEDERAL GOVERNMENT DOES NO CRASH TESTING ON THIS TYPE OF VEHICLE FOR PASSENGER STRENGTH AND INTEGRITY. FURTHERMORE, KANSAS IS IN VIOLATION OF THE FEDERAL LAW THAT RESTRICTS SCHOOL DISTRICTS FROM OWNING AND OPERATING THIS TYPE OF VEHICLE. QUITE SIMPLY WHAT WE ARE TALKING ABOUT IS SACRIFICING CHILDREN'S SAFETY FOR DOLLAR SAVINGS. WHEN WE LOOK AT SAFETY AND PROTECTION IT IS A “NO BRAINER” (refer to picture of bus).

THE DIFFERENCE AND PROBLEM THAT WE HAVE WITH THIS LAW IS ONE THAT WE MUST RESOLVE WITH YOUR ASSISTANCE. PLEASE REFER TO “NTSB NOTES ON SPECIAL INVESTIGATIVE REPORT ON NONCONFORMING BUSES”.

LAST OF ALL LADIES AND GENTLEMEN, I PERSONALLY TALKED WITH MRS STREBLER OF SOUTH CAROLINA WHO LOST HER SON JASON, AND REALIZED THAT WITH MY EXPERIENCE AND CONTACTS WITHIN THE PUPIL TRANSPORTAION INDUSTRY, I MUST DO EVERYTHING I CAN DO TO STOP MORE INJURIES AND FATALITIES FROM HAPPENING IN THESE NONCONFORMING VANS. MY QUESTION TO YOU IS – DOES IT TAKE A MAJOR ACCIDENT IN KANSAS WITH ONE OF THESE VEHICLES BEFORE YOU CHANGE THE LAW ? THE ANSWER IS UP TO YOU AND YOUR CONSCIENCE.



SENATE TRANSPORTATION
COMMITTEE -DATE: 2-1-01
ATTACHMENT: 6

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P R E S S A D V I S O R Y

Local Transportation Professional Acquires Prestigious Credentials

Jack Woolf Achieves Certified National Status

Jack Woolf, an employee of Midwest Bus sales in Bonner Springs, KS, has been certified as a Director of Pupil Transportation by the National Association for Pupil Transportation (NAPT). Woolf is only the 45th person in the United States to achieve this recognition.

The NAPT Professional Certification Program was established in 1989 to recognize the achievements and expertise of individuals in various administrative positions within the pupil transportation field. A candidate for certification in any category must undergo an objective peer review of the candidate's education, career experience, and achievements in the field of pupil transportation operations as well as a rigorous job-specific written examination that tests a candidate's knowledge of national standards for safe and efficient pupil transportation. The categories are structured according to job responsibilities and identify individuals who are fully qualified to carry out all administrative and technical functions associated with each job.

NAPT currently offers four types of professional certification: Director of Transportation; Supervisor of Pupil Transportation; Pupil Transportation Specialist; and Pupil Transportation Driver Instructor. Certification as a Director of Pupil Transportation (CDPT) is available to those individuals who are qualified to serve as the top administrator of a pupil transportation system. Candidates must demonstrate that they are capable of handling a position that involves establishing programs and policies, setting standards, developing materials, and providing leadership to achieve designated goals.

Specific certification requirements are:

- College degree and/or Acceptable Career Profile
- Minimum of five (5) years experience as Director and/or Supervisor of Transportation
- Attendance at two (2) NAPT Annual Conferences

-more-

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- Certificate of Completion indicating twenty (20) hours contact time from an NAPT-approved workshop
- Workshop presentation at a national or state meeting, or accepted project/published article
- Completion of the NAPT CDPT 3-hour written exam

The National Association for Pupil Transportation (NAPT) is a nonprofit, voluntary membership organization that represents public and private sector school transportation professionals from around the world who advocate safe and efficient pupil transportation and encourage professional growth through life-long learning.

For additional information, please contact:

Michael J. Martin, Executive Director
National Association for Pupil Transportation
4 Tower Place – Executive Park
Albany, NY 12203-0647

NATIONAL TRANSPORTATION SAFETY BOARD

Public Meeting of June 8, 1999

Abstract of Final Report

(Subject to Editing)

Special Investigative Report: Nonconforming Buses

This is an abstract from the Safety Board's report and does not include the Board's rationale for the conclusions and recommendations. Safety Board staff is currently making final revisions to the report from which the attached conclusions and recommendations have been extracted. The final report and pertinent safety recommendation letters will be distributed to recommendation recipients and investigation parties as soon as possible. The attached information is subject to further review and editing.

EXECUTIVE SUMMARY

In the 1970s, the U.S. Department of Transportation enacted Federal regulations containing school bus occupant crash protection standards to safeguard children being transported to and from school or school-related activities. The Federal Motor Vehicle Safety Standards (FMVSS),¹ which are contained in 49 *Code of Federal Regulations* (CFR) 571, require that school buses have body joint strength, roof rollover protection, and energy-absorbing seats that specialty buses, vans, or motorcoaches are not required to have. Many standards related to occupant protection and vehicle construction strength are a result of past Safety Board recommendations.

Requiring the use of school buses that conform with Federal standards is the purview of the States. Most States require that children can only be transported to and from school on buses meeting Federal school bus crashworthiness standards. However, despite National Highway Traffic Safety Administration (NHTSA) recommendations and interpretations to the contrary, some States either allow or do not prohibit the use of nonconforming buses² for school-related activities, Head Start³ programs, child care facilities, and "for-hire"⁴ transport.

FMVSS definitions (CFR 571.3) indicate that *bus* means a motor vehicle designed to carry more than 10 persons,⁵ and *school bus* means a bus that carries students to or from school or school-related activities. For this report, *nonconforming bus* means a bus that does not meet the FMVSS specific to school buses.

¹ School bus crashworthiness standards that are applicable to this report are listed in appendix A.

² A summary of current State restriction appears later in this report.

³ Head Start is a child development program that has served low-income families since 1965.

⁴ "For-hire" vehicles are those that are contracted by an individual or group but not by an institution, such as a school system.

⁵ A 15-passenger van is considered a bus.

In 1998 and early 1999, the National Transportation Safety Board investigated four accidents in which a total of 9 people were killed and 36 were injured when the nonconforming buses in which they were riding were involved in collisions. Most of the victims, including eight fatalities, were children.

On March 25, 1998, in Sweetwater, Florida, a 15-passenger van hired by parents to take children to and from school collided with a transit bus. Three children were ejected and sustained head injuries. On March 26, 1998, in Lenoir City, Tennessee, a 25-passenger specialty bus⁶ taking children from a school-related activity collided with a truck tractor semitrailer. Two people, one of whom was ejected, were fatally injured. On December 8, 1998, in East Dublin, Georgia, a 15-passenger van transporting children to a Head Start program collided with a pickup truck. One child was ejected and fatally injured. On February 16, 1999, in Bennettsville, South Carolina, a 15-passenger van transporting children home from an after-school church program was struck by a tow truck. Three children were ejected, and a total of six children were fatally injured.

According to a NHTSA fact sheet on school buses, the number of school bus passenger fatalities nationwide averages fewer than 10 each year out of approximately 10 billion student trips.⁷ The Safety Board is firmly convinced that the best way to maximize pupil transportation safety is to require the use of school buses or buses built to equivalent occupant crash protection standards.⁸ When States and various school systems allow the transportation of children in vehicles not meeting Federal school bus construction standards, the Federal intent of protecting school children is undermined.

In two of the accidents that are the focus of this special investigation (Lenoir City and Bennettsville), bus crashworthiness is an issue. In two others (Sweetwater and East Dublin), occupant crash protection is an issue. In three of the accidents, most of the child occupants were not wearing the available restraints. (The specialty bus in the Lenoir City accident was not equipped with restraints nor was it required to be.) The proper use of age-appropriate restraints is essential for passenger safety in almost all motor vehicles. However, a review of State and local laws showed that they do not require or, in some cases, do not address this most fundamental safety feature for pupil transportation.

⁶ Specialty bus is the industry term for the small buses that are commonly used as shuttle or tour buses. Additional information about specialty buses appears later in this report. Presently, no Federal standard defines the names and configurations for buses of these sizes and types. The Safety Board will address this issue in an upcoming special investigation report.

⁷ The number of student trips was obtained from a January 1999 position paper of the National Association of State Directors of Pupil Transportation.

⁸ Because of industry demands, motorcoaches typically are built to occupant crash protection standards that are equivalent to those for school buses. More information about motorcoaches appears later in this report.

This special investigation discusses the subject accidents in greater detail, the lack of occupant crash protection of the various types of nonconforming vehicles, and the State and local laws that undermine the safety of pupil transportation. The specific safety issues include the following:

- The adequacy of occupant crash protection and crashworthiness of nonconforming buses transporting school children;
- The adequacy of State regulations and guidelines governing nonconforming buses used to transport school children; and
- The adequacy of State laws governing the use of restraint systems in nonconforming buses transporting school children.

CONCLUSIONS

1. Had the unrestrained children in the Sweetwater, Florida, and East Dublin, Georgia, accidents been in a school bus or a vehicle built to comparable seating standards, the compartmentalization of the vehicle may have contained them within their seating areas and prevented them from striking multiple interior surfaces or from being ejected.
2. Had the children in the Bennettsville, South Carolina, accident been riding in a school bus instead of a passenger van, the striking tow truck probably would not have intruded as much and the children in the impact area likely would have had more survivable space because of the school bus' greater structural strength.
3. In the Lenoir City, Tennessee, accident, the passenger probably would not have been ejected and the specialty bus probably would have sustained less damage had the vehicle met Federal school bus or equivalent structural standards because it would have had greater floor and joint strength.
4. Given their better crashworthiness and occupant protection, had school buses or buses providing equivalent occupant crash protection been used in the four accidents that are the subject of this special investigation, the vehicles probably would have sustained less intrusion damage and the passengers may have suffered fewer and less severe injuries.
5. State laws regarding student transportation do not provide uniform safety. Further, the lack of Federal and State legislation regarding Head Start and day care transportation allows for situations in which students may be transported in a vehicle that does not provide the maximum available protection during accidents.

6. Had the passengers been wearing their seat belts during the Sweetwater, Florida, accident sequence, the three children probably would not have been ejected and the fourth child probably would not have sustained such extensive injuries from striking the van's interior surfaces.
7. Had the fatally injured 4-year-old child in the East Dublin, Georgia, accident been properly secured in a child safety restraint system or seat belt, he probably would not have been ejected and have sustained fatal injuries.
8. The Bennettsville, South Carolina, accident was so severe that the child passengers probably would have been injured and perhaps killed regardless of the safety measures taken. However, had the three children seated on the left side of the passenger van been wearing their seat belts, they probably would not have been ejected, which would have increased their chances of survival.

RECOMMENDATIONS

As a result of its investigation, the National Transportation Safety Board makes the following Safety Recommendations:

To the Department of Health and Human Services:

1. Require that Head Start children be transported in vehicles built to Federal school bus structural standards or the equivalent.
2. Incorporate and mandate the use of the guidelines from the National Highway Traffic Safety Administration's *Guideline for the Safe Transportation of Pre-school Age Children in School Buses* into the rules for the transportation of Head Start children.

To the Governors of the 50 States and the Mayor of the District of Columbia:

3. Require that all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school related activities, including, but not limited to Head Start programs and day care centers, meet the school bus structural standards or the equivalent as set forth in 49 *Code of Federal Regulations* Part 571. Enact regulatory measures to enforce compliance with the revised statutes.
4. Review your State and local laws and, if applicable, revise to eliminate any exclusions or exemptions pertaining to the use of age-appropriate restraints in all seat belt-equipped vehicles carrying more than 10 passengers (buses) and transporting school children.

5. Adopt the National Highway Traffic Safety Administration's *Guideline for the Safe Transportation of Pre-school Age Children in School Buses* and, distribute the guidelines and encourage their implementation by all operators of school buses that transport preschool-age children to and from school or school-related activities.

To the National School Boards Association, the National Association of Independent Schools, the National Conference on School Transportation, the National Association of Child Care Professionals, the National Child Care Association, the National Head Start Association, the Young Men's Christian Association, and the Young Women's Christian Association: [Additional Addresses will be added.]

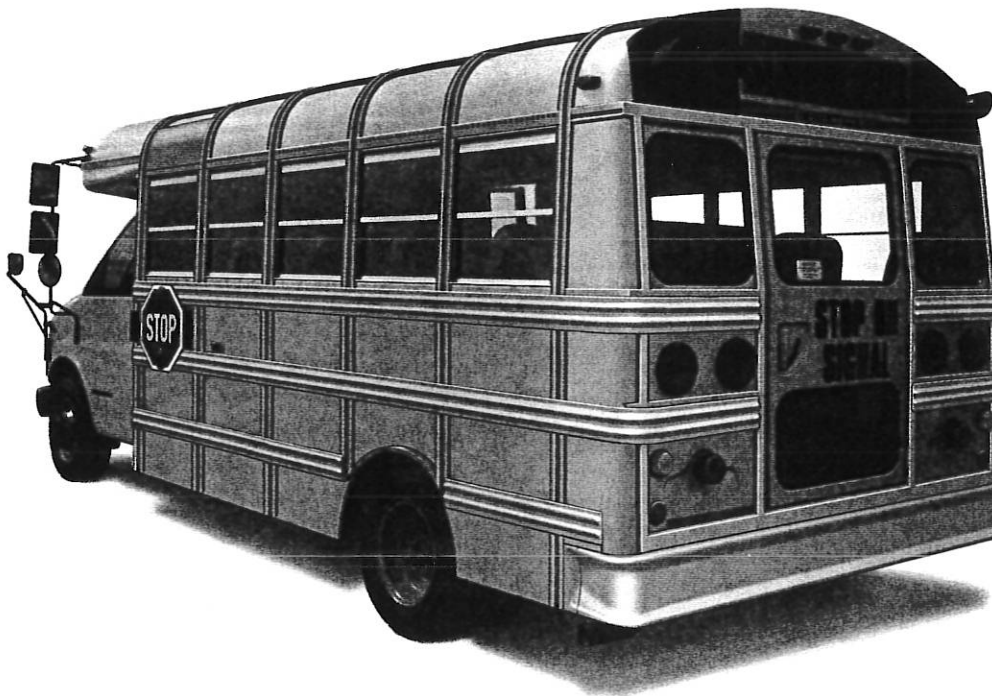
6. Inform your members about the circumstances of the accidents discussed in this special investigation report and urge that they use school buses or buses having equivalent occupant protection to school buses to transport children.

To the Community Transportation Association of America:

7. Inform your members of the circumstances of the East Dublin, Georgia, accident and of the added safety benefits of transporting children by school bus, and encourage them to use buses built to Federal school bus structural standards or equivalent to transport children.

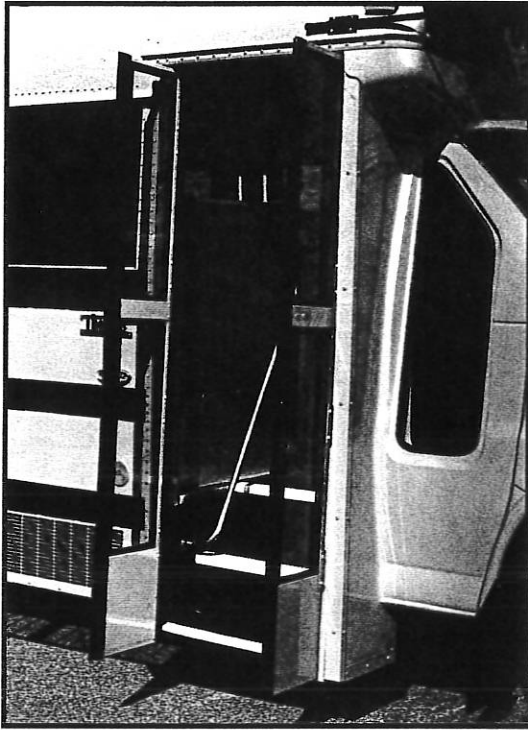
Precious things come, and go, in small packages.

The Thomas Minotour® EL is built to be one tough package. When a 15 passenger vehicle is too small, you can transport up to 30* children in this small bus with big features. It's a great way to maximize the efficiency of your fleet. It's more maneuverable than full size buses and it meets all applicable Federal Motor Vehicle Safety Standards for type "A" school buses. So consider the small bus with big capacity for your next type "A" bus purchase.

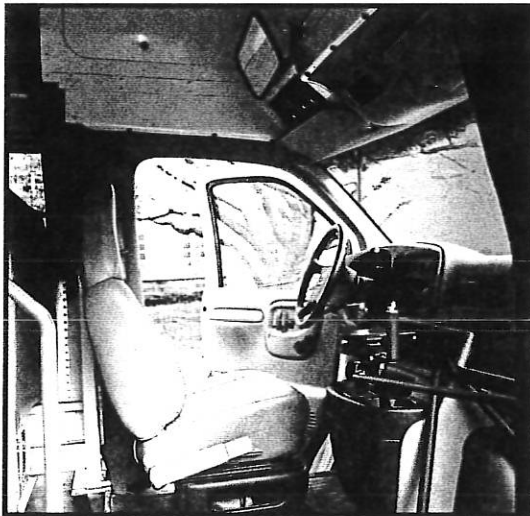


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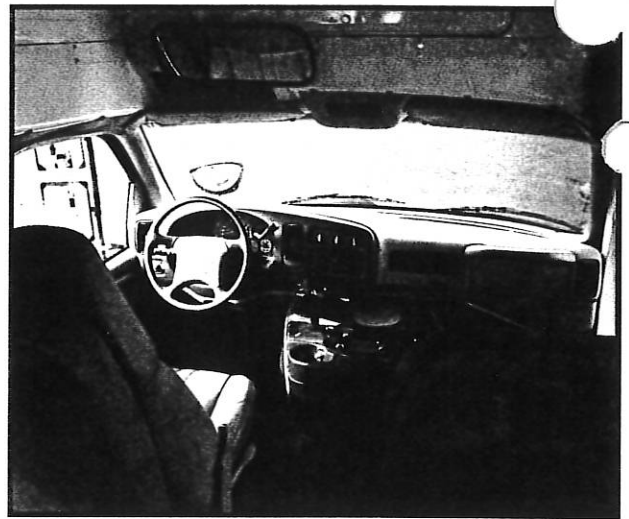
Small Bus - Big Features



Full height outward opening entrance door allows easy passenger entry and exit.



A separate door is provided for easy driver entry and exit.



The driver's area is designed to be comfortable and user friendly.



Electrical access and a convenient storage area are located in the driver's area.



Spacious interior includes a convenient center aisle.



Testimony to the Senate Committee on Transportation RE: Senate Bill 21

February 1, 2001

The following information describes basic differences between vans and school buses. Most differences are established by Federal Motor Vehicle Safety Standards (FMVSS) for school buses and some are derived from basic industry standards of design and construction. Vans are considered "multipurpose passenger vehicles" or "buses", and are not necessarily designed to meet the same safety standards as school buses.

Passenger Seating and Crash Protection - FMVSS 222

School bus standards include requirements for high-back, padded seats that form a "compartment" around a seated passenger. In the event of a crash, the seat in front of an unrestrained passenger helps absorb the forward momentum. In addition, school bus seat padding is designed specifically to reduce the severity of a head impact injury.

Seats in vans are required to provide no such protection. The back of a seat may easily bend forward if struck by a passenger from behind. No effective compartment exists that would contain and protect an unrestrained passenger in the event of a crash.

Body Panel Joint Integrity - FMVSS 221

School bus standards include strength requirements for the joints between body panels on the exterior and interior of the vehicle. Stronger body panel joints help insure panels do not break free in a crash and expose panel edges that might injure passengers. Stronger joints also improve integrity of the body as a whole and increase impact protection of the vehicle walls, roof, and floor. Vans have no requirements for body panel joint integrity.

Rollover Protection - FMVSS 220

FMVSS requires that the roof structure of a school bus to resist the forces involved in a vehicle rollover. The roof deflection is limited to a few inches after repeated loading of a given force, based on the vehicle curb weight of the vehicle. A strong roof structure helps insure the safety of passenger space inside the vehicle. Vans do not have an equivalent requirement for rollover protection.

Side Impact Protection - FMVSS 214

Though FMVSS requires a certain level of side impact protection in both vans and small school buses, typical school bus industry construction standards provide a higher level of protection. Van construction typically consists of interior and exterior sheet metal pressed into shape and spot welded together. The cage-like structure of a school bus with exterior guard rails better resists intrusion of a colliding vehicle or obstacle.

SENATE TRANSPORTATION
COMMITTEE -DATE: 2-1-01
ATTACHMENT: 7

7-1

SHIPPING ADDRESS:
415 WEST 6TH STREET
SOUTH HUTCHINSON, KS 67505
(316) 662-9000

1-800-533-1850
<http://www.collinsbus.com>

P.O. BOX 1070
HUTCHINSON, KS 67504-294
FAX: (316) 662-3838

National Transportation Safety Board (NTSB) investigations of accidents involving vans show that a lesser amount of intrusion would probably result in a vehicle constructed like a school bus. Less intrusion into the passenger compartment could mean fewer and less severe injuries to passengers inside.

Emergency Exit Requirements - FMVSS 217

School bus standards include requirements for the ease of exit window and/or door operation. These performance standards help insure passengers can quickly exit the vehicle in an emergency. Vans have no such requirements, and van exits are often blocked by seats.

Warning Lights - FMVSS 108 Pedestrian Safety Devices - FMVSS 131

In addition to differences in school bus and van crashworthiness, school buses employ pedestrian warning devices to alert nearby traffic of children loading and unloading. Flashing warning lights and stop arms can help prevent pedestrian injuries.

Summary


As shown by NTSB investigations of various accidents involving vehicles not meeting federal school bus standards (NTSB Report #PB990917003), children may sustain fewer and less severe injuries if transported in school buses should an accident occur. Based largely on the increased level of safety inherent in school buses over vans, the NTSB has made the following recommendations to State governments:

1. Require that all vehicles carrying more than 10 passengers and transporting children to and from school and school related activities meet the school bus structural standards set forth by Federal Motor Vehicle Safety Standards.
2. Enact regulatory measures to enforce compliance with the above requirement.

These recommendations coincide with the intent of Federal laws which prohibit the sale or lease of new non-school bus vehicles for the purpose of student transportation.

Sincerely,

COLLINS BUS CORPORATION

A handwritten signature in black ink, appearing to read 'Bryce Pfister', written over a horizontal line.

Bryce Pfister, P.E.
Director of Engineering

To: All Ford Dealers (SMD#361)
From: Darryl Hazel, General Marketing Manager, Ford Division
Subject: Sale or Lease of Ford Club Wagons and Super Club Wagons for Student Transportation

This letter serves as a reminder to all Ford dealers that the sale or lease of vehicles to a school district for student transportation is strictly regulated by both Federal and State regulations. You and the purchaser are responsible for ascertaining and ensuring compliance with state and federal laws and regulations applicable to the sale and use of such vehicles.

Federal statutes and regulations specify that a "school bus" must meet certain unique requirements as set forth in Sections 30101-30127 of Volume 49 of the United States Code and Section 571 of Volume 49 of the Code of Federal Regulations.

The National Highway Traffic Safety Administration (NHTSA) defines a "school bus" as "a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation". 49 CFR 571.3

The NHTSA defines a "bus" as a "motor vehicle designed for carrying more than 10 persons". This definition includes the driver, so that any vehicle designed to carry 11 or more persons is considered a bus. 49 CFR 571.3

Ford manufacturers incomplete vehicles such as the Econoline cutaway and the B-Series Chassis Cowl that can be outfitted with the School Bus Prep package. Ford provides, with each unit, an incomplete vehicle manual to assist the Final Stage Manufacturer in complying to the applicable federal school bus safety standards. The Final Stage Manufacturer is responsible to ensure that the final product complies with all federal and state regulations.

Ford Club Wagons and Super Club Wagons that have more than ten designated seating positions are not certified to and DO NOT COMPLY with all of the requirements of the Federal Motor Vehicle Safety Standards (FMVSS) specifically applicable to school buses. Because these vehicles do not comply with these requirements, they cannot lawfully be sold or leased as new vehicles to educational institutions for purposes that include transporting pre-primary, primary, or secondary school students to and from school related events.

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WARNING: IT IS A VIOLATION OF FEDERAL LAW FOR ANY PERSON TO KNOWINGLY
SELL OR LEASE A NEW VEHICLE FOR USE AS A SCHOOL BUS THAT DOES NOT COMPLY
WITH ALL FMVSS REQUIREMENTS APPLICABLE TO SCHOOL BUSES

The NHTSA has stated that it considers the seller of a vehicle to be the person most likely to be knowledgeable of its intended use. Accordingly,

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Ford Motor Company recommends that a dealer - who sells or leases a new Club Wagon or Super Club Wagon having more than ten (10) designated seating positions to an organization that has education-related functions - obtain for his or her files a signed statement from the purchaser or lessee confirming that the vehicle is not being purchased or leased for carrying students to and from school or related events. You may be subject to a civil penalty for the violation of a federal law if you sell or lease such a vehicle and know or have reason to know that the purchaser or lessee intends to use the vehicle as a school bus.

The following information is provided in response to the questions of various manufacturers, dealers, school administrators and others. The NHTSA has provided certain examples of its interpretation of the law and the regulations governing the transportation of students to and from school and other related events in "school bus" vehicles. According to the NHTSA, new buses sold or leased for the specific uses listed below are required to comply with the Federal Motor Vehicle Safety Standards applicable to school buses:

- + transportation of pre-primary, primary and secondary public and private school students to and from school and related events. A school related event includes any activity connected to a school whether on or off school grounds, including sports events, band concerts, field trips, and competitions such as debate or chess tournaments.
- + transportation of students of a pre-primary, primary or secondary school that is operated under the auspices of a church; and
- + transportation of students of a vocational school that is connected with a secondary school.

New buses sold or leased for the uses listed below are not required to comply with the Federal Motor Vehicle Safety standards applicable to school buses:

- + transportation of adults or other post-high school students to vocational training;
- + transportation of college and university students on field trips or to athletic events;

+ - 3 -

- + transportation of children to and from day care centers in which the facilities serve a primarily custodial function, rather than an educational function;
- + transportation of children to and from church schools, such as Sunday schools or other schools providing religious training (does not include transportation of students of pre-primary, primary or secondary schools operated by churches); and
- + transportation of "playground teams" that are organized independently of any school or educational organization.

Questions concerning the application of these examples or the Federal school bus-related laws and regulations to your specific situation should be directed to your dealership's attorney or the Chief Counsel's Office, National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

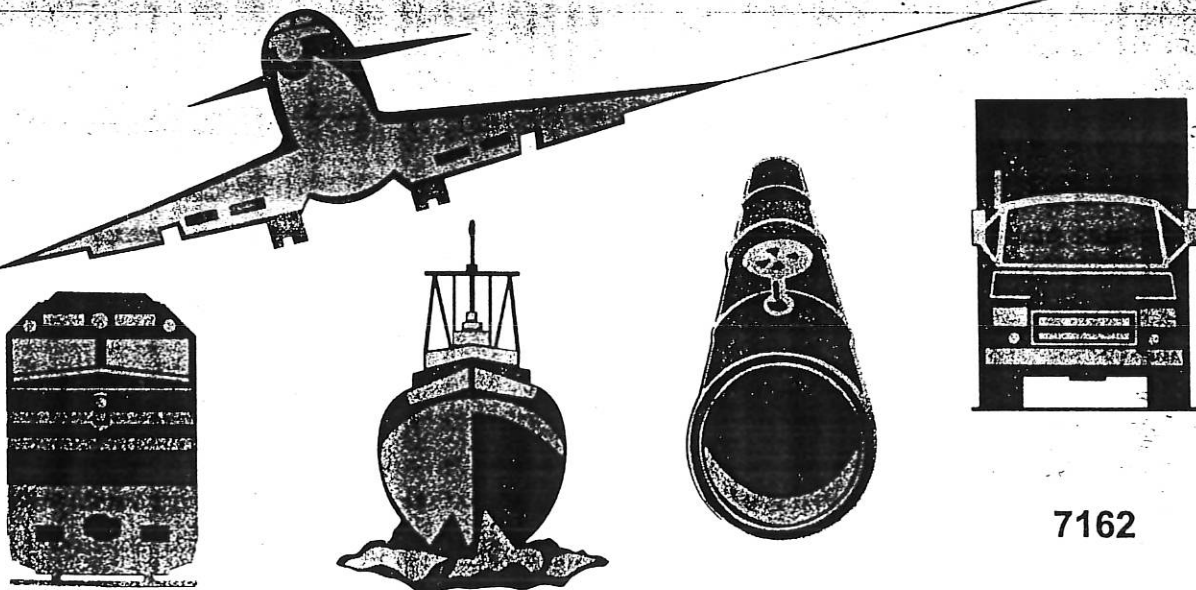
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NATIONAL TRANSPORTATION SAFETY BOARD

WASHINGTON, D.C. 20594

HIGHWAY SPECIAL INVESTIGATION REPORT

PUPIL TRANSPORTATION IN VEHICLES NOT MEETING FEDERAL SCHOOL BUS STANDARDS



National Transportation Safety Board. 1999. Pupil Transportation in Vehicles Not Meeting Federal School Bus Standards. Highway Special Investigation Report NTSB/SIR-99/02. Washington, DC.

This report contains the findings of a special investigation conducted as a result of four fatal accidents involving nonconforming buses used to transport school children. In the first accident, on March 25, 1998, three children were ejected when the passenger van transporting them collided with a transit bus in Sweetwater, Florida. On March 26, 1998, two people were fatally injured when the specialty bus transporting the students collided with a truck tractor semitrailer in Lenoir City, Tennessee. On December 8, 1998, one child was ejected and fatally injured when the passenger van transporting them collided with a pickup truck in East Dublin, Georgia. On February 16, 1999, in Bennettsville, South Carolina, three children were ejected and six children were fatally injured when the passenger van transporting them was struck by a tow truck.

From its investigation, the Safety Board identified safety issues in the following areas: the adequacy of occupant crash protection and crashworthiness of nonconforming buses used to transport school children, the adequacy of State regulations and guidelines governing nonconforming buses used to transport school children, and the adequacy of State laws governing the use of restraint systems in nonconforming buses transporting school children.

The National Transportation Safety Board is an independent Federal agency dedicated to promoting aviation, railroad, highway, marine, pipeline, and hazardous materials safety. Established in 1967, the agency is mandated by Congress through the Independent Safety Board Act of 1974 to investigate transportation accidents, determine the probable cause of accidents, issue safety recommendations, study transportation safety issues, and evaluate the safety effectiveness of government agencies involved in transportation. The Safety Board makes public its actions and decisions through accident reports, safety studies, special investigation reports, safety recommendations, and statistical reviews.

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Highway Special Investigation Report

PUPIL TRANSPORTATION IN VEHICLES NOT MEETING FEDERAL SCHOOL BUS STANDARDS

NTSB/SIR-99/02
PB99-917003
Notation 7162
Adopted: June 8, 1999



National Transportation Safety Board
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20594

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Introduction

In the late 1960s and early 1970s, the National Transportation Safety Board investigated a number of catastrophic school bus accidents in which children were killed or severely injured because of the vehicles' joint failure and structural collapse. Based on its findings in these accident investigations, the Safety Board issued several safety recommendations¹ to the National Highway Traffic Safety Administration (NHTSA) to improve the crashworthiness of school buses so as to afford our nation's youth better occupant crash protection in the event of accidents.

The resulting revisions to 49 *Code of Federal Regulations* (CFR), contained in Part 571, Federal Motor Vehicle Safety Standards (FMVSS), require that large and small yellow school buses² transporting children to and from school or school-related activities have roof rollover protection, energy-absorbing seats, and greater body joint strength than most other types of vehicles. The enactment of these standards has had an enormous impact on the safety of student transportation. According to a NHTSA fact sheet on school buses, the number of school bus passenger fatalities nationwide averages fewer than 10 each year out of approximately 10 billion student trips.³

In recent years, the Safety Board has investigated several serious accidents highlighting a disturbing trend in pupil transportation. Some school districts, day care centers, Head Start facilities, contract transportation companies, and other concerns are using "nonconforming buses," that is, vehicles for student transportation that meet the Federal definition of a bus⁴ but not the Federal occupant crash protection standards of school buses. This trend is potentially serious in that it puts children at greater risk of fatal or serious injury in the event of an accident. During an 11-month period beginning in spring 1998, the Safety Board investigated four accidents involving nonconforming buses, summarized below, that resulted in 9 people dying and 36 people sustaining serious and minor injuries. Most of the victims, including the eight fatalities, were children.

On March 25, 1998, in Sweetwater, Florida, a 15-passenger van hired by parents to take children to and from school collided with a transit bus. Three children were ejected and sustained head injuries. On March 26, 1998, in Lenoir City, Tennessee, a 25-passenger

¹ School bus crashworthiness standards that are applicable to this report are listed in appendix A. Past Safety Recommendations that relate to rollover strength, body joint strength, and seating and crash protection are listed in appendix B.

² The large yellow school bus, which is the vehicle that most people associate with student transportation, has a seating capacity of more than 50 and a Gross Vehicle Weight Rating (GVWR) of more than 10,000 pounds. Many school systems use small yellow school buses (10,000-pound GVWR or less) when large school buses exceed their pupil transportation needs.

³ The number of student trips was obtained from a January 1999 position paper of the National Association of State Directors of Pupil Transportation.

⁴ FMVSS (CFR 571.3) defines *bus* as a motor vehicle designed to carry more than 10 persons and *school bus* as a bus that carries students to or from school or school-related activities.

specialty bus⁵ taking children from a school-related activity collided with a truck tractor semitrailer. Two people, one of whom was ejected, were fatally injured. On December 8, 1998, in East Dublin, Georgia, a 15-passenger van transporting children to a Head Start program⁶ collided with a pickup truck. One child was ejected and fatally injured. On February 16, 1999, in Bennettsville, South Carolina, a 15-passenger van transporting children home from an after-school church program was struck by a tow truck. Three children were ejected, and a total of six children were fatally injured.

Based on its findings in these accidents, the Safety Board initiated the special investigation that is the subject of this report. In the course of its investigation, the Board found that while most States require that children can only be transported to and from school on buses meeting Federal school bus crashworthiness standards, some States either allow or do not prohibit the use of nonconforming buses for school-related activities, Head Start programs, child care facilities, and "for-hire"⁷ transport despite Federal guidelines to the contrary. The Safety Board is firmly convinced that the best way to maximize pupil transportation safety is to require the use of school buses or buses built to equivalent occupant crash protection standards. When States and various school systems allow children to be transported in vehicles not meeting Federal school bus construction standards, the Federal intent of protecting school children is undermined.

In two of the accidents that are the focus of this special investigation (Lenoir City and Bennettsville), bus crashworthiness is an issue. In two others (Sweetwater and East Dublin), occupant crash protection is an issue. In three of the accidents, most of the child occupants were not wearing the available restraints. (The specialty bus in the Lenoir City accident was not equipped with restraints, nor was it required to be.) The proper use of age-appropriate restraints is essential for passenger safety in almost all motor vehicles. However, a review of State and local laws showed that they do not require or, in some cases, do not address this most fundamental safety feature for pupil transportation.

This special investigation report discusses the subject accidents in greater detail, the lack of occupant crash protection of the various types of nonconforming vehicles, and the State and local laws that undermine the safety of pupil transportation. The specific safety issues include the following:

⁵ *Specialty bus* is the industry term for the small buses that are commonly used as shuttle or tour buses. Additional information about specialty buses appears later in this report. No Federal standard defines the names and configurations for buses of these sizes and types. The Safety Board will address this issue in an upcoming report.

⁶ Head Start is a child development program that has served low-income families since 1965.

⁷ *For-hire* vehicles are those that are contracted by an individual or group but not by an institution, such as a school system.

- The adequacy of occupant crash protection and crashworthiness of nonconforming buses transporting school children;
- The adequacy of State regulations and guidelines governing nonconforming buses used to transport school children; and
- The adequacy of State laws governing the use of restraint systems in nonconforming buses transporting school children

Accident Synopses

Sweetwater, Florida

On March 25, 1998, about 3 p.m., a 1992 Dodge Ram model B350 15-passenger van, occupied by the driver and 10 students, ages 6 to 11, struck the left side of a Miami Transit Authority (MTA) bus at an intersection in Sweetwater, Florida. The van was owned and operated by the driver, who had been contracted by the students' parents to provide transportation to and from a local elementary school.

At the time of the accident, the van was traveling southbound on 113th Avenue en route from the school to the students' residences; the MTA bus was on its scheduled route traveling eastbound on 3rd Street. Traffic flow at the intersection of 3rd Street and 113th Avenue was controlled by a two-way stop sign for east-west traffic. Police reports indicate that as the eastbound MTA bus was approaching the intersection, it passed another transit bus that was loading passengers at a bus stop and entered the intersection without stopping at the stop sign. About the same time, the southbound passenger van, which had the right-of-way, entered the intersection and struck the side of the transit bus. At impact, the van rotated about 90 degrees counterclockwise and remained upright (figure 1). The MTA bus continued to travel eastbound and remained upright.



Figure 1. The passenger van that was involved in the Sweetwater collision

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One van passenger and the van driver sustained serious injuries; the passengers' injuries resulted from contact with multiple interior surfaces, and the van driver's injuries resulted from damage intrusion in the floor pedal area. The remaining passengers sustained minor or no injuries. The transit busdriver sustained minor injuries. The van was equipped with lap-shoulder belts at the outboard seating positions and with lap belts at the interior seating positions. According to Miami-Dade County police reports, the van driver and the transit busdriver were wearing their lap-shoulder belts when the accident occurred. The van passengers were not wearing the available restraints. Three children were ejected from the van; all sustained closed-head injuries. One child who was not ejected suffered a closed-head injury and a fractured clavicle.

Lenoir City, Tennessee

On March 26, 1998, about 2:20 p.m., a Rocky Top Tours, Inc.,⁸ "mini-coach,"⁹ occupied by 22 William Blount High School students, 2 adults, and an adult driver, was struck on the left side by a truck tractor semitrailer combination vehicle near Lenoir City, Tennessee. The specialty bus was en route from an academic competition in Kingston, Tennessee. According to witnesses, the specialty busdriver, who was operating in the right eastbound lane on Interstate (I)-40, missed her intended exit and was turning left across the left eastbound lane of I-40 to make a U-turn at a median crossover. The truck tractor

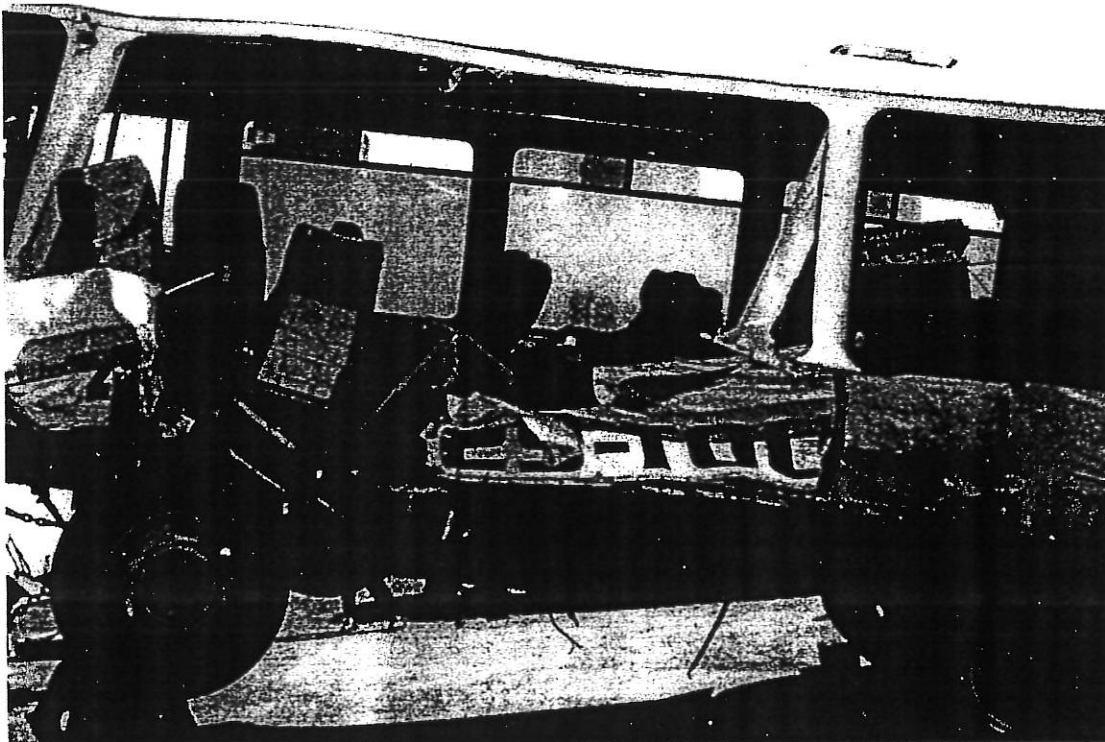


Figure 2. The specialty bus that was involved in the Lenoir City collision

⁸ Rocky Top Tours, Inc., is an intrastate and interstate passenger carrier that is registered with the U.S. Department of Transportation as USDOT 602917.

⁹ *Mini-coach* is the manufacturer's term for this specialty bus.

semitrailer, which was traveling in the left eastbound lane, struck the specialty bus at a point directly behind the driver's seat, tearing the bus body open (figure 2).

One student passenger was ejected and sustained fatal injuries, and an adult passenger seated in the impact area sustained fatal injuries. The driver and other passengers of the specialty bus sustained injuries ranging from minor to serious; the truckdriver sustained minor injuries.

The accident bus was a 1990 National Coach specialty bus designed to carry 24 passengers and a driver. The driver's seating position was equipped with a lap-shoulder belt, which the police determined had been used; the passenger seating positions were not equipped with seat belts.

East Dublin, Georgia

On December 8, 1998, about 8:10 a.m., a 1995 Ford 15-passenger van, occupied by a driver; five children, ages 4 and 5; and an adult aide, struck the left side of a 1996 Chevrolet pickup truck in East Dublin, Georgia (figure 3). The van was transporting the children from their homes to the local East Dublin Georgia Head Start program center. The van was traveling westbound on County Road 20. When the van reached the intersection of Georgia State Route 31, its driver drove through a stop sign, entered the intersection, and hit the southbound pickup, which was being operated by a 17-year-old driver. Each vehicle overturned onto its left side and came to rest in a grassy area near the southwest corner of the intersection.



Figure 3. The passenger van that was involved in the East Dublin collision

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During the accident sequence, a 4-year-old child was ejected from the van and sustained fatal injuries; he was found about 10 feet from the van. Eight of the 10 windows in the van shattered during the accident. The van driver sustained serious injuries; the adult aide and remaining four children sustained minor injuries. Although the pickup truckdriver was wearing his seat belt and remained in his vehicle, he sustained fatal injuries from impact and intrusion.

Safety Board investigators interviewed the adult aide, who stated that she could not remember any details of the accident, including the children's seating positions and restraints use. The van driver refused Safety Board requests for an interview. The children were not interviewed because of their ages. Investigators found a child safety seat in the van, but could not determine whether it had been used by any of the children because it had been moved during rescue operations. The outboard seating positions were equipped with lap-shoulder belts, and the interior seats were equipped with lap belts only.

The Laurens County Rural Transit System owned the van and transported the children under contract to the Middle Georgia Community Action Agency, Inc. (MGCAA), which operated the Head Start center.

Bennettsville, South Carolina

On February 16, 1999, about 5:20 p.m., a 1996 Dodge 15-passenger van, occupied by an adult driver and six children, ages 7 to 11, was traveling eastbound on County Road 209 when it was struck by a northbound tow truck on State Route 9 (figure 4). The van driver reported that she had stopped for the intersection stop sign, then had proceeded across the two southbound lanes to the median crossover area, where she again had stopped before proceeding across the northbound lanes. She said she never saw the tow truck approaching. A witness who had been stopped at the westbound stop sign said, however, that the van did not stop at the sign and continued to travel into the path of the tow truck, which struck the right side of the van. After impact, the van came to rest upright against a tree about 100 feet northwest of the intersection. The overturned tow truck was next to the van.

The outboard seating positions were equipped with lap-shoulder belts, and the interior seats were equipped with lap belts only. None of the van occupants was restrained at the time of the accident. Of the six children in the van, three were ejected during the accident sequence and sustained fatal injuries. Three children remained in the van; however, they sustained fatal injuries because their seating positions were in the impact area. The van driver sustained moderate injuries. The tow truckdriver sustained moderate injuries.

The 15-passenger van was owned and operated by the Wallace Family Life Center, an affiliate of the United Methodist Church. The van had picked up the children at school around 3 p.m. and had taken them to the center for after-school care. The children were en route home after the center had closed when the accident occurred.

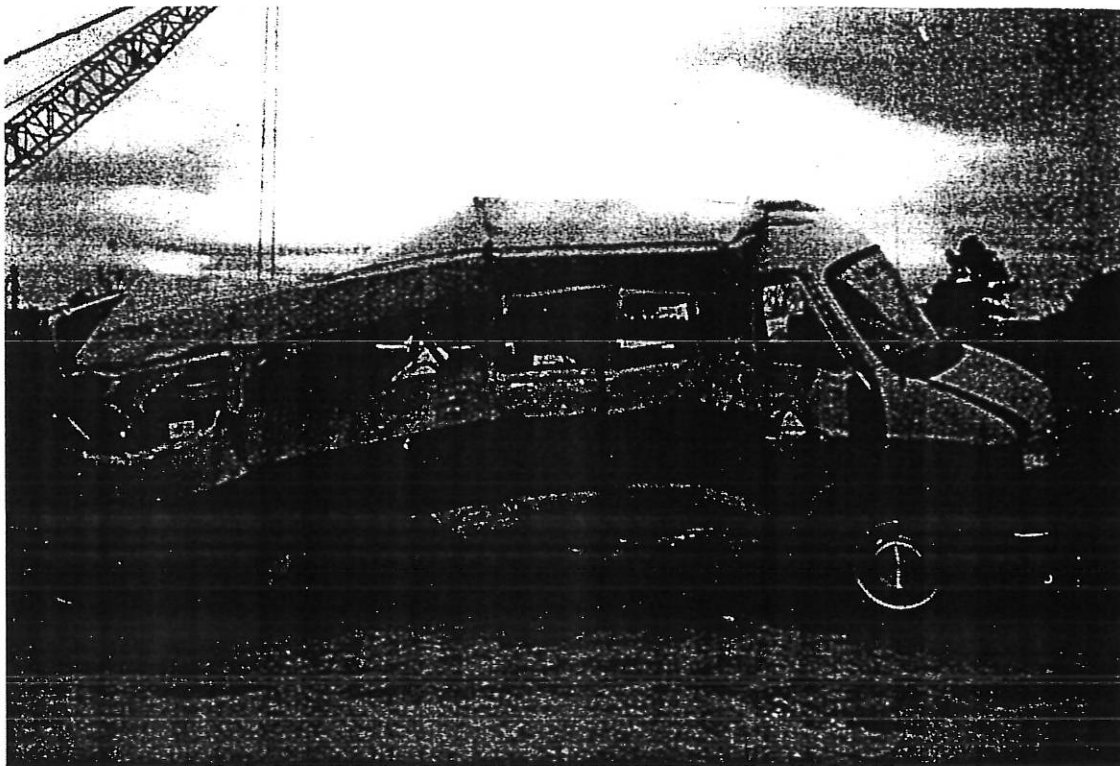


Figure 4. The passenger van that was involved in the Bennettsville collision

Table 1 summarizes the four accidents that are the subject of this special investigation. A table listing the occupant injuries according to the criteria of the International Civil Aviation Organization appears in appendix C.

Table 1. Summary of Subject Accidents

Accident Location	Type of Vehicle	Type of Operation	Occupants	Ejected/Injury Type	Not Ejected/Injury Type
Sweetwater	15-pass. van	Privately operated "for hire" To and from school	10 children (ages 6-11); 1 adult	3 children/ minor	1 child/serious 6 children/none 1 adult/serious
Lenoir City	24-pass. + driver specialty bus	Contracted by school. To and from school activities	22 children (high school age); 3 adults	1 child/fatal	1 child/serious 16 children/minor 4 children/none 1 adult/fatal 2 adults/none
East Dublin	15-pass. van	Contracted with transit agency To and from Head Start	5 children (ages 4-5); 2 adults	1 child/fatal	4 children/minor 1 adult/serious 1 adult/minor
Bennettsville	15-pass. van	Church-owned From school to day care to home	6 children (ages 7-11); 1 adult	3 children/ fatal	3 children/fatal 1 adult/serious

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Adequacy of Occupant Crash Protection and Crashworthiness of Nonconforming Buses Transporting School Children

In the early 1970s, the Federal Government deliberately developed stronger design standards for school buses because they carry children. All bus structures, regardless of type, must meet Federal standards; however, only school buses have Federal standards specifically addressing occupant protection, joint strength of the body panels, and roof rollover protection. Table 2 summarizes the occupant crash protection attributes required by Federal or industry standards for the types of buses discussed in this report.

Table 2. Required Crash Protection Attributes for Various Bus Types

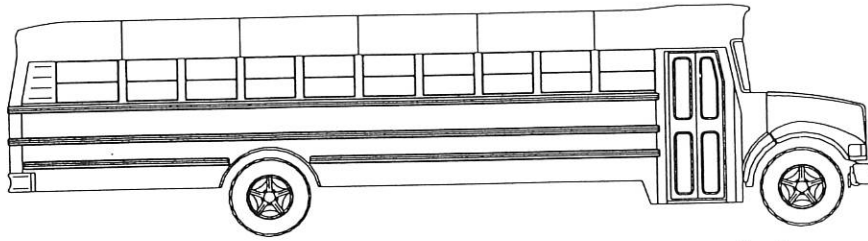
Type of Bus	Crashworthiness (Joint Strength and Roof Rollover)	High Backed Padded Seats	Minimum Seat Spacing	Seat Belts
Large school bus Gross vehicle weight rating (GVWR) > 10,000 lb.	Yes*	Yes*	Yes*	No
Small school bus GVWR ≤ 10,000 lb.	Yes*	Yes*	No	Yes*
Motorcoach	Yes**	Yes**	No	No
Specialty bus	No	Varies	No	No
15-passenger van	No	No	No	Yes*

* Federal Standard

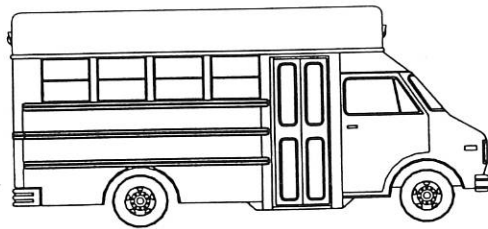
** Industry Standard

Figure 5 shows the five types of buses discussed in this report that are used to transport school children. The occupant crash protection standards for school buses assure their passengers a higher degree of safety than other vehicles. Specialty buses, vans, and motorcoaches do not have comparable crashworthiness and occupant protection standards required by the Federal Government.

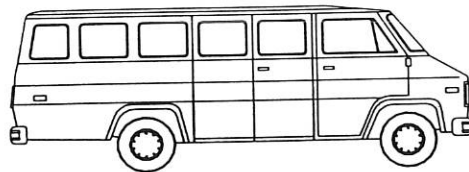
Although Federal regulations specify the minimum construction standards for all buses, industry builds the various types of nonconforming buses based on their anticipated usage and service life. Specialty buses, which are generally used for light duty transportation, such as local tours or airport shuttles, are expected to accrue the same lifetime mileage as a passenger car or light truck. They typically are built like recreational vehicles, such as motor homes. Fifteen-passenger vans, which are generally used as passenger vehicles, are expected to accrue about the same lifetime mileage as passenger cars. The vans typically are built to the Federal standards required for all buses that are not school buses. Motorcoaches, which generally are used for long distance interstate



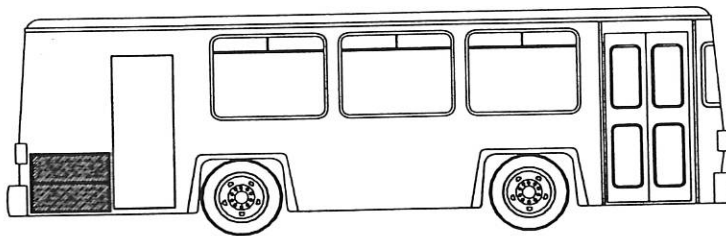
Large school buses must be built to Federal school bus standards



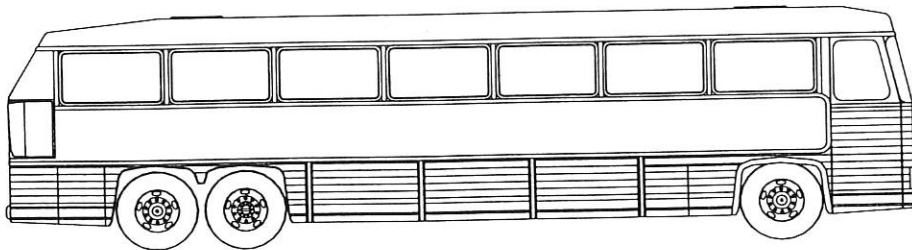
Small school buses must be built to Federal school bus standards



15-passenger vans must be built to Federal bus standards



Specialty buses must be built to Federal bus standards



Motorcoaches must be built to Federal bus standards;

Figure 5. Types of buses and applicable standards

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transportation, are expected to accrue several million miles in their service life. The motorcoach industry typically manufactures motorcoaches stronger than Federal regulations require because of their anticipated usage. Because of their size and weight, motorcoaches afford their passengers greater safety than vans and specialty buses. Motorcoaches have other safety features to protect the passengers, such as seat anchorages and improved body crush, which were incorporated as a result of crash testing.

Occupant Crash Protection Standards

School bus occupant crash protection standards require that the vehicle have compartmentalization, that is, an interior design using high-back, padded seats spaced comparatively close together, so that, during an accident sequence, occupants have less room to move around the vehicle or to be ejected.¹⁰ Fifteen-passenger vans do not have federally required seating compartmentalization.

During the Sweetwater accident sequence, several children in the passenger van struck multiple interior surfaces; three children were ejected and sustained head injuries. One child who remained in the vehicle received serious injuries from striking interior surfaces. In the East Dublin accident sequence, the four children in the passenger van who received minor injuries and who were not ejected probably were wearing restraint devices. The child who died probably was not wearing a restraint device and, given the vehicle's dynamics during the crash, probably struck multiple interior surfaces before being ejected.¹¹

In its 1989 Safety Study *Crashworthiness of Small Poststandard School Buses*¹² the Safety Board states:

Unrestrained passengers on a school bus are less likely to be ejected than occupants of passenger cars because they are not seated next to a door, windows are usually partitioned, seatbacks are usually closer and higher, and passengers are farther from the windshield.

The unrestrained passengers in Sweetwater and East Dublin accidents did not receive the benefits provided by the occupant crash protection standards of school buses. The Safety Board concludes that had the unrestrained children in the Sweetwater and East Dublin accidents been in a school bus or a vehicle built to comparable seating standards, the compartmentalization of the vehicle may have contained them within their seating areas and prevented them from striking multiple interior surfaces or from being ejected.

¹⁰ To provide additional protection to passengers in small school buses, FMVSS 222, "School Bus Passenger Seating and Crash Protection," requires that either lap belts or lap-shoulder belts be installed at all designated passenger seating positions in small school buses (under 10,000 pound GVWR). In February 1999, based on testing that it had conducted, NHTSA published *Guideline for the Safe Transportation of Pre-school Age Children in School Buses* (see appendix D), which recommends that preschool-age children be transported in child safety restraint systems.

¹¹ Whether the child's fatal injuries resulted from his striking the interior of the van or being ejected could not be determined because the family did not allow an autopsy.

¹² NTSB/SS-89/02.

Body Integrity Standards

Federal standards for school bus body joint strength (FMVSS 221) require body panel joint strength levels that typically are greater than those in specialty buses and vans. Federal rollover standards (FMVSS 220) necessitate a strong cage-like structure to support the roof in the event of a rollover. Thus, the greater body panel joint and the structural strength of a school bus provide an extra measure of safety in collisions as compared to nonconforming buses.

In November 1998, NHTSA issued an amendment to FMVSS 221 requiring that small school buses (equal to or less than 10,000 pounds GVWR), such as the type shown in figure 6, meet the same body joint strength standards as larger school buses by May 5, 2000. The standard requires that school bus body panel joints be strong enough to resist separation during a crash that can cause sharp cutting edges and openings through which children can be ejected.

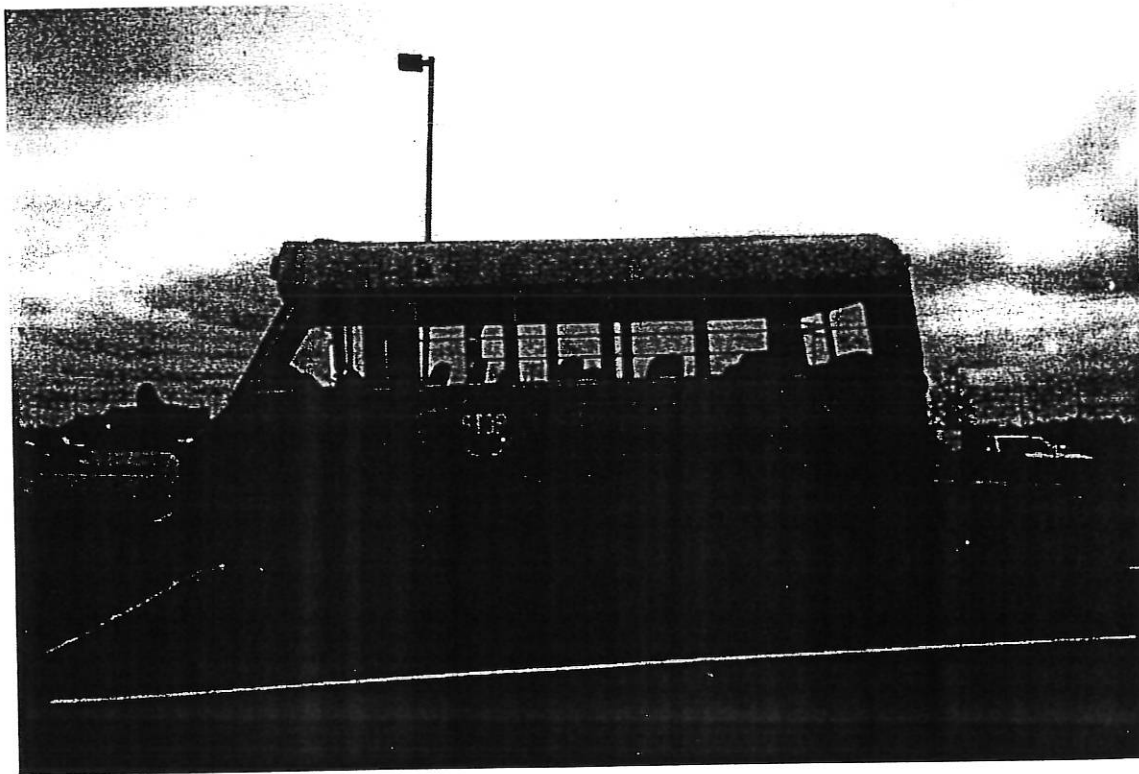


Figure 6. The strong cage-like structure of the small school bus supports the roof in the event of a rollover. The body panel joints resist separation during a crash.

In 1993, the Safety Board investigated an accident in Snyder, Oklahoma,¹³ that had a scenario similar to that of the Bennettsville collision, except that the vehicle struck in the

¹³ For additional information, see Highway Accident Report *Collision of Small School Bus and Tractor-Semitrailer near Snyder, Oklahoma* (NTSB/HAR-94/04).

side was a small school bus that met FMVSS 220 and the striking vehicle was a fully loaded truck tractor semitrailer. As table 3 shows, despite the larger size and far greater weight of the striking vehicle in the Snyder accident, the school bus afforded better protection from intrusion damage than the nonconforming 15-passenger van in the Bennettsville accident.

Table 3. Comparison of Snyder and Bennettsville Accidents

Striking Vehicle	Weight	Speed (estimated)	Struck Vehicle	Weight (approximate)	Amount of Intrusion
Tow truck (Bennettsville)	10,000 lbs	55 mph	15-Passenger van	5,730 lbs	44 inches
Truck tractor semitrailer (Snyder)	66,500 lbs	55-60 mph	20-Passenger small school bus	8,324 lbs	29 inches

The Safety Board concludes that had the children in the Bennettsville accident been riding in a school bus instead of a passenger van, the striking tow truck probably would not have intruded as much, and the children in the impact area probably would have had more survivable space because of the school bus's greater structural strength.

The bus in the Lenoir City accident met the FMVSS applicable for specialty buses, yet it did not provide ample protection to its occupants. Upon impact, the side of the specialty bus was torn from the frame and its floor was split (figure 7). One passenger was ejected through the opening that was created.

The degree of damage probably resulted from the vehicle's construction, which was typical of small (in this case, 24-passenger) specialty buses that are built with large windows to facilitate sightseeing and that are primarily used for short-distance excursions. The Lenoir City specialty bus had a floor that was constructed of thin metal-covered plywood supported by a tubular metal frame. The sides of the bus body were a framework of square metal tubing that supported the exterior sheet metal panels. Body panels were attached to the framework by means of riveting, adhesive compounds, and 2-inch-wide double-sided tape. The specialty bus had some fiberglass components, most of which formed the front and rear body fascia.

A school bus or a motorcoach would more likely have provided the occupants with greater protection because of Federal or industry design requirements. (A school bus would have been designed with greater joint strength to comply with the FMVSS for crashworthiness; a motorcoach would have been designed with greater strength to meet the demands during its long service life.) The Safety Board concludes that in the Lenoir City accident, the passenger probably would not have been ejected and the specialty bus

¹³ For additional information, see Highway Accident Report *Collision of Small School Bus and Tractor-Semitrailer near Snyder, Oklahoma* (NTSB/HAR-94/04).

probably would have sustained less damage had the vehicle met Federal school bus or equivalent structural standards because it would have had greater floor and joint strength.

The Safety Board concludes that given their better crashworthiness and occupant protection, had school buses or buses providing equivalent occupant crash protection been used in the four accidents that are the subject of this special investigation, the vehicles probably would have sustained less damage and the passengers may have suffered fewer and less severe injuries.

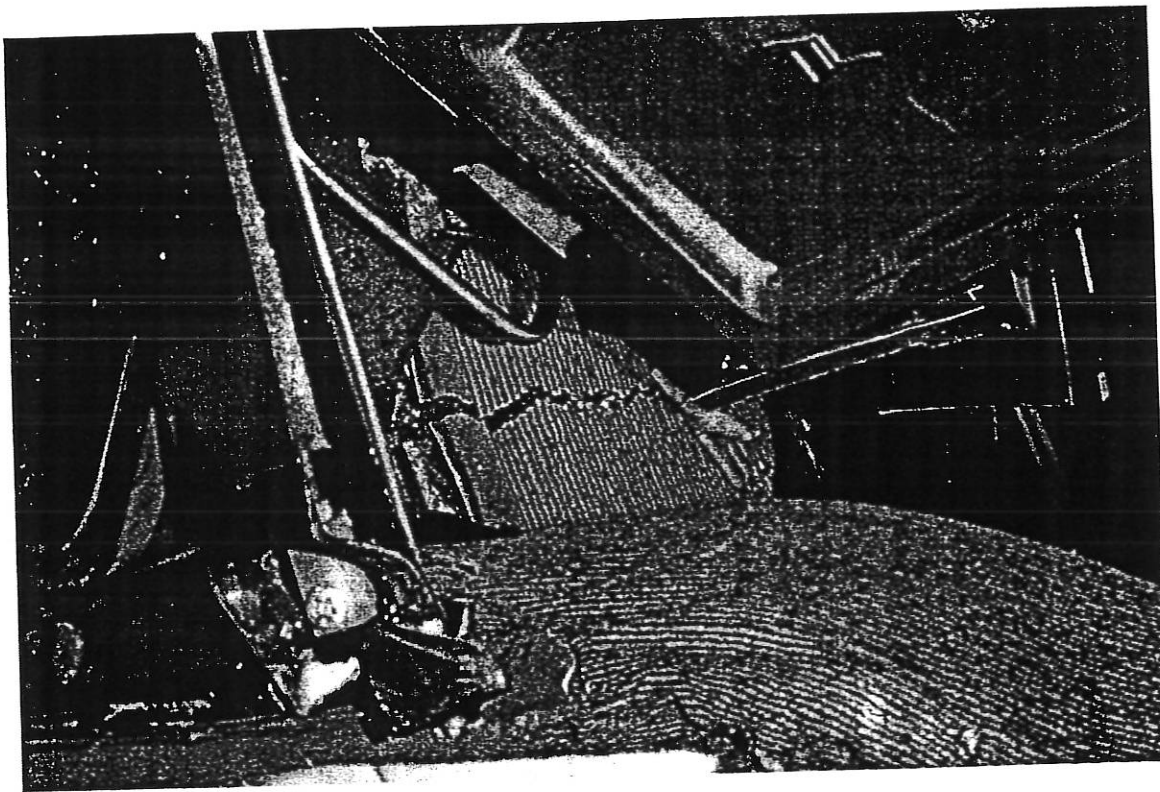


Figure 7. Cracked plywood flooring in Lenoir City specialty bus .

Adequacy of Existing Regulations and Guidelines Governing Vehicles Used to Transport School Children

The Federal Government regulates the standards to which vehicles must be built, but the States mandate what type of vehicle should be used to transport school children. As part of this special investigation, the Safety Board reviewed the statutes and policies governing the transport of children for the States and local areas in which these four accidents occurred. In some cases, the laws were ambiguous. Some statutes allowed the transport of school children in nonconforming buses in certain situations. Others did not address the carriage of children enrolled in certain programs. Table 4 shows the school bus definitions and summarizes the vehicle requirements for pupil transportation contained in NHTSA guidelines and in the State and local laws of Florida, Tennessee, Georgia, and South Carolina. In the following section, the Safety Board reviews Federal and national laws and rules and discusses how the regulations in these four States, contrary to Federal guidelines, allow school children to be transported in vehicles not meeting school bus occupant crash protection standards.

Federal and National Guidelines

NHTSA

In 1974, Congress directed NHTSA to require that new school buses meet the FMVSS (49 CFR 571) on specific aspects of bus safety, including floor strength, seating systems, and crashworthiness. NHTSA's Safety Program Guideline 17, *Pupil Transportation Safety*, establishes minimum recommendations for a State highway safety program for pupil transportation, including program administration; identification, operation, and maintenance of buses used for carrying students; and training for passengers, pedestrians, and bicycle riders. Guideline 17 recommends that buses meeting the structural FMVSS for school buses be used for transporting children to and from school or school-related activities.

In recent years, NHTSA has published opinions and regulatory amendments defining school bus safety requirements.¹⁴ With respect to the use of nonconforming buses for Head Start programs, in 1977, NHTSA issued an interpretation letter in a response to an inquiry as to whether Head Start facilities are considered preprimary schools for purposes of applying the Federal school bus safety standards. The letter reads, in part:

¹⁴ NHTSA's published opinions and regulatory requirements for school buses can be found on the agency's website (www.nhtsa.dot.gov).

Table 4. Comparison of NHTSA Guidelines and State Laws Governing Pupil Transportation

	NHTSA	Florida	Tennessee	Georgia	South Carolina
School bus definition	Any vehicle designed to carry more than 10 passengers to or from school or school-related activities. All new school buses must meet FMVSS on specific aspects of school bus safety, including floor strength, seating systems, and crashworthiness.	All vehicles operated by or under contract with local school boards to transport children to and from school or school-related events must meet Federal school bus standards contained in 49 CFR 571. Use of 15-passenger vans prohibited.	Vehicle with 11 or more seating accommodations, including the driver's, that is used for purposes that include carrying pupils to or from school or school-related events. Conventional buses, transit buses, or van-type equipment.	Motor vehicle operated for the transportation of children to or from school or school-related activities.	Motor vehicle that complies with State board of education color and identification requirements that is used to transport children to or from public school or school activities.
	Recommended/Required Vehicle for Use				
Use	NHTSA	Florida	Tennessee	Georgia	South Carolina
To/From school	Recommends buses meeting school bus FMVSS.	State requires buses meeting school bus FMVSS, if operated by public school. Dade County Code excludes privately operated buses seating 24 pupils or fewer from the State requirement for school buses.	Recommends school bus or buses meeting same standards.	Requires school bus.	School bus recommended but not required. Legislation proposed to transport all children on school buses.
To/From school-related activities	Recommends buses meeting school bus FMVSS.	Requires buses meeting school bus FMVSS, if operated by public school.	State recommends school bus or bus meeting same standards. Blount County policy manual recommends school buses or commercial vehicle.	Excludes 15-passenger vans from school bus standards.	School bus not required.
Head Start	Recommends buses meeting school bus FMVSS.	School bus not required unless operated by a public school.	School bus transportation laws not applicable.	School bus transportation laws not applicable.	School bus not required under State law but covered under Federal Regional IV Office of Head Start.
Day care	Recommends buses meeting school bus FMVSS.	School bus transportation laws not applicable.	School bus transportation laws not applicable.	School bus transportation laws not applicable.	School bus transportation laws not applicable.

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[NHTSA] has determined that these [Head Start] facilities are primarily involved with the education of preprimary school children. Thus, the buses used to transport children to and from the Head Start facilities are considered school buses...and must meet all Federal school bus safety standards.

In 1998, NHTSA issued an interpretation letter regarding the use of nonconforming vans at day care centers. The Iowa Department of Education had asked if the school bus FMVSS applied to buses operated by publicly or privately owned day care facilities to transport children to and from school. NHTSA responded that the pertinent issue is whether the bus is "used significantly" to transport children to or from school or a school-related event. Citing a case in which students were being transported 5 days a week, NHTSA stated, "In our view, such regular use of the vehicle to pick up students 'from school' (even if the same students are not transported each day), would constitute a 'significant' use of the vehicle."

NHTSA wrote that regular use on alternate days would be considered "significant." In the same interpretation, NHTSA pointed out that Federal regulations only pertain to the purchase of a new vehicle and advised that State laws should be consulted because they stipulate what vehicle types are required for student transportation.

Head Start Bureau

Currently, the Head Start Bureau¹⁵ does not have any mandatory requirements for the transportation of children in Head Start programs, even though approximately 60 percent of Head Start participants receive transportation services.

In 1993, the Head Start Bureau issued an Information Memorandum, "Safe Transportation of Head Start Children," encouraging all Head Start grantees to contact their State Directors of Pupil Transportation to determine if Head Start is included in State student transportation plans. The memorandum recommends that if Head Start is not included in the plans, grantees should use the State school bus operations plan as a guide to develop pupil transportation safety procedures.

In 1995, the Head Start Bureau issued a notice of proposed rulemaking (NPRM) to establish required safety features and operating procedures for any vehicle, including all buses, used to transport children to Head Start programs. (See appendix E.) The NPRM proposes that the transport of Head Start children be limited to school buses.

According to a Head Start Bureau representative, school associations, child safety advocacy groups, and manufacturers generally support the rulemaking effort. Many transit agencies and State and local government agencies oppose the NPRM, citing financial concerns. For example, transit agencies pointed out that under the NPRM, if buses transporting Head Start children were required to be "school bus yellow," a transit agency

¹⁵ The Head Start Bureau is a subordinate organization of the Administration for Children, Youth, and Families, which is within the Administration for Children and Families of the Department of Health and Human Services (DHHS).

would not be able to use that vehicle for any other type of transportation, which could cause a financial hardship.

The Head Start Bureau representative indicated that the agency is in the process of reviewing the final rule. The Safety Board considers this regulatory requirement very important; the DHHS should make every effort to expedite the rulemaking to prevent future injuries and fatalities to children enrolled in Head Start programs.

National Associations

The National Association of State Directors of Pupil Transportation Services (NASDPTS)¹⁶ states in a position paper, "We believe that it is appropriate to require higher levels of safety in vehicles that transport children to and from school and school-related activities." NASDPTS further states that "school children should be transported in school buses which provide them with the highest levels of safety, not in vans which do not meet the stringent school bus safety standards issued by the Federal Government."

In December 1998, the National Association for Pupil Transportation (NAPT)¹⁷ and NASDPTS enacted a joint resolution stating that they supported additional Federal, State, and local legislation to eliminate the transport of children to educational programs in vehicles that do not meet school bus FMVSS.

Inconsistency Between State Laws and Federal Guidelines

In each of the subject accidents, the transport of children in nonconforming buses was allowed by State law or local codes, which is inconsistent with the intent of Federal and national recommendations to use school buses for pupil transportation.

Florida

In Florida, neither the State nor the local school board has regulations governing the type of vehicle that a private contractor hired by a parent or a parents' group must use to carry children to school. Thus, by statutory exclusion, the use of the nonconforming van involved in the Sweetwater accident was allowed for pupil transport even though Florida statutes require that all vehicles operated by or under contract with school boards for transporting students to and from school meet Federal school bus occupant crash protection standards.¹⁸ Likewise, Dade County does not require that privately operated buses with a seating capacity of less than 24 pupils meet the State requirement to use school buses for pupil transportation.¹⁹

¹⁶ NASDPTS is comprised mainly of State government agency representatives who are engaged in school transportation. Federal agencies, other associations, and transportation services suppliers, such as school bus manufacturers, supporting the efforts of NASDPTS to promote school transportation safety and efficiency may also have member representatives to NASDPTS.

¹⁷ The NAPT is an organization that promotes safety and efficiency in pupil transportation.

¹⁸ Florida Statutes, Chapter 234.051.

¹⁹ Dade County Code, Section 30-372.

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Tennessee

In Tennessee, State laws²⁰ require that buses used to transport pupils for activities other than to and from school meet the construction requirements imposed on school buses. However, another section of the State regulations²¹ listing approved buses for pupil transportation includes some vehicles that may meet the definition of nonconforming bus, including "conventional buses" and "van-type equipment." Moreover, the Blount County regulations governing pupil transportation in Lenoir City²² allow the use of "commercial vehicles" for extracurricular activities. Thus, the lack of uniform guidance in the State of Tennessee regulations and the lack of specificity in the Blount County policy manual permit the use of nonconforming buses, such as the specialty bus in the Lenoir City accident, for pupil transportation. Allowing the use of such vehicles that do not meet school bus occupant crash protection standards to transport students to and from extracurricular activities is contrary to Federal guidelines.

Georgia

In Georgia, the State law²³ requires that children be transported to and from school and church in a school bus meeting specifications prescribed by the State Board of Education. However, Head Start transportation is not addressed in the specifications because the program is not within the purview of the Georgia State Board of Education. Thus, by exclusion, Georgia law allows the use of a nonconforming van to transport children to a Head Start facility despite NHTSA's interpretation that Head Start is an educational program and, as such, children enrolled in the program should be transported in school buses to and from the centers. The State exclusion is also contrary to the national Head Start Bureau's proposals that the transport of Head Start children be limited to school buses.

The Safety Board believes that the DHHS should require that Head Start children be transported in vehicles built to Federal school bus structural standards or the equivalent.

As mentioned earlier, NHTSA's *Guideline for the Safe Transportation of Pre-School Age Children in School Buses* recommends that preschool-age children be transported in child safety restraint systems²⁴ on school buses. Because Head Start children are primarily preschool age, the Safety Board believes that the DHHS should incorporate and mandate the use of the guidelines from this NHTSA publication into its rules for the transportation of Head Start children.

²⁰ *Manual for School Administrators*, Tennessee State Board of Education.

²¹ *Pupil Transportation of the Department of Education*, Chapter 0520-1-5, Tennessee State Board of Education.

²² *Blount County School Board Policy Manual*.

²³ Georgia Official Code, Section 40-8-112.

²⁴ Commonly known as a child safety seat or child restraint.

The Safety Board is convinced that, pending regulatory revisions, other entities can take an active role in improving the safe transportation of children enrolled in Head Start programs. In East Dublin, the children were being transported by a local transit company. The Community Transportation Association of America (CTAA) comprises a network of community-based agencies and coordinated services that ensures mobility for an estimated 75 million people at risk of being unable to provide or afford their own transportation. Among those at risk are the economically disadvantaged preschool-age children enrolled in Head Start programs. The Safety Board believes that the CTAA should inform its members of the circumstances of the East Dublin accident and the added safety benefits of transporting children by school bus and that it should encourage them to use buses built to Federal school bus structural standards or the equivalent to transport children.

South Carolina

The transportation of children enrolled in day care centers is not specified in Federal or State laws. Thus, by statutory exclusion, the use of the nonconforming van involved in the Bennettsville accident was allowed for pupil transportation. However, the Bennettsville van was used to pick up children after school to take them to the Wallace Family Life Center. Therefore, according to NHTSA's interpretation of the Federal regulations, the regular use of the vehicle to transport students from school meant the children should have been transported in a school bus.

While the operation of the vans and the specialty bus in the Sweetwater, East Dublin, Bennettsville, and Lenoir City accidents probably met applicable State and local laws, the children transported in those vehicles were not afforded the same level of protection as children transported on school buses or buses built to equivalent structural standards. When the State government does not prohibit the use of vans or buses not complying with school bus FMVSS or comparable standards for school transportation, parents may believe their children are being transported in the safest mode possible. The Safety Board concludes that Federal and State laws regarding student transportation do not provide uniform safety. Further, the lack of State legislation regarding Head Start and day care transportation allows for situations in which students may be transported in a vehicle that does not provide the maximum available protection during accidents.

For this report, the Safety Board reviewed a February 1999 NASDPTS survey to which 32 State directors responded. Table 5 shows the results of the survey. Only 26 directors said that their States prohibit the use of nonconforming vans to transport children to and from school; 6 directors said that their States had no such prohibitions. Regarding the transport of children to and from school-related activities, 19 States prohibit the use of nonconforming vans and 13 do not. Twenty states currently permit the use of nonconforming vans for Head Start transportation, while eight do not.²⁵ Twenty-three States allow the use of vans in day care centers and six do not.

²⁵ The total number of responses to some questions varies because some State directors did not answer all survey inquiries.

Table 5. Results of the NASDPTS Survey

Does the State Prohibit the Use of Nonconforming Buses for Pupil Transportation...	Yes	No
to and from school?	26	6
to and from school-related activities?	19	13
for Head Start?	8	20
for day care?	6	23

What is particularly disturbing about the NASDPTS survey results and the findings from the four accidents that are the subject of this report is that they highlight problems that the Safety Board identified more than 15 years ago. In 1983, based on its investigations of several school bus accidents and its review of accident data, the Safety Board concluded that while the overall safety record of school bus transportation in this country was good, the protection of school bus passengers in crashes was a matter of intense concern. On September 28, 1983, the Safety Board made the following safety recommendation to the Governors of the 50 States and the Mayor of the District of Columbia:

H-83-40

Review State laws and regulations and take any necessary legislative action to ensure that vehicles designed to carry more than 10 passengers and weighing less than 10,000 pounds GVWR and used to transport children to and from school, school-related events, camp, day care centers, or similar purposes meet all FMVSS applicable to small school buses.

Of the recipients responding, only 11 (Alaska, California, Connecticut, Florida, Guam, Louisiana, New Mexico, New York, North Dakota, Oklahoma, and Virginia) said that they required the use of buses meeting FMVSS for transporting school children during these events. Based on their responses, Safety Recommendation H-83-40 was classified "Closed—Acceptable Action" for these 11 recipients.²⁶ However, in reviewing the State statutes for the 1998 Sweetwater accident, the Safety Board determined that Florida law does not prohibit the use of nonconforming buses that are privately hired to transport school children.

The survey responses also indicate that several States allow vehicles that do not meet the FMVSS for small school buses to be used to transport school children in some situations. For example, Florida prohibits the use of nonconforming buses for public school transportation, but not for private schools. Florida, California, New Mexico, and Oklahoma²⁷ permit the use of nonconforming buses by day care and Head Start providers.

²⁶ The disposition of this safety recommendation for the remaining States appears in appendix B.

²⁷ The States mentioned here are used as examples. Not all States for which Safety Recommendation H-83-40 was closed responded to the survey.

Based on concerns expressed by the school transportation industry, questions posed to NHTSA, and its special investigation findings, the Safety Board is convinced that children being transported on nonconforming buses are not receiving the protection that would be provided by buses meeting the structural FMVSS applicable to school buses. Therefore, the Safety Board classifies Safety Recommendation H-83-40 "Closed—Superceded" and recommends that the Governors of the States and the Mayor of the District of Columbia require that all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school-related activities, including, but not limited to, Head Start programs and day care centers, meet the school bus structural standards or the equivalent as set forth in 49 CFR Part 571. Enact regulatory measures to enforce compliance with these statutes.

The Safety Board believes that all States should adopt NHTSA's *Guideline for the Safe Transportation of Pre-school Age Children in School Buses*, distribute the guideline to all school bus operators transporting preschool-age children to and from school or school-related activities, and encourage those operators to implement the guideline.

The Safety Board is also convinced that a number of national associations are in a unique position to promote the use of school buses to maximize safety in pupil transportation. The National School Boards Association (NSBA), a not-for-profit federation of State associations of school boards across the United States and its territories, is a nationwide advocacy and outreach organization for public school governance. A goal of the NSBA is to foster systemic reform in the public schools by encouraging and preparing local school board members to become catalysts for change.

The National Association of Independent Schools (NAIS) is a voluntary membership organization for more than 1,000 precollegiate schools and associations in the United States. Independent schools are distinct from other schools in that they are supported primarily by tuition, charitable contributions, and endowment income rather than by tax or church funds. A primary mission of the NAIS is to serve as an advocate for member schools to national and regional media, to 10 Federal agencies, and to 13 congressional committees. The NAIS tracks and analyzes legislation and regulations in a number of areas and provides its member schools with information through a variety of sources, including statistical surveys, magazines, and a website.

The National Conference on School Transportation, which usually is held every 5 years, is attended by representatives from State departments of education, public safety, motor vehicles, and other State agencies responsible for the administration of pupil transportation at the State level. A primary purpose of the conference is the review and revision of the *National Standards for School Transportation*, which the conference then provides to State policymakers and legislators as guidelines for developing State standards.

The National Parent Teacher Association (PTA) is the oldest and largest volunteer child advocacy organization in the United States. For more than 100 years, this not-for-profit organization of parents, educators, students, and others has been a leading force in promoting the education, health, and safety of children and their families. The PTA has

had a major role in promoting school bus safety, producing a bus driver guide, a parental tip card, and a children's film, "Be Cool, Follow the Rules," which demonstrates safe conduct on and around the school bus and includes instruction on emergency evacuation.

The National Association of Child Care Professionals (NACCP), with almost 10,000 members, is the leading association serving child care owners, directors, and administrators in the United States. A goal of the NACCP is to improve, enhance, and strengthen the skills and management competencies of its members.

The National Child Care Association (NCCA) is a professional trade association with a membership of over 6,000 licensed private child care centers and preschools, more than 60,000 child development staff members, and 24 State-affiliated associations. The NCCA represents the interests of the licensed, private childhood care and education community, frequently testifying before Congress on policies affecting child care services.

The National Head Start Association (NHSA) is a private not-for-profit membership organization representing the 750,000 children in and the 139,000 staff members of the 2,051 Head Start programs in America. The NHSA provides a national forum for the continued enhancement of Head Start services for poor children from infancy to age 5 and their families.

The Young Men's Christian Association (YMCA) and the Young Women's Christian Association (YWCA), are the largest nonprofit community service organizations in America. Together, the YMCA and the YWCA are the nation's largest providers of child care. They have thousands of centers throughout the United States serving the health and social service needs of 16 million men, women, and children.

Churches and other religious organizations that sponsor youth activities, particularly after-school day care, also can take an active role in ensuring the transportation safety of children.

The Safety Board believes that the associations listed above and the headquarters of major churches should inform their members about the circumstances of the accidents discussed in this special investigation report and urge that they use buses built to Federal school bus structural standards or the equivalent to transport children.

Adequacy of Laws Governing the Use of Restraint Systems in Vehicles Transporting School Children

The Safety Board recognizes that, although safety-conscious schools and organizations are increasingly replacing nonconforming buses with school buses, vehicles not meeting the occupant crash protection standards of school buses will continue to be used for pupil transport until Federal or State laws stipulate otherwise. The Board is therefore convinced that children being transported in nonconforming vehicles to or from school or school-related activities should be provided the protection of occupant restraints. Table 6 summarizes the seat belt requirements for three of the States featured in this investigation report.²⁸ A review of current State laws, particularly allowable exclusions pertaining to seat belt use in nonconforming buses for pupil transportation, raises some concerns. The following discussion reviews past Safety Board actions and the use of restraint devices in the Sweetwater, East Dublin, and Bennettsville accidents.

Table 6. Seat Belt Laws for the Subject States

State	Law
Florida	<ul style="list-style-type: none"> All passengers under the age of 16 must be restrained by a safety belt or child restraint device. A bus used to transport persons for compensation is excluded.
Georgia	<ul style="list-style-type: none"> Each minor over 4 years of age in a passenger vehicle shall be restrained by a seat safety belt. Every child under 4 years of age shall use a child passenger restraining system; if the child is 3 or 4 years of age, the seat belt shall be sufficient to meet the requirements of this subsection.
South Carolina	<ul style="list-style-type: none"> Every driver and occupant must wear a safety belt. (This requirement does not apply to school, church, or day care buses.)

Past Safety Board Actions

In 1994, the Safety Board reiterated Safety Recommendation H-83-39 asking that the Governors of the 50 States "review State laws and regulations and take any necessary legislative action to ensure that passengers in small school buses and school vans are required to use available restraint systems whenever the vehicle is in motion."²⁹ In 1996, the Safety Board performed a safety study, *The Performance and Use of Child Restraint Systems, Seat Belts, and Air Bags for Children in Passenger Vehicles*, which resulted in the Board recommending that the Governors of all the States conduct a review and enact legislation, if needed, to "ensure that children up to 8 years old are required by the State's mandatory child restraint use law to use child restraint systems and booster seats"

²⁸ Under Federal law, vans are required to be equipped with seat belts. Specialty buses such as the type involved in the Lenoir City accident are not required to be equipped with seat belts, and the accident vehicle was not. The Lenoir City accident will therefore not be discussed in this section.

²⁹ Safety Recommendation H-83-39 was reiterated in the Snyder, Oklahoma, accident report.

(H-96-14), "eliminate exemption for children to substitute seat belts in place of child restraint systems" (H-96-15), and "require children 8 years or older to use seat belts in all vehicle seating positions" (H-96-16).

The Board is still awaiting response from Florida and South Carolina regarding Safety Recommendations H-96-14 through -16. Based on information received from Georgia, the Safety Board classified Safety Recommendation H-96-16 "Closed-Acceptable Action" and is awaiting response to Safety Recommendations H-96-14 and -15.³⁰

Use of Restraints in the Subject Accidents

The 15-passenger vans in the Sweetwater, East Dublin, and Bennettsville accidents were equipped with two front bucket seats and four rows of bench seats. Each front bucket seat was equipped with a continuous loop three-point lap-shoulder belt restraint. The first, second, and third row bench seats were equipped with continuous loop three-point lap-shoulder belt restraints in the left seating positions and two-point lap belt restraints in the center. The vans in the Bennettsville and Sweetwater accidents had two-point lap belts in the right positions. The van in the East Dublin accident was equipped with continuous loop three-point lap-shoulder belts in the right seating positions. In all vans, the fourth row bench seat was equipped with a continuous loop three-point lap-shoulder belt for each of the two outboard positions and two-point lap belts for each of the two center positions.

The owner of the nonconforming bus in the Sweetwater accident provided transportation to school children on a weekly "for-hire" basis. The parents opted to pay for the service because the school bus stop was several blocks from their houses and they were concerned for their children's safety. Because the for-hire van was not contracted by the school system, the driver was exempt from requiring the children to wear the seat belts with which the van was equipped.³¹ The children on the Sweetwater van were, therefore, not afforded the level of safety that is provided to children riding in other than for-hire passenger vehicles or in district school buses, which require the use of available occupant protection. The Safety Board concludes that had the passengers been wearing their seat belts during the Sweetwater accident sequence, the three children probably would not have been ejected and the fourth child probably would not have sustained such extensive injuries from striking the van's interior surfaces.

In the East Dublin accident, investigators found one child safety seat in the van. According to the MGCAA, the aide on the nonconforming bus was responsible for ensuring that all children were properly secured in the vehicle. Based on Georgia law,³² every child in the passenger van should have been secured in a child restraint system or a seat belt. The aide cannot remember where the children were seated or whether they were wearing restraints. Because one child was ejected from the vehicle during the accident

³⁰ The disposition of these safety recommendations for the remaining States appears in appendix F.

³¹ Florida State Traffic Laws, Chapter 316.614(4).

³² Georgia Code 40-8-76.1(3).

sequence, the Safety Board is convinced that this child was either unrestrained or not properly restrained in a child restraint or seat belt. The other children who remained in the van sustained minor injuries; therefore, they probably were restrained. The Safety Board concludes that had the fatally injured 4-year-old child in the East Dublin accident been properly secured in a child safety restraint system or seat belt, he probably would not have been ejected and would not have sustained fatal injuries.

In the Bennettsville collision, none of the children on the nonconforming bus were wearing seat belts, nor were they required to be.³³ While the van's right side was crushed so badly that the children seated on that side had little survivable space, the van's left side sustained little crush damage. One child on the left side of the bus struck her head on the roof of the van before she was ejected. The Safety Board concludes that the Bennettsville accident was so severe that the child passengers probably would have been injured and perhaps killed regardless of the safety measures taken. However, had the three children seated on the left side of the passenger van been wearing their seat belts, they probably would not have been ejected, which would have increased their chances of survival.

The Safety Board therefore believes that the Governors of the States and the Mayor of the District of Columbia should review their State and local laws and, if applicable, revise them to eliminate any exclusions or exemptions pertaining to the use of age-appropriate restraints in all seat belt-equipped vehicles carrying more than 10 passengers (buses) and transporting school children.

³³ South Carolina Code of Laws, Section 56-5-6530(3).

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Conclusions

1. Had the unrestrained children in the Sweetwater, Florida, and East Dublin, Georgia, accidents been in a school bus or a vehicle built to comparable seating standards, the compartmentalization of the vehicle may have contained them within their seating areas and prevented them from striking multiple interior surfaces or from being ejected.
2. Had the children in the Bennettsville, South Carolina, accident been riding in a school bus instead of a passenger van, the striking tow truck probably would not have intruded as much, and the children in the impact area probably would have had more survivable space because of the school bus' greater structural strength.
3. In the Lenoir City, Tennessee, accident, the passenger probably would not have been ejected and the specialty bus probably would have sustained less damage had the vehicle met Federal school bus or equivalent structural standards because it would have had greater floor and joint strength.
4. Given their better crashworthiness and occupant protection, had school buses or buses providing equivalent occupant crash protection been used in the four accidents that are the subject of this special investigation, the vehicles probably would have sustained less damage and the passengers may have suffered fewer and less severe injuries.
5. State laws regarding student transportation do not provide uniform safety. Further, the lack of Federal and State legislation regarding Head Start and day care transportation allows for situations in which students may be transported in a vehicle that does not provide the maximum available protection during accidents.
6. Had the passengers been wearing their seat belts during the Sweetwater, Florida, accident sequence, the three children probably would not have been ejected and the fourth child probably would not have sustained such extensive injuries from striking the van's interior surfaces.
7. Had the fatally injured 4-year-old child in the East Dublin, Georgia, accident been properly secured in a child safety restraint system or seat belt, he probably would not have been ejected and would not have sustained fatal injuries.
8. The Bennettsville, South Carolina, accident was so severe that the child passengers probably would have been injured and perhaps killed regardless of the safety measures taken. However, had the three children seated on the left side of the passenger van been wearing their seat belts, they probably would not have been ejected, which would have increased their chances of survival.

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Recommendations

As a result of its investigation, the National Transportation Safety Board makes the following Safety Recommendations:

To the Department of Health and Human Services:

Require that Head Start children be transported in vehicles built to Federal school bus structural standards or the equivalent. (H-99-20)

Incorporate and mandate the use of the guidelines from the National Highway Traffic Safety Administration's *Guideline for the Safe Transportation of Pre-school Age Children in School Buses* into the rules for the transportation of Head Start children. (H-99-21)

To the Governors of the 50 States and the Mayor of the District of Columbia:

Require that all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school related activities, including, but not limited to, Head Start programs and day care centers, meet the school bus structural standards or the equivalent as set forth in 49 *Code of Federal Regulations* Part 571. Enact regulatory measures to enforce compliance with the revised statutes. (H-99-22)

Review your State and local laws and, if applicable, revise them to eliminate any exclusions or exemptions pertaining to the use of age-appropriate restraints in all seat belt-equipped vehicles carrying more than 10 passengers (buses) and transporting school children. (H-99-23)

Adopt the National Highway Traffic Safety Administration's *Guideline for the Safe Transportation of Pre-school Age Children in School Buses*, distribute the guideline to all school bus operators transporting preschool-age children to and from school or school-related activities, and encourage those operators to implement the guideline. (H-99-24)

To the National School Boards Association; the National Association of Independent Schools; the National Conference on School Transportation; the National Parent Teacher Association; the National Association of Child Care Professionals; the National Child Care Association; the National Head Start Association; the Young Men's Christian Association; the Young Women's Christian Association; the American Baptist Churches in the USA; the National Baptist Convention of America; the Southern Baptist Convention; the Church of the Brethren; the Catholic Bishops; the Christian Reformed Church; the Christian Schools International; the Episcopal

Church, USA; the First Church of Christ, Scientist; the Church of Jesus Christ of Latter Day Saints; the American Lutheran Church; the Lutheran Church in America; the Evangelical Lutheran Church in America; the United Methodist Church; the United Methodist Church Communications; the African Methodist Episcopal Churches; the Church of the Nazarene; the Presbyterian Church in America; the National Office of the Presbyterian Church, USA; the Seventh Day Adventist Church; the United Pentecostal Church International; the National Association of Evangelicals; the Foundation for Evangelism; the Unitarian Universalist Association, the National Association of Church Business Administration; the Union of American Hebrew Congregations; the United Jewish Communities; the Messianic Jewish Alliance of America; the Union of Messianic Jewish Congregations; the National Spiritual Assembly of the Baha'is of the United States; the American Buddhist Congress; the Nation of Islam; the Arya Pratinidhi Sabha America; the American Atheists; and the American Ethical Union:

Inform your members about the circumstances of the accidents discussed in this special investigation report and urge that they use buses built to Federal school bus structural standards or the equivalent to transport children. (H-99-25)

To the Community Transportation Association of America:

Inform your members of the circumstances of the East Dublin, Georgia, accident and of the added safety benefits of transporting children by school bus, and encourage them to use buses built to Federal school bus structural standards or equivalent to transport children. (H-99-26)

BY THE NATIONAL TRANSPORTATION SAFETY BOARD

JAMES E. HALL
Chairman

JOHN A. HAMMERSCHMIDT
Member

ROBERT T. FRANCIS II
Vice Chairman

JOHN J. GOGLIA
Member

GEORGE W. BLACK, JR.
Member

June 8, 1999

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Services

Administration for Children and Families

45 CFR Part 1310
Head Start Program; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Children and Families****45 CFR Part 1310**

RIN 0970-AB24

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Final rule.

SUMMARY: This final rule implements the statutory provision for establishing requirements for the safety features and the safe operation of vehicles used by Head Start agencies to transport children participating in Head Start programs.

DATES: 45 CFR 1310.11 and 1310.15(c) are effective January 20, 2004. 45 CFR 1310.12(a) and 1310.22(a) are effective January 18, 2006. 45 CFR 1310.2(c) and 1310.12(b) are effective February 20, 2001. The other provisions of this part are effective January 18, 2002.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013; (202) 205-8572.

SUPPLEMENTARY INFORMATION:

- I. Program Purpose
- II. Background and Purpose of Rule
- III. Summary of Major Provisions of the Rule
- IV. Rulemaking History
- V. Section-by-Section Discussion of Comments
- VI. Impact Analysis
- VII. List of Subjects in 45 CFR Part 1310 Final Rule

SUPPLEMENTARY INFORMATION**I. Program Purpose**

Head Start is authorized under the Head Start Act (the Act), Title VI, Subtitle A, Chapter 8 of the Public Law 97-35, the Omnibus Reconciliation Act of 1981 (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive child development services primarily to low-income children, predominantly age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services.

Additionally, section 645A, of the Head Start Act provides authority to fund programs for families with infants

and toddlers. Programs receiving funds under the authority of this section are referred to as Early Head Start programs. Programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start regulations permit up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special educational and related services.

The Head Start Improvement Act of 1992 contained a provision that requires the Head Start Bureau to develop regulations for the safe transportation of Head Start children. In addition, the Final Report of the Advisory Committee on Head Start Quality and Expansion included in its recommendations the development of " * * * regulations to assure that safe and effective transportation services are available." Finally, in July 1999 the National Transportation Safety Board (NTSB) sent a letter to the Department of Health Human Services reporting findings from the investigation of four accidents in which children being transported in non-conforming vans were killed. One of the fatalities was a Head Start child. The NTSB issued clear recommendations to Head Start based on its findings. The NTSB's letter stated that "when States allow children to be transported in vehicles not meeting Federal school bus construction standards, NHTSA's intent of protecting school children is undermined * * *. The Safety Board is firmly convinced that the best way to maximize pupil transportation safety is to require the use of school buses or buses built to equivalent occupant crash protection standards." The NTSB commented that the release of the Head Start Transportation " * * * rulemaking should be expedited to prevent future injuries and fatalities to children enrolled in Head Start programs". The specific recommendations included that "Head Start children be transported in vehicles built to Federal school bus

structural standards or the equivalent" and that guidelines provided by the National Highway Traffic Safety Administration's Guideline for the Safe Transportation of Preschool Age Children in School Buses be mandated in the rule. The guidelines are related to child passenger restraint systems. The development of "Performance Standards" for Head Start transportation supports the goal of ensuring that children and families receive high quality Head Start services.

II. Background and Purpose of the Rule

The authority for this final rule is found in sections 640(i) and 644(a) and (c) and 645A(b)(9) of the Head Start Act (42 U.S.C. 9801 *et seq.*). Section 640(i) directs the Secretary to issue regulations establishing requirements for the safety features and the safe operation of vehicles used to transport children participating in Head Start programs. Section 645A(b)(9) requires that Early Head Start agencies comply with requirements established by the Secretary concerning design and operation of such programs. Sections 644(a) and (c) require the issuance of regulations setting standards for organization, management, and administration of Head Start programs.

Since the inception of the program, most Head Start agencies have routinely provided transportation for some Head Start children to and from the classroom when needed, although there has never been a requirement to do so. To date, information on transportation provided to Head Start programs has been limited to a series of Information Memoranda which provide guidance to programs on issues around transportation safety, but which do not require any action on the part of Head Start agencies. The following is a summary of that information:

ACYF-IM-82-01, "Bus Safety," issued on January 19, 1982. This Information Memorandum addresses the applicability of The National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards (45 CFR Part 571) to school buses with a seating capacity of eleven (11) or more. The Administration for Children, Youth and Families suggested that all buses purchased or leased to transport Head Start children meet the NHTSA standards.

ACYF-IM-83-06, "Transportation Safety," issued March 24, 1983. This Information Memorandum provided notification to Head Start programs of a Highway Accident Report prepared by the National Transportation Safety Board (NTSB) on an accident involving a Head Start vehicle. As a result of their

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investigation, the NTSB recommended that ACYF advise all Head Start programs of the circumstances of the accident in hopes that the report would draw attention to the importance of transportation safety. The Information Memorandum also notified programs of the NTSB's recommendation that ACYF adopt, and emphasize the need for adherence to, the policies and guidelines provided by the National Highway Traffic Safety Administration's (NHTSA) Pupil Transportation Safety Standards, Highway Safety Program Standard Number 17 (now Guideline 17). A copy of Standard 17 was included and programs were "urged" to use the Standard to assess the adequacy of their transportation systems.

ACYF-IM-93-10. "Transportation," issued on March 18, 1993. This Information Memorandum replaced ACYF-IM-82-01 and ACYF-IM-83-06, since both the Federal Motor Vehicle Safety Standards (FMVSS) and NHTSA's Pupil Transportation Safety Standards had been revised. The Information Memorandum provided Head Start programs with a copy of the new Guideline 17 and again encouraged programs to purchase only vehicles that meet the FMVSS for school buses. The Information Memorandum also provided Head Start programs with new information regarding the Federal Highway Administration's (FHWA) Commercial Motor Vehicle Safety Act and the Commercial Driver's License (CDL) program.

As these issuances have been advisory and not legally binding, there have been differing degrees of implementation. Not all Head Start agencies offer transportation services and, among the agencies that do provide transportation, there are varying degrees of quality and safety.

Because of the impact on the overall quality of services provided to children and families and to assure them access to services, we strongly believe that transportation services in Head Start must meet safety and quality regulations. Many low income families who enroll children in Head Start have limited, if any, access to regular transportation. They often do not own, or cannot afford to operate, a vehicle. They frequently are geographically isolated from, or unable to afford, public transportation. Some communities do not provide any public transportation. Head Start transportation services may be required to ensure the enrollment and attendance of the highest need children.

When Head Start children are transported to and from the program, it is important that the time spent in

transit be safe and support Head Start learning experiences. In a typical rural Head Start program some children are transported over long distances and spend a significant part of their day en route to and from the classroom. Therefore, the time children spend on the vehicle should be treated with the same level of importance as the time the children spend in the classroom and in other program activities.

We know from experience and documentation that significant variation exists among States in terms of whether or not drivers and vehicles that transport Head Start children are included under the purview of State school bus requirements.

In developing this rule, the Head Start Bureau commissioned a survey of the States to determine whether and the extent to which, the requirements in the State's pupil transportation safety plan applied to Head Start programs. Of the 48 States that responded to the survey, 14 of them stated that their Head Start programs are covered by the State regulations governing pupil transportation, 23 States responded that their Head Start programs are not covered, 10 States gave a conditional response and one (1) State did not know. The survey also indicated significant variation among the States in the amount of training required for school bus drivers. Of the 45 States that responded to this question, 39 have some mandated training requirements for school bus drivers, three States reported that driver training was handled at the local level, and three States reported no mandated training requirements for school bus drivers. More significantly, only 13 States reported mandated driver training for Head Start bus drivers.

This variation, both in the way Head Start programs are viewed by the States as well as differing requirements among the States, limits reliance on the States as the sole source of transportation safety standards for Head Start programs.

Variation among the States in regulation of Head Start transportation services and oversight, was one of the primary determinants of our decision to develop minimum standards for all Head Start programs, regardless of the State or jurisdiction in which they operate.

We have substantially revised the proposed rule by providing that within five years of the date of publication of these regulations, Head Start agencies must use for activities defined as "transportation services", either a school bus or an "Allowable Alternate Vehicle." These two classes of vehicles

are defined in the regulations under section 1310.3. The term "Allowable Alternate Vehicle" is used to describe a vehicle which complies with the FMVSS applicable to school buses related to crash survivability and mirrors, but does not meet the other FMVSS which apply to crash prevention, such as the requirements for flashing school bus lights and stop arms, or the provisions in Guideline 17 relating to the color of the vehicle and the use of lights and stop arms. All other parts of the regulation, with the exception of Section 1310.11 and Section 1310.15(a) which are effective three years from the date of publication and Sections 1310.2(c) and 1310.12(b) which are effective 30 days from the date of publication, are effective one year from the date of publication.

The provisions that are effective in one year are important to child passenger safety and pose less burden to grantees than the vehicle, safety restraint, and monitor provisions. The Notice of Proposed Rulemaking included a three year phase-in period for all of the provisions with the exception of driver training. The NPRM invited comments about the feasibility of the three year period. The implementation periods that were selected for each provision resulted from review of the comments and analysis of current Head Start requirements. To improve transportation safety as quickly as possible where it was reasonable the implementation period was changed to one year.

The additional category of vehicle was added to address two significant issues raised during the NPRM comment period. The first issue related to the fact that some States prohibit Head Start and other community based programs from using school buses. The second issue related to concerns raised by Community Transportation Agencies (CTAs) about their ability to continue serving Head Start programs if all Head Start agencies providing transportation services were required to use only school buses. Some CTAs operate vehicles which serve both Head Start grantees and other community organizations, and believe that using only school buses to provide transportation for Head Start programs would interfere with their ability to use the same vehicles to meet the needs of other segments of the community. Other groups, such as senior citizens, might object to the use of school buses to meet their needs, and it would be prohibitively expensive for the CTAs to have separate vehicles to meet the needs of Head Start programs and those of

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other groups. Reconciling the opposing issues related to vehicle structural safety took several years of painstaking work. Significant progress was accomplished through the contributions of the Joint Department of Health and Human Services and Department of Transportation Coordinating Council on Human Services Transportation (now known as the Coordinating Council on Access and Mobility). The development of the allowable alternate vehicle evolved through information exchange, inclusion of multiple perspectives, and willingness to compromise in order to improve the safety of children.

We believe that recognizing an additional class of vehicle without the exterior crash avoidance features is appropriate since those features are not necessary to serving Head Start children. Under Section 1310.20(b)(6), children who must cross the street or highway to board or after exiting the vehicle because curbside drop-off or pick-up is impossible, must be escorted across the street by a bus monitor or other adult. The crash avoidance features are therefore unnecessary to ensure the safety of children being transported to and from Head Start programs.

Formerly, NHTSA interpreted the statutes it is charged with enforcing to prohibit vendors from selling vehicles for use in transporting children enrolled in Head Start programs that do not meet the standards adopted pursuant to those statutes for school buses. The basis for this position was its interpretation of the term "school" in the definition of "schoolbus" appearing in 49 U.S.C. 30125(a)(1) to include Head Start programs.

At the suggestion of the Head Start Bureau, NHTSA reconsidered its interpretation in light of the new wording added to the Head Start Act by the Coats Human Service Reauthorization Act of 1998, Section 102, Pub. L. 105-285, 112 Stat. 2702, 2703. The statute amended Section 636 of the Head Start Act (42 U.S.C. 9831) to provide that "[i]t is the purpose of this subchapter to promote *school readiness* by enhancing the social and cognitive development of low-income children through the provision, to low-income children and their families, of health, educational, nutritional, social, and other services that are determined, based on family needs assessments to be necessary." (Emphasis added.) In view of the rewording of the statute, NHTSA agreed that it was no longer appropriate to consider the Head Start program to be a school program.

The change in NHTSA's position made it possible for the Head Start

program to authorize use of a separate category of vehicle, the "Allowable Alternate Vehicle", to transport children enrolled in Head Start programs. The Allowable Alternate Vehicle symbolizes the cooperative approach adopted by the Departments of Transportation and Health and Human Services, over the course of nearly a decade, to solve the complicated problems related to improving the safety of Head Start transportation services.

Vehicles meeting the specifications of Allowable Alternate Vehicles are currently in use in some States that prohibit Head Start programs from using school buses. These vehicles also may be used in States where Head Start is not included under pupil transportation regulations and a program chooses a vehicle with the structural features, but not the appearance, of a school bus. The Head Start Bureau anticipates that manufacturers will be able to meet the increased demand for alternate vehicles because school bus manufacturers currently produce such vehicles.

In the development of the rule, we have, with only minor variations, adopted a number of the relevant provisions of Guideline 17 and have referenced several of the Federal Motor Vehicle Safety Standards applicable to school buses. This final rule was developed through ongoing consultation with the National Highway Traffic Safety Administration on the application of the FMVSS and Guideline 17 to Head Start programs.

It should be noted that we do not want to place Head Start agencies in conflict with State requirements. On the contrary, it is our intention to continue to work with the States beyond the implementation of the rule to enhance the relationship between Head Start programs and the State agencies responsible for pupil transportation safety. Toward that end, we consulted with the National Association of State Directors of Pupil Transportation throughout the development of this rule.

Where Guideline 17 lacked specificity or was silent on some aspect that is important for transporting Head Start children, we relied on other resources, such as the National Standards for School Bus Operations, in determining regulatory criteria. For example, the regulation includes requirements for the content of driver training and rules for trip routing. The Transportation Research Board's (TRB) Special Report 222 provided valuable information regarding the use of seat belts on school buses, the need for strict rules for trip routing, and the need to train children in safe riding practices both on and off the bus.

The TRB's examination of the use of seat belts on school buses in Special Report 222, along with NHTSA's recommendation in Guideline 17 that passengers in vehicles with a gross vehicle weight rating of less than 10,000 pounds (which is the class of vehicle most frequently used by Head Start programs) use occupant restraints, raises an issue of special significance to the safe transportation of Head Start children. The use of standard Type I (lap) and Type II (lap and shoulder) seat belts is inappropriate for children who weigh 50 pounds or less, because of the potential for injury from the seat belt itself. Children weighing 50 pounds or less should be seated in child restraint systems designed in accordance with FMVSS No. 213, "Child Restraint Systems." Since almost all Head Start children fall into this lower weight category, we have included such a requirement in the rule. Our decision to include this requirement is based on consultation with organizations such as the American Academy of Pediatrics, the Children's National Medical Center in Washington, DC and the Riley Hospital for Children, Automotive Safety for Children Program in Indianapolis, Indiana. The regulation provides that within three years of its publication, all vehicles must be equipped for use of child restraint systems. In some instances, this may require replacement of existing vehicles. While the regulation allows up to five years to use school buses or allowable alternate vehicles, the full five years will not be available if vehicles are being used that cannot accommodate, or be safely retrofitted to accommodate child restraint systems. We recognize the financial effect that a three year versus a five year implementation period may have for some grantees. We urge grantees to evaluate existing vehicles for capacity to accommodate child restraint systems and plan accordingly. The use of child restraint systems for children weighing 50 pounds or less is critical to their safety.

We have excluded the transportation provided under the Head Start and Early Head Start home-based program option from the requirement for use of school buses or allowable alternate vehicles, and the requirements on driver qualifications and bus monitors. In the home-based option, it may only be necessary to transport parents and children to twice monthly group socializations and other program activities. Usually, the transportation is provided in a vehicle other than a school bus driven by the home visitor, although many programs already use

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school buses to transport children enrolled in home-based programs. We anticipate that programs already using school buses will continue the practice. Programs will also need to comply with other requirements of the regulations when transporting children enrolled in home-based programs. We also expect that as more grantees acquire school buses and allowable alternate vehicles for use in transporting children enrolled in other program options, they will make available to children enrolled under the home-based option the same transportation services provided to children enrolled under other program options. We are, however, reluctant at this time to apply the same requirements under the home-based option as other options because local circumstances may at times make it impossible to comply fully with the requirements of the regulations. There may be situations, for example, in rural communities with widely dispersed populations when it will not be possible for a grantee to coordinate its use of vehicles to provide the necessary services using school buses or allowable alternate vehicles to meet the needs of children enrolled in the home-based option as well as those enrolled under the other options that it operates.

It should be noted that the requirements in the regulation which are generally applicable to Head Start, Early Head Start and delegate agencies, such as the requirements for safety education in 45 CFR 1310.21, the requirement for release of a child to a parent, legal guardian, or other individual identified in writing by the parents in 45 CFR 1310.10(g) and the use of appropriate child restraint systems in 45 CFR 1310.11, apply to services under the home-based option.

We recognize that implementing this regulation will require programs to learn its provisions and determine their application in reference to existing State regulations. There are a variety of resources available to support agencies. The Head Start Act requires that an allotment of Head Start and Early Head Start funding be dedicated to training and technical assistance for staff and parents. This is accomplished through a variety of avenues, many of which will be instrumental in supporting grantees as they adopt the provisions of the transportation regulation. The training and technical assistance network consists of local, regional, and national resources. Each region has a Quality Improvement Center (QIC) which supplies the Head Start and Early Head Start programs in its region with a variety of training opportunities that are responsive to program needs and

emerging issues. Several of the QIC staff have become experts in transportation issues based on the current needs of grantees they serve. The Head Start Publications Management Center provides the vehicle for distributing information material to all of the Head Start and Early Head Start Grantees and delegate agencies. Materials offered by the Publications Center include the "Transportation Tool Kit" which was developed to provide Head Start programs with resources and information related to transportation services. There are also various training opportunities available through each State's Department of Transportation and several national organizations, including the International Center for Injury Prevention and the Community Transit Assistance Program, have volunteered to participate in providing training to Head Start programs. The National Highway Traffic Safety Program offers extensive training resources and has already been involved in providing materials to Head Start programs. The NHTSA document entitled "Guideline for the Safe Transportation of Pre-school Age Children in School Buses" was distributed to all grantee and delegate agencies in 1999.

III. Summary of the Major Provisions of the Rule

A summary of the major provisions of the final rule follows. The rule:

- Establishes requirements for transportation services for all Head Start, Early Head Start and delegate agencies that transport children to and from program activities;
- Requires that, beginning five years from the publication of the regulation, vehicles used to provide transportation services to Head Start, Early Head Start, and delegate agency program activities be either "school buses" or "allowable alternate vehicles" as those terms are defined in the regulation;
- Requires that children receiving Head Start, Early Head Start and delegate agency transportation services be seated in height and weight-appropriate child restraint systems when the vehicle is equipped for use of such devices.
- Describes the minimum qualifications for operators of vehicles that are used to provide transportation services to children enrolled in Head Start, Early Head Start and delegate agency program activities;
- Describes the training requirements for operators of vehicles that are used to provide transportation service to children enrolled in Head Start, Early Head Start and delegate agencies;

- Describes the vehicle and pedestrian safety training requirements for parents and children;
- Describes the requirements for transportation of children with disabilities; and
- Defines the role of Head Start, Early Head Start and delegate agencies in local efforts to plan and implement coordinated transportation systems in order to achieve greater overall cost effectiveness in providing safe transportation.

The contents of this rule include aspects of the following Department of Transportation guidelines and standards:

- Highway Safety Program Guideline No. 17, "Pupil Transportation Safety," referred to in this text as Guideline 17, published in the *Federal Register* (56 FR 19270, April 26, 1991) and (57 FR 56991, December 2, 1992);
- 49 CFR part 571—Federal Motor Vehicle Safety Standards;
- 49 CFR part 383—Commercial Driver's License Standards: Requirements and Penalties; 49 CFR part 391—Qualifications of Drivers;
- 1990 National Standards for School Buses and School Bus Operations, National Safety Council; and
- Special Report 222, "Improving School Bus Safety," Transportation Research Board, National Research Council, 1989.

We also reviewed the National Highway Traffic Safety Administration's "1999 Guideline for the Safe Transportation of Pre-school Age Children in School Buses." This document confirms that, based on conclusive crash testing research results, preschool age children are most safely transported on school buses when seated using weight-appropriate child safety restraint systems.

IV. Rulemaking History

On June 15, 1995, the Department published a Notice of Proposed Rule Making (NPRM) in the *Federal Register* (60 FR 31612), proposing regulations establishing requirements for the safety features and the safe operation of vehicles used by Head Start agencies to transport enrolled children, safety education, and transportation coordination. Copies of the proposed rule were mailed to all Head Start grantee and delegate agencies. Interested individuals were given 60 days in which to comment on the proposed rule. During the 60-day comment period the Department received more than 800 comments from more than 300 respondents. The respondents included Head Start grantees and public and private agencies and individuals

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interested in Head Start transportation services.

V. Section-by-Section Discussion of Comments

The comments were analyzed and categorized according to regulatory section and again by nature of comment. Only those sections for which comments were made or to which changes were made are discussed below. The discussion of the sections follows the order of the NPRM table of contents and a notation is made wherever the section designations have been changed or deleted from the final rule.

Subpart A—General

Section 1310.1—Purpose

There were no significant comments submitted in response to this section. Language was added to the final rule to clarify that training in pedestrian safety is an included element of the regulation. Language was also added to the effect that agencies must make reasonable efforts to coordinate resources in order to control costs and improve the quality and availability of transportation services.

Section 1310.2—Applicability

Section 1310.2(a) (re-designated as Section 1310.2(c) in the final rule)

This section described the rule's applicability to all Head Start grantees, Early Head Start grantees and delegate agencies.

Comments. Paragraph (a) in the proposed rule specified the rule's applicability to all Head Start grantees and delegate agencies that provide transportation to children. Several respondents objected on the grounds that a school bus would not be able to safely navigate the challenging terrain encompassed within their program area.

Response. We recognize that there are rare circumstances when programs may use non-traditional forms of transportation (e.g., boats for some island programs) to bring children to and from the program. Waiver authority has been added to the final rule under Section 1310.2(c) so that, on a case-by-case basis, the Department of Health and Human Services official may permit exclusion from one or more requirements of the final rule based on "good cause". Good cause will exist only if adherence to a requirement of the Part itself causes a safety hazard in the circumstances faced by the Head Start, Early Head Start or delegate agency. The waiver provision will take effect 30 days after publication of the regulation.

We have excluded home-based program transportation from the vehicle, drive qualification, and bus monitor provisions of the regulation. Home-based Head Start programs may provide transportation to small groups of children and their parents twice per month. Many home-based programs currently use school buses for such transportation and home-based programs are strongly encouraged to use school buses or allowable alternate vehicles whenever possible. When the State in which a Head Start or Early Start program operates sets a higher standard than this regulation, agencies shall comply with the State regulation.

The rule is applicable to all Head Start and Early Head Start grantees and delegate agencies regardless of whether they offer transportation services or not. Some provisions are not applicable if an agency does not provide any transportation services, either directly or through another organization. This includes sub-parts related to vehicles, drivers and trip routing. Other sections are applicable regardless of whether the program provides transportation services or not. Sections which provide requirements for all grantees and delegate agencies include, Section 1310.10(a), (b) and (g), Section 1310.21(a), (c)(2), and (e) and Section 1310.22(c).

Section 1310.3 Definitions

This section supplied definitions for the relevant terms used in the regulation. There were no comments submitted in response to this section of the proposed rule. We have deleted several definitions for terms that were either deleted from the regulation or are self-explanatory and added clarifying language to several others. The term "Transportation" is redefined under "Transportation Services" in the final rule. We added definitions for the terms "Agency", "Agency Providing Transportation Services", "Delegate Agency", "Early Head Start Agency", "Early Head Start Program", "Head Start Agency", "Head Start Program" and "seat belt cutter" to clarify the use of these terms in the regulation. We also added a definition of the "Allowable Alternate Vehicle" because it is a term used in the final rule. We added a definition for "school bus" as the term is used throughout the regulation. Deleted definitions were: "coordinated transportation", "crossing control arm", "stop signal arm", "driver", "winter packs", "driver qualifications", "Guideline 17", "transportation supervisor", "training", "school bus loading zone", and "vehicle". The

remaining terms are listed alphabetically in the final rule.

Subpart B—Transportation Requirements

Section 1310.10 General

Section 1310.10(a) (re-designated in the final rule as Section 1310.10(c))

This section required that programs providing transportation to Head Start children comply with the applicable requirements of this Part.

Comments. The majority of letters were supportive and indicated that adoption of the NPRM would yield safer and higher quality transportation services for children in Head Start. Some other respondents expressed concern that the requirement jeopardizes some transportation services provided for Head Start children by public school districts, regional transit authorities and contractors. Many writers expressed support for the increased safety the regulation affords, but are concerned about the cost of compliance. For example, respondents wrote that the increased costs associated with bus monitors, driver certification and training, child safety restraints, using vehicles that meet the identified safety standards, and providing communication equipment would be prohibitive without additional grant funds. Several also objected that the three-year phase in period was unrealistic with respect to replacement of existing vehicles. Some respondents recommended that waivers be allowable for all or most of the rule's requirements.

Response. The requirements of the regulation are essential in assuring the safe transportation of preschool age children. However, waivers under section 1310.2(c) of the final rule shall be granted on a case-by-case basis where adherence to a specific provision would cause a safety hazard in the circumstances faced by the Head Start, Early Head Start, or delegate agency. Requests for waivers should be made to the responsible official of the Department of Health and Human Services.

In response to comments that three years is not a reasonable period for replacement of existing vehicles in order to comply with the regulations, the effective date of sections 1310.12(a) and 1310.22(a), which now provide that children enrolled in Head Start agencies be transported in either school buses or allowable alternate vehicles, will be five years from the date of publication of this part in the Federal Register. This change will provide additional time for

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necessary financial planning and upgrading and replacing vehicles.

The requirement which appeared in the NPRM at section 1310.11(i) that children are seated in child safety restraint systems is addressed in the final regulation sections 1310.11 and 13.10.15(a) and (d). Those provisions require that beginning on the date three years from publication in the **Federal Register**, each vehicle used to transport children enrolled in Head Start must be equipped for use of height and weight appropriate child restraint systems which conform to the performance requirements (49 CFR 571.213) for use by children weighing fifty pounds or less who will be transported in the vehicle. This requirement can be met either by retrofitting vehicles already in service or by acquiring new vehicles. For an additional explanation of the reasons for the change in the requirements regarding child safety restraint systems, see the discussion of section 1310.11 in this preamble.

Section 1310.10(b)

Paragraph (b) required that Head Start programs assess and document annually decisions about providing transportation to some, all, or none of the enrolled children.

Comments. Several respondents interpreted the requirement to mean programs are required to transport all children. Others feared they would not be allowed to enroll children they could not transport. Respondents objected to the requirement on the basis that additional transportation requirements are too expensive and they would need to reduce their enrollment to meet the transportation requirements.

Response. The requirement's intent is that programs provide transportation services to the degree possible when the lack of such services would preclude an eligible child from participating in Head Start. It requires programs to consider the most efficient and appropriate service provision. The language in the final rule was clarified to make sure that Head Start agencies assist as many children as possible to obtain transportation, either by providing it directly or through some other means, but are not required to transport every child in the program. We deleted the requirement for specified documentation of Head Start agencies' efforts under this section as unnecessarily burdensome.

Section 1310.10(c) (re-designated as Section 1310.10(a) in the final rule)

The section required Head Start agencies that do not provide transportation to some or all of the

enrolled children to provide reasonable assistance to help families arrange transportation for their children to and from the program.

Comments. One respondent expressed concern that an implied liability would exist for a Head Start agency that recommended or arranged child transportation services.

Response. We agree that child safety is a primary concern and that programs must be cautious in assisting families in making alternative transportation arrangements. The regulation requires Head Start agencies to assist as many children as possible who need transportation to attend the program to get that transportation. Parents and guardians are responsible for the safety of children in their care when they bring those children to or from Head Start program activities. When the grantee or delegate agency cannot provide transportation services, possible alternative arrangements may be suggested to parents. This is consistent with Head Start Performance Standard 1304.41(a)(2) which requires grantees and delegates agencies to support collaborations that promote the access of children and families to resources that are responsive to their needs.

Section 1310.10(d) (deleted from the final rule)

Paragraph (d) required each Head Start program providing transportation services to have designated full or part-time transportation supervisor to ensure compliance with the requirements of this Part.

Comments. Some respondents objected that if the transportation services are provided contractually or via a school district, a Head Start employed transportation supervisor is not necessary. The objection most frequently cited was that an additional staff position could not be accommodated through existing grant funds.

Response. The requirement for a designated transportation supervisor reflected recognition of the critical nature of safe transportation services and the time and expertise required to ensure safety. Upon consideration of the comments and given the variety of Head Start staffing patterns, we determined that a separate dedicated staff position may not always be necessary to ensure safe and effective transportation services. The language in the final rule specifies transportation regulation oversight and compliance with the applicable requirements of this part in section 1310.10(c). Head Start agencies providing transportation through another organization or individual must

monitor the compliance of the transportation provider with the requirements of this part.

Section 1310.10(e) (re-designated as Section 1310.15(c) in the final rule)

Paragraph (e) required vehicles providing Head Start transportation be staffed with at least one bus monitor in addition to the driver.

Comments. The objections to this paragraph related mainly to the cost of employing bus monitors or the belief that monitors are not necessary for small groups of children. Some respondents indicated that finding volunteer monitors is too difficult. Several writers objected to requiring bus monitors to wear seatbelts as they felt this would negatively impact the monitor's ability to assist children during the ride. Several writers recommended additional monitors for larger groups of children.

Response. The final rule maintains the requirement of at least one bus monitor on vehicles transporting Head Start children. Preschool children require adult supervision and assistance to safely board and exit the vehicle, fasten safety restraints, and to evacuate the vehicle in the event of emergencies. The driver's attentions must be primarily focused on safe operation of the vehicle. The final regulations provide in section 1310.15(d) that, except for bus monitors while they are assisting children, all occupants of the vehicle must be seated and wearing seat belts while the vehicle is in motion. As necessary based on passenger needs, programs may elect to assign more than one monitor to a vehicle. Although the term "bus monitor" is being used in the regulations, the requirement in 45 CFR 1310.15(c) applies to all vehicles, except for those used to transport children served under the home-based option, used to provide transportation services after the effective date of the provision.

Section 1310.10(f)

Paragraph (f) required that all accidents involving Head Start vehicles, with or without children on board, must be reported in accordance with State regulations for reporting school bus accidents. There were no specific comments to this section. The language in the final rule was changed to reference "applicable State requirements" to improve clarity.

Section 1310.10(g) (re-designated as Section 1310.10(d)(1) in the final rule)

Paragraph (g) required that vehicles transporting Head Start children be equipped with a communication system for use in the event of emergencies. The

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NPRM referenced a citizen band radio as an example of a communication system.

Comment. Many writers understood the NPRM to require citizen band radios on vehicles that transport Head Start children and objected on several grounds. Notably, some State police departments have advised against this device fearing it could inform potential criminals of the location of a stranded bus load of children and staff. Most respondents were supportive of equipping vehicles that transport Head Start children with communication capacity.

Response. The final rule continues to require a communication system on vehicles, but defers to grantees to select the most appropriate equipment.

Section 1310.10(h) (deleted from the final rule)

Paragraph (h) required the use of special equipment (e.g., winter packs and air conditioning) as necessary for vehicles transporting Head Start children in extreme climatic conditions.

Comments. Some writers requested a definition "extreme climatic conditions." Others stated that the appropriate outfitting of buses should be a local decision.

Response. It was not our intent that this section be prescriptive. We agreed with the respondents who stated that the appropriate outfitting of vehicles should be a local decision and have deleted the special equipment for climate extremes from the final rule.

Section 1310.10(i) (re-designated as Section 1310.10(g), in the final rule)

Paragraph (i) specified that children must be released only to authorized individuals.

Comments. There were few comments in response to this section of the proposed regulation. Two writers recommended clarifying the section to stipulate that child release procedures be required even if the Head Start program is not directly providing the transportation services. One respondent was concerned that a parent with a disability might be unable get outside to put their child on the vehicle and meet the child at the end of the day.

Response. The language in the final rule contains clarification to reinforce that all providers of Head Start, Early Head Start and delegate agency services, including transportation services, must abide by the child release regulation. The provision allows for a child's parent or legal guardian to designate, in writing, other individuals authorized to pick up the child.

Section 1310.11—Vehicles (re-designated as Sections 1310.12–1310.15 in the final rule)

Section 1310.11(a) (re-designated as Section 1310.12(a) in the final rule)

Paragraph (a) specified that vehicles used to transport Head Start children must comply with the recommendations regarding "school buses" as provided in Guideline 17 and prohibited the use of vans in transporting Head Start children.

Comments. This NPRM section elicited the largest number of comments. A number of respondents strongly objected to the prohibition against using vans. While a few writers advocated the use of buses over vans for safety advantages, most stated that programs would not be able to afford to replace vans with school buses and that buses are an inefficient method to transport individual or small groups of children. There were also comments that in some regions of the country, roads are unpaved and require four wheel drive vehicles. Many individuals cited very geographically large service areas as an impediment to reasonably efficient school bus use. One writer cited a State rule permitting the use of qualified vans and drivers if the number of children is fewer than ten and the route would be excessively long if a regular school bus was used.

Response. Substantial effort was devoted to creating a solution that would both improve the safety of vehicles providing Head Start transportation services, not contradict existing State regulations, and be reasonable for use by various transportation providers. The solution provides for the use of either a vehicle that qualifies as a "school bus" or an "Allowable Alternate Vehicle" which is not a school bus but does meet the structural, or crash protection, standards of a school bus. This decision to require that Head Start transportation service providers only use vehicles with the interior safety features required for school buses reflects the research demonstrating that school buses are safer than other vehicles.

The National Highway Traffic Safety Administration confirms that based on research, "school buses have been and remain the safest form of highway transportation" (*School Bus Safety: Safe Passage for America's Children* (1998), p. 5). NHTSA based its conclusion in part on data documenting that the school bus occupant fatality rate of 0.2 fatalities per 100 million vehicle miles traveled (VMT) is much lower than the rates for passenger cars (1.5 per 100 million VMT) or light trucks and vans

(1.3 per hundred million VMT). NHTSA established the Federal Motor Vehicle Safety Standards (FMVSS) to make school buses stronger and to provide improved occupant protection (p. 7).

Further evidence of serious safety hazards posed by the use of vans is provided by the National Transportation Safety Board's Highway Special Investigation report titled "Pupil Transportation In Vehicles Not Meeting Federal School Bus Standards" (June 1999). The report's findings are based on the investigation of child fatalities in four accidents where children were being transported in vehicles that did not meet the crash protection standards of school buses. One of the accidents involved children being transported to a Head Start program. The report includes detailed analysis of the crashworthiness of the nonconforming vehicles and provides a table describing the crash protection attributes of different vehicle types. Fifteen-passenger vans do not possess the joint strength or roof rollover protection provided by school buses. Federal school bus standards require that body panel joints be strong enough to resist separation during a crash that can cause sharp cutting edges and openings through which children can be ejected. The Safety Board included a comparison of two accidents, one involving a school bus and one involving a fifteen-passenger van. Although the bus was struck by a much larger, heavier truck it suffered far less intrusion damage than the fifteen-passenger van. The Board found that if the children involved in the van accident had been on a bus, they would have had more "survivable space." The report concludes that "given their better crashworthiness and occupant protection, had school buses or buses providing equivalent occupant crash protection been used in the four accidents * * * the vehicles probably would have suffered less damage and the passengers may have suffered fewer and less severe injuries."

Based on its report, the National Transportation Safety Board issued a letter to the Department of Health and Human Services (July, 1999) recommending the expedition of the rule requiring that Head Start Children be transported in vehicles built to Federal school bus structural standards or the equivalent and that the guidelines from the National Highway Safety Administration's Guideline for the safe Transportation of Preschool Age Children in School Buses regarding child passenger restraint systems be incorporated in the regulation. Both of the Safety Board's recommendations are reflected in the final rule.

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Because all children attending Head Start must be accompanied by an adult if they cross a street or highway to board or exit a vehicle, the final regulation permits the use of an "Allowable Alternate Vehicle" which would not be identified as a "school bus," be painted yellow or equipped with flashing lights and a stop arm. The final regulation provides for waiver of one or more of its specific requirements when adherence to a requirement of this part would itself create a safety hazard in the circumstances faced by the Head Start, Early Head Start, or delegate agency, such as when use of a school bus or allowable alternate vehicle is ruled out because of terrain in the area served by the grantee or some other safety factor. In response to the concern about navigating unpaved roads, it should be noted that four wheel drive school buses are currently available.

Section 1310.11(b) (re-designated as Section 1310.12(a) in the final rule)

Section 1310.11(b)(1) (deleted from the final rule)

Paragraph (b)(1) stated that vehicles used for Head Start transportation must comply with all of the Federal Motor Vehicle Safety Standards (FMVSS) for school buses.

Comments. Some respondents objected that Head Start should not be required to use vehicles meeting the FMVSS if Head Start is not included in the State's pupil transportation regulations. Many people asked for additional clarification regarding the definition of allowable exceptions. For example, are medical visits considered incidental and do they require a vehicle complying with the FMVSS for school buses? Cost was again a major topic and several writers suggested a gradual implementation period to reasonably replace existing vehicles with school buses. One writer was concerned that school buses do not include the proper safety restraint systems for young children. Again, several respondents said that school buses cannot navigate rural roadways, which may be unpaved, or very narrow. One comment noted that some States prohibit transit authorities from using school buses and the rule would effectively prevent those agencies from providing Head Start transportation services.

Response. Under section 1310.12(a) the final rule requires that when school buses, as defined in the rule, are used for the planned transportation of Head Start children, they must comply with the FMVSS for school buses, including both crash prevention and crash survivability standards.

In response to the concern that school buses may not be the most practical vehicle to provide transportation in certain circumstances, an alternative acceptable vehicle has been defined in the rule for the purpose of Head Start transportation. The alternative vehicle, called the "allowable alternate vehicle," is defined in these regulations as one which must meet the FMVSS applicable to school buses for crash survivability and mirrors (49 CFR part 571), but is not required by these regulations to meet the standards related to visibility and traffic control. The latter are collectively called crash prevention standards and they include the color of the vehicle, flashing school bus lights, and a stop arm. Crash prevention standards are related to the appearance of vehicles. They include FMVSS 49 CFR 571.108 and 571.131. Requiring the allowable alternate vehicle to meet the crash survivability standards, but not the crash prevention standards, permits greater flexibility in vehicle appearance while maintaining the structural safety features afforded by school buses.

Because Head Start children must be accompanied by an adult when they must cross the street before boarding or after exiting the vehicle, the crash avoidance features are not required for allowable alternate vehicles.

Incidental transportation, which is the unplanned, necessary, transportation of a single child or small group of children for some exceptional purpose, is not required to meet the requirements of the rule relating to transportation services. The distinction between planned and unplanned transportation is designed to allow transportation of children to occur as necessary in unanticipated or exceptional situations. Programs should make every effort to use school buses or allowable alternate vehicles whenever possible. Section 1310.11(b)(1) was deleted in the final rule as it duplicated provisions already specified.

Section 1310.11(b)(2) (re-designated as Section 1310.10(d)(2) and (3) in the final rule)

Proposed paragraph (b)(2) described the requirement that vehicles that transport Head Start children be properly equipped with a fire extinguisher and a first aid kit with location signs for both visibly posted.

Comment. One comment was submitted suggesting most standard first aid kits do not contain adequate supplies for conditions such as shock or severe bleeding.

Response. The final rule maintains the requirement that vehicles transporting Head Start children must be equipped with a fire extinguisher and

first aid kit. Seat belt cutters were added to the required safety devices in response to concerns that child safety restraints might slow evacuation of children in an emergency. Grantees are reminded to follow applicable State agency guidelines concerning contents of first aid kit.

Section 1310.11(b)(3) (re-designated under Section 1310.12(a) in the final rule)

Paragraph (b)(3) required that vehicles used to transport Head Start children be equipped with mirrors complying with 49 CFR 571.111.

Comments. There were no comments in response to this section of the proposed regulation.

Response. The specific provision regarding mirrors was deleted as its content is included within the definitions for school buses and allowable alternate vehicles.

Section 1310.11(b)(4) (deleted from the final rule)

Paragraph (b)(4) required that bus steps be equipped with a lower step panel at the primary access point to permit children to step on and off the bus unassisted.

Comments. Several respondents objected to the lower step panel on the grounds that it is too prescriptive and may be unsafe on certain terrain. Further, it was noted that Head Start children vary in size and physical ability and are expected to always have adult assistance when boarding or exiting a Head Start vehicle.

Response. The requirement was deleted from the final rule because we agree with comments that it was more prescriptive than necessary.

Section 1310.11(b)(5) (re-designated as Section 1310.12(a) and (b)(2) in the final rule)

Proposed paragraph (b)(5) stated that vehicles providing Head Start transportation services must be equipped with reverse beepers.

Comments. Writers regarded the reverse beepers as unnecessary because the proposed rule prohibited backing up.

Response. The rule specifies that "vehicles must not be required to back up * * * [on their routes] except when necessary for reasons of safety or because of physical barriers." This requirement reflects that it is not safe for school bus routes to be mapped so that backing up is necessary. A bus, however, may need to back up for reasons of safety or physical barrier. In either instance the reverse beepers notify pedestrians of the driver's

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intention and could prevent accidents and injury. Therefore, the provision was retained.

Section 1310.11(b)(6) (provision addressed in Section 1310.22 in the final rule)

Paragraph (b)(6) specified that vehicles that transport Head Start children must be equipped to accommodate children's special needs (e.g., wheelchair lifts).

Comments. Many respondents interpreted the section to mean that every Head Start vehicle must be equipped to meet the potential needs of children with disabilities and were concerned about unnecessary effort and prohibitive expense. Several respondents asked for clarification regarding the definition of "special equipment" and the portion of an agency's fleet that should be so equipped.

Response. The language in the final rule, section 1310.22(b), specifies that Head Start agencies must meet the requirements of the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, and the Head Start Performance Standards for Children with Disabilities. It is not necessary, or advisable, that every vehicle transporting Head Start children be equipped with a wheelchair lift. We emphasize that Head Start programs must be prepared to meet the special transportation needs of children with disabilities who enroll in the program. Agencies must consider the needs of children with disabilities when arranging for transportation services using school buses or allowable alternate vehicles. Whenever possible, children with disabilities must be transported along with their peers who do not have disabilities.

Section 1310.11(c) (deleted from the final rule)

Paragraph (c) specified that, to the extent allowable within State requirements, vehicles that transport Head Start children must comply with the following recommendations for identification and equipment of a school bus contained in Guideline 17: (1) Be identified with the words "School Bus" printed in letters not less than eight inches high, located between the warning signal lamps as high as possible without impairing visibility of the lettering from both front and rear, and have no other lettering on the front or rear of the vehicle except as required by Federal Motor Vehicle Safety Standards (FMVSS), 49 CFR part 571; (2) be painted National School Bus Glossy Yellow, in accordance with the

specification of National Institute of Standards and Technology (NIST) Federal Standard No. 595a, Color 13432, except that the hood should be either that color or lusterless black, matching NIST Federal Standard No. 595a, Color 37038; (3) have bumpers of glossy black, matching NIST Federal Standard 595a, Color 17038, unless, for increased visibility, they are covered with a reflective material; (4) be equipped with a stop signal arm as specified in FMVSS No. 131 (49 CFR 571.131) and a crossing control arm; and (5) be equipped with a system of signal lamps that conforms to the performance requirements of FMVSS No. 108 (49 CFR 571.108).

Comments. No significant comments were received in response to paragraphs (c)(1)-(2). There were, however, a few respondents objecting to the bumper color requirement on the grounds it would require expensive retrofitting of existing vehicles. There were also respondents who objected to paragraphs (c)(4) and (5) which required that vehicles comply with the FMVSS for stop signal arms, crossing control arms, and signal lamps. Several respondents indicated that crossing control arms are unnecessary because Head Start children should only enter or exit buses curbside. There were objections to increased costs for all safety features.

Response. The safety features that would have been required by the proposed Section 1310.11(c)(1)-(5) were deleted from the final regulations because they are not necessary in view of the requirement that children using Head Start vehicles be accompanied by a bus monitor or other adult when they must cross the street before boarding or after exiting the vehicle. The final rule identified the required features for allowable alternate vehicles and school buses under its definitions, Section 1310.3.

Section 1310.11(d) (re-designated as Section 1310.14 in the final rule)

Section 1310.11(d)(1) (re-designated as Section 1310.14 in the final rule)

Paragraph (d)(1) required Head Start agencies to assure that vehicle specifications are correctly provided and that the intended use is identified in bid announcements.

Comments. Respondents requested that bus specifications and purchase procedures be provided by the Head Start Bureau.

Response. Requirements for vehicles to be used in Head Start transportation services are defined in the final rule either explicitly or through reference to other requirements, such as provisions of the FMVSS. Grantees can comply

with the requirement to ensure that bid solicitations include correct vehicle specifications by citing or restating the relevant requirements of these regulations, as well as any applicable State requirements. Since the relevant Federal specifications are set forth in the regulations, no changes were made to the final rule.

Section 1310.11(d)(2) (re-designated as Section 1310.14 in the final rule)

Section 1310.11(e) (re-designated as Sections 1310.12(a) and (b) in the final rule)

Paragraph 1310.11(e) specified that existing vehicles not compliant with the FMVSS and the minimum capacity requirement must be replaced within a three-year period. It also reminded readers that, in accordance with 42 U.S.C. 9839(g)(2)(c), Head Start funds may be used for capital expenditures to purchase buses.

Comments. Many respondents objected to the three-year phase in period as far shorter than the useful life of some vehicles. Several individuals suggested periods between five and ten years as more accomplishable and reasonable.

Response. Head Start agencies that are transporting children enrolled in their programs in vehicles which do not meet the requirements under Section 1310.12 should consider replacing those vehicles with compliant vehicles as soon as possible. The allowable limit for vehicle replacement has been extended to five years in order to accommodate the useful life of vehicles that are relatively new at the time the rule is published. Also, the wording of the final regulation has been changed to require that each agency providing transportation services must transport children enrolled in its programs in school buses or allowable alternate vehicles that are equipped for use of height and weight appropriate child restraint systems, and that have reverse beepers. It should be noted that existing vehicles which cannot be equipped to safely accommodate child restraint systems must be replaced within three years of publication of the final rule. We recognize that in a minority of cases this could necessitate vehicle replacement before the full five year period expires or the vehicle's useful life is completely exhausted. This constitutes a reasonable compromise because it will affect relatively few vehicles, three years is an adequate amount of planning time, and restraint systems are essential to child passenger safety. The implementation of child restraint systems should occur as quickly as is reasonably possible.

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Paragraph (b) was added to the final rule to clarify that, beginning thirty days after publication of the rule, vehicles purchased with Head Start funds for use transporting children must meet the requirements of paragraph (a).

The language reminding readers that Head Start funds may be used for capital expenditures including buses was deleted as it appears elsewhere (as referenced above) and it is not directly a part of this regulation.

Section 1310.11(f) and (h) (combined and re-designated as Section 1310.15(a) in the final rule)

Paragraph (f) proposed that all passengers on a Head Start vehicle be seated while it is in motion. Paragraph (h) proposed that bus drivers, monitors and other passengers must wear seat belts when the vehicle is in motion.

Comments. Two respondents stated that bus monitors may need to attend to children while the bus is moving and therefore might not be able to remain seated.

Response. While the vehicle is in motion, all children and adults must be wearing appropriate safety restraints. In the event of an emergency while the bus is moving, the monitor may need to unfasten his or her seatbelt and move to assist a child. The language in the final rule was changed slightly to require that, other than a monitor assisting a child, all passengers must remain seated and use appropriate safety restraints while the vehicle is in motion.

Section 1310.11(g) (re-designated as Section 1310.10(e) in the final rule)

Paragraph (g) stated that the use of auxiliary seating was prohibited.

Comments. Several respondents objected to the prohibition against auxiliary seating in wheelchair lift equipped vehicles or adjacent to an emergency door.

Response. The NPRM did not intend to prohibit correctly installed auxiliary seating. The final rule clarifies that all seats must be permanent and pass inspection.

Section 1310.11(i) (re-designated as Section 1310.15(a) in the final rule)

The NPRM indicated that children weighing less than 50 pounds should be seated using child safety restraint seats.

Comments. There were few responses to this item. One respondent objected to the cost and space implications of child safety seats, saying that installing the seats would reduce seating capacity by a third. Another respondent suggested that transportation staff training in the correct use of transportation safety seat use be required in the final rule. A final

respondent expressed concern that use of child restraint systems would delay the evacuation of children in an emergency.

Response. Because the National Highway Traffic Safety Administration Guideline for the Safe Transportation of Preschool Children in School Buses concludes that children weighing 50 pounds or less are most safely transported on school buses when they are seated in age- and weight-appropriate restraint systems, this requirement was retained with explicit reference to the 50-pound requirement (National Highway Traffic Safety Administration, 1999). It is expected that programs will make sure transportation staff receive instruction in the correct use of the child restraint system. There are more child restraint systems and more vehicle configurations than were available when the NPRM was published in 1995. The three year implementation period for child safety seats and the five year period for vehicle implementation was designed to provide planning time for grantees with regard to issues such as seat spacing. The final rule requires vehicles transporting Head Start children to be equipped with seat belt cutters which could be used to speed the evacuation of children in an emergency.

Section 1310.11(j) (re-designated as Section 1310.15(b) in the final rule)

Section 1310.11(k) (re-designated as Section 1310.13 in the final rule)

Section 1310.11(k)(1) (re-designated as Section 1310.13(a) in the final rule)

This standard proposed a thorough safety inspection of each vehicle at least annually through a State licensed or operated inspection system.

Comments. One response objected that the requirement is too prescriptive, another suggested it should specifically identify inspection components, a third voiced concern that the rule would conflict with State regulations and a final respondent stated unconditional support.

Response. Regular vehicle inspections are an integral element of safe transportation services. As provided in section 1310.2(a) of the final rule, this provision will apply except when there is an applicable State or local requirement that sets a higher standard.

Section 1310.11(k)(2) (re-designated as Section 1310.13(b) in the final rule)

Section 1310.11(k)(3) (re-designated as Section 1310.13(c) in the final rule)

Section 1310.12—Driver Qualifications (re-designated as Section 1310.16 in the final rule)

Section 1310.12(a) (re-designated as Section 1310.16(a) in the final rule)

Section 1310.12(a)(1) (deleted from the final rule)

Paragraph (a)(1) addressed Head Start transportation service driver qualifications. The proposed requirement was that drivers be at least 21 years of age.

Comments. Several people wrote that they currently use drivers who are eighteen or nineteen years and older as is allowable in their States. Others strongly supported that drivers be at least 21 years old.

Response. The minimum age requirement was removed from the final rule. The final regulation requires that all drivers of vehicles providing Head Start transportation possess Commercial Drivers Licenses and meet physical and other requirements.

Section 1310.12(a)(2) (re-designated as Section 1310.16(a)(1) in the final rule)

Paragraph (a)(2) listed the requirement that drivers providing Head Start transportation possess a Commercial Driver's License (CDL).

Comments. The majority of objections were to the cost implications of having current drivers obtain and meet the ongoing requirements for the CDL. Several respondents were also concerned that the wages paid to Head Start drivers are not competitive with public school bus drivers or commercial truck drivers. One writer objected that the CDL requirement is "just a way to ensure that all Head Start drivers are drug and alcohol tested." A few respondents were concerned about the implications of the CDL requirement for the Home-based program option.

Response. The Commercial Driver's License requirements establish a driver's qualifications to operate the appropriate class of passenger vehicle. The CDL is viewed as the best assurance that drivers will meet essential minimum standards. The final rule retains the CDL requirement in States where such licenses are granted. All operators of commercial motor vehicles are required to have CDLs. Commercial motor vehicles include vehicles designed to carry 16 or more passengers, including the driver. Many States have extended the inclusion to all vehicles used to provide pupil transportation. To

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obtain a CDL, vehicle operators must pass written and driving tests in accordance with Federal Standards for the vehicle the person intends to operate. The knowledge test includes such topics as proper procedures for loading and unloading passengers, proper response to emergencies, proper response at railroad crossings and proper braking procedures. The skills test requires applicants to demonstrate basic vehicle control, safe driving, and air brake skills. The topics addressed by the CDL tests are deemed essential for operators of vehicles transporting children. The cost of transportation services may increase as current transportation providers employ drivers with CDLs to meet the requirements of this part. However, many providers already employ CDL drivers as is required by their State. Grantees and delegate agencies will need to assess current practice and make training and budget plans accordingly.

Home-based programs are encouraged to use drivers with CDL's to provide child transportation services, however, home-based programs are excluded from the vehicle type, driver qualification and bus monitor provisions of this regulation. Incidental transportation is not included under the provisions of this Part.

Section 1310.12(a)(3) (re-designated as Section 1310.16(a)(2) in the final rule)

Paragraph (a)(3) proposed that drivers meet physical, mental, moral, and other requirements established by Federal and State regulations, including rules regarding drug and alcohol use.

Comments. The majority of respondents emphasized the importance of drug and alcohol testing. Some objected to the term "moral requirements" as too subjective.

Response. We agreed with writers that the word "moral" is subject to variable interpretation and it was deleted from the final rule.

Section 1310.12(b) (re-designated as Section 1310.16(b) in the final rule)

Paragraph (b) proposed that each Head Start agency establish its own applicant screening procedure and system for informing applicants of required background checks. Criteria for the rejection of applicants not meeting the requirements would also be established.

Comments. There were two respondents who indicated that their current background check procedures are adequate. Several comments supported the importance of background checks as part of applicant screening.

Response. Driver background checks are an important element of safe transportation services. Some agencies will find that they already meet the requirements of the rule and others will need to establish or improve their systems. This section remains unchanged in the final rule.

Section 1310.12(c) (re-designated as Section 1310.16(b)(1) in the final rule)

Section 1310.12(c)(1) (re-designated under Section 1310.16(b) in the final rule)

Paragraph (c)(1) proposed that applicant screening procedures include an application that provides employment history, educational background, and personal references. There were no significant comments to this section. However, paragraph (c)(1) was removed and the introductory language in (c) edited to include a reference to 45 CFR 1304.52(b)(1), which contains requirements for staff recruitment and selection.

Section 1310.12(c)(2) (re-designated under Section 1310.16(b) in the final rule)

This paragraph required an interview and screening procedure to help establish that an applicant is "of good moral character" and does not abuse drugs or alcohol.

Comments. Writers objected to the phrase "good moral character" as subjective and ambiguous.

Response. We agree that the term "good moral character" is difficult to define and it was deleted from the final rule. The required physical, interviews and background checks will help identify any candidate who fails to meet established employment criteria. In the interest of accuracy and inclusiveness, the term "State Department of Motor Vehicles" was changed to the final rule to "appropriate State agency."

Section 1310.12(c)(4) (re-designated as Section 1310.16(b)(3) in the final rule.)

This section proposed that drivers have physical examinations.

Comments. Writers were generally supportive of physical examinations for bus drivers.

Response. This provision has been rewritten to require that after a conditional offer of employment and before the applicant begins work as a driver, a medical examination must be performed by a licensed doctor of medicine or osteopathy to establish that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations. The wording of the provision was changed to make the

provision consistent with the requirements of the Americans with Disabilities Act.

Section 1310.13—Driver Training (re-designated as Section 1310.17 in the final rule)

Section 1310.13(a) (re-designated as Section 1310.17(a) in the final rule)

Paragraph (a) in the NPRM required that driver training plans include both pre-service and annual in-service training programs.

Comments. There were no comments specifically applicable to paragraph (a). Comments on other sections reflected a need to clarify the requirements in this section.

Response. The provision was reworded in the final rule to clarify that drivers must receive training prior to operating a vehicle and annually thereafter. The words "pre-service" and "in-service" were replaced to reflect the growing number of twelve month programs.

Section 1310.13(b)(1) (re-designated as Section 1310.17(b) in the final rule.)

The section proposed that drivers transporting Head Start children receive a minimum of 40 hours of skills training prior to providing transportation and outlined specific skill areas.

Comments. This area attracted multiple comments objecting to the 40 hour pre-service requirement on the grounds it is excessive and unreasonable. Others stated that the pre-service training regulation is substantially more than their State requires for public school drivers. Another respondent raised the practical difficulty of providing 40 hours of pre-service training to a driver hired during the program year, rather than at the beginning.

Response. We agree with the respondents who wrote the 40 hours of pre-service training may, in some cases, be more than necessary. Per respondent recommendation, the language in the final rule has been changed to require training topics, rather than hours. Each program will decide on the number of hours necessary to effectively cover the required material. The required content of training remains unchanged and programs are expected to design training plans that will include the required skill areas.

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Section 1310.13(b)(1)(i)-(vii) (re-designated as Section 1310.17(b)(1)-(7) in the final rule)

Section 1310.13(b)(2)(i)-(iii) (re-designated as Section 1310.17(b)(2) and (c) in the final rule)

Paragraphs (b)(2)(i)-(iii) specified pre-service training in addition to the previously listed skills training.

Comments. Respondents again objected to the time requirement for pre-service training.

Response. The final rule has been modified to allow the non-skills based training to occur in accordance with the agency's driver training plan. This allows programs to design and deliver training that is effective and efficient in meeting individual program needs.

Section 1310.13(c)(2) (re-designated under Section 1310.17 in the final rule)

Section 1310.13(c)(1) and (2) (deleted from the final rule)

These items proposed eight hours of in-service training annually to maintain and enhance driver skills.

Comments. Respondents were evenly split on whether eight hours would constitute too much or too little in-service driver training.

Response. The final rule specifies content requirements for in-service training and leaves decisions concerning the number of hours of training to individual Head Start agencies. Sections 1310.13(c)(1) and (2) were deleted from the final rule.

Section 1310.13(d) (re-designated as Section 1310.17(e) in the final rule)

Section 1310.13(e) (re-designated as Section 1310.17(f) in the final rule)

Section 1310.13(f) (Re-designated as Section 1310.17(a) in the final rule)

Paragraph (f) stated that drivers of vehicles that transport Head Start children employed on the effective date of this regulation must meet the pre-service training as new drivers within three months of that date.

Comments. There were several comments suggesting that three months is insufficient to provide the required training for existing drivers.

Response. There are two changes in the final rule that address the above concerns and provide time requirement relief. The first is that the rule identifies training topic requirements, but leaves decisions about the amount of training time necessary to the grantee. The second is that the time to train currently employed drivers has been extended from three months from the provisions' effective date to one year and 90 days from that date. This change will allow

agencies to use their regularly scheduled staff training to provide the required driver training. Programs are expected to provide the required training to drivers as quickly as possible.

Section 1310.13(g) (re-designated as Section 1310.17(f)(1) in the final rule)

Paragraph (g) specified that Head Start drivers must be evaluated annually by the transportation supervisor and that the evaluation must include an on-board observation of driving performance.

Comments. Respondents requested that the wording be changed from "transportation supervisor" to "supervisor" to allow local flexibility in performing this function.

Response. While the supervisory functions outlined for transportation services in the NPRM remain, the requirement for a "transportation supervisor" has been deleted. We anticipate that most programs directly providing transportation services will employ a full- or part-time person to supervise transportation services. Some programs may elect to assign the supervisory responsibilities to an existing position. Agencies that use another organization or an individual for transportation services will monitor a contract or agreement that requires the contractor to perform driver supervision.

Section 1310.13(h) (re-designated as Section 1310.17(f)(2) in the final rule)

Paragraph (h) proposed that programs should provide the same pre- and in-service training to bus monitors that they provide for drivers.

Comments. Many respondents objected to this requirement on the basis that bus monitors are often volunteers who would not be amenable or available for this training. Some respondents also indicated that it is not necessary that bus monitor training be as rigorous as driver training.

Response. The final rule was changed to state that programs must specifically provide bus monitors with training in the areas of: child boarding and exiting procedures, use of child restraint systems, responding to emergencies, emergency evacuation procedures, use of special equipment, required paperwork, child pick up and release procedures and pre- and post-trip vehicle checks (e.g., ensure that there are no safety hazards and that no child is left on the bus). The burden of the requirement has been eased by eliminating the requirement that monitors receive exactly the same training as drivers. The provisions identifies types of training that monitors

must receive to ensure that safety-related topics are included.

Section 1310.20—Trip Routing

Section 1310.20(b)(1)

This paragraph proposed limiting the transit time for a child to or from Head Start to no more than one-hour unless there is express written approval from the Regional Office.

Comments. Several writers stated that the one-hour limit is unrealistic or even impossible in rural areas.

Response. We acknowledge that limiting bus routes to one-hour is problematic in some areas. We wish to stress that children should spend the shortest amount of time possible on the Head Start vehicle given the routing safety parameters outlined in Section 1310.20(a) and the geography of the service area. The language in the final rule has been modified to allow greater flexibility.

Section 1310.20(b)(2)

The NPRM proposed that vehicles transporting Head Start children may not be loaded beyond capacity at any time.

Comments. A few respondents proposed that, because preschool children are "small," three could be seated per bench even though this exceeds the vehicle's posted capacity.

Response. All children receiving Head Start transportation must be seated with a size-appropriate safety restraint in a manufacturer designated seat. The final rule retains the stipulation that at no time may vehicle capacity be exceeded. The wording of the provision has been changed by eliminating the first sentence of the proposed rule to clarify the requirement.

Section 1310.20(b)(3)

The proposed rule stated that vehicles should not be required to back up or perform "U" turns during routes.

Comments. Some respondents objected on the grounds that there may be situations (e.g., roads with no outlet) when a three-point or "U" turn is required. It is noted that prohibiting "U" turns could result in more need for children to cross the street. Finally, a contradiction between the preamble's prohibition of "U" turns and this section's use of the term "should not" was identified.

Response. The final rule emphasizes that vehicles must not be required to back up on their routes or make "U" turns, except when necessary for reasons of safety or because of physical barriers. Every effort to avoid these maneuvers must be made through route planning. Extreme caution must be used

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in negotiating "U" turns, backing up, or three point turns.

Section 1310.20(b)(4)-(6)

These paragraphs proposed that Head Start vehicle stops should: be located to minimize traffic disruptions and allow the driver a good field of view in front of and behind the vehicle; and minimize the need for children to cross the street to board or leave the vehicle. In addition, the section proposed that if children must cross the street or highway after boarding or exiting the vehicle, they must be escorted across the street by the driver, bus monitor, or another adult, and that under no circumstances may a school bus stop be located in a way that children must cross the street or highway unless the vehicle is equipped to stop traffic as described in the proposed section 1310.11(c)(1)-(5).

Comments. Respondents strongly objected to a driver leaving the vehicle to accompany a child across the street. It was also noted that some States prohibit flashing red lights in urban areas.

Response. We agree that under no circumstance should a driver leave the vehicle to escort a child across the street and have changed the final rule to so state. The requirement for equipping school buses with flashing red lights and other exterior features proposed in section 1310.11(c)(1)-(5) has been withdrawn from the final regulation. The bus monitor or another adult must accompany every child boarding or exiting the bus. The word "should" which appeared in the NPRM was changed to "must" to clarify that this is a requirement and not a recommendation.

Section 1310.20(b)(7)

The section proposed establishment of specific procedures in the event alternate routes are required by hazardous weather or other situations.

Comments. Respondents requested clarification of the NPRM phrase "or other situations which may arise that could affect the safety of the children en route."

Response. The final rule, while recognizing that every contingency cannot be anticipated, has listed several events that could lead to the need to find a different route. The intent is to assure that there are specific procedures in place in the event unplanned re-routing is required by any situation. Possible hazards, in addition to weather conditions such as ice or water build up, include water or natural gas line breaks, emergency road repair, natural disaster damage caused by earthquake,

tornado, or flood, a motor vehicle accident, a building fire, or a crime scene.

Section 1310.21—Safety Education

Section 1310.21(a)

This requirement proposed that Head Start programs should provide pedestrian safety training to caregivers and children who do not receive Head Start transportation.

Comments. All respondents supported this section. It was noted that programs will need to use careful practices to emphasize that preschool age children should not be crossing the street alone. Also, there was a suggestion that the phrase "as developmentally appropriate" be included in the section.

Response. We have re-worded the final rule slightly to emphasize that preschool children must not cross the street alone. We have also specified that pedestrian safety teaching must be appropriate for each child's development. Finally, we removed specific content requirements so grantees may design training to meet individual community needs and conditions.

Section 1310.21(b)(1)-(5)

Paragraph (b) identified the safety instruction that Head Start programs would be required to provide to children transported to and from the program.

Comments. Comments were submitted suggesting the safety education be included in the daily lesson plan and that nationally produced videos be supplied for programs to use for safety instruction.

Response. The final rule remains unchanged except that the term "bus" is changed to "vehicle" to clarify applicability to various transportation possibilities. The rule defines the content safety teaching must include, but leaves the method to the local program.

Section 1310.21(c) (re-designated Section 1310.21(c)(1) in the final rule)

Section 1310.21(e) (re-designated as Section 1310.21(c)(2) in the final rule)

Paragraph (e) proposed that child and caregiver safety training should occur within the first five days of the program year.

Comments. There were many objections that the five-day time limit is unreasonable and, in some cases, impossible.

Response. As suggested by respondents, the final rule was modified to allow that safety instruction must

occur within the first thirty days of the program year.

Section 1310.21(f) (re-designated as Section 1310.21(d) in the final rule)

This section proposed that a minimum of two bus evacuation drills per year in addition to the one required under section 1310.21 (b)(5) be required.

Comments. The comments ranged from recommending monthly evacuation drills to suggesting that the drills themselves could pose a safety risk and are unnecessary.

Response. The requirement is consistent with the pupil transportation regulations in many States and, therefore, remains unchanged in the final rule.

Section 1310.21(g) (re-designated as Section 1310.21(e) in the final rule)

Paragraph (g) proposed that teachers should develop daily activities to remind children of the safety procedures.

Comments. Some respondents questioned the need for daily lessons.

Response. The final rule requires staff to make safety reminders an integral, developmental and individualized part of program experiences rather than a discrete, daily, directly instructed lessons. The word "should" was replaced by "must" because passenger and pedestrian safety awareness are essential elements of safe transportation service. Based on data indicating that most school bus related fatalities occur when a child is in the loading zone, NHTSA states that "educating children on how to be safe pedestrians is fundamental to school bus safety" (*School Bus Safety: Safe Passage for America's Children*, p.7)

Section 1310.22—Children With Disabilities

This section of the NPRM specified that transportation services to children with disabilities enrolled in Head Start comply with the Head Start performance Standards on Service for Children with Disabilities.

Comments. There were no significant comments to this section of the regulation. Other sections provoked concerns that the proposed rule would require all vehicles used for Head Start transportation be wheelchair accessible.

Response. Head Start and Early Head Start programs are currently obligated to meet the requirements of the Americans with Disabilities Act, Head Start Performance Standards on Services for Children with Disabilities and Section 504 of the Rehabilitation Act of 1973. Under these regulations they must accommodate the special needs of

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children with disabilities. Paragraph (a) of this section in the final rule was amended to clarify that Head Start transportation services must be accessible and that children with disabilities should be transported on vehicles that meet the requirements for school buses or allowable alternate vehicles. Transportation provided under the home-based option is excepted from this provision unless the agency uses school buses or allowable alternate vehicles to transport other children enrolled in the home-based option. This exception has been created because it may not always be possible to ensure that when the agency does not regularly use school buses or allowable alternate vehicles to transport children receiving home-based services that an accessible school bus or allowable alternate vehicle will be available from another source when needed. The rule also specifies that, whenever possible, children with disabilities should be transported on the same vehicles used to transport other children in the program.

Section 1310.23—Coordinated Transportation

Section 1310.23 (a)(1) (re-designated under Section 1310.23(a) and 1310.23(b)(1) in the final rule)

Paragraphs (a) and (a)(1) proposed that Head Start grantees coordinate transportation resources with other human service agencies whenever possible to maximize access and efficiency. Agencies would be required to provide an analysis of the cost of providing transportation directly versus contracting for the service.

Comments. Many respondents cited examples of difficulties obtaining transportation services from other providers. In particular, it was noted that while public schools might like to transport Head Start children, they rarely have space available on their buses. Finally, respondents noted that the vehicles used by other human service agencies would likely not meet Head Start vehicle requirements.

Response. The NPRM was prefaced with the phrase "whenever possible and to the extent feasible." It is understood that the opportunities for coordinated transportation services will vary across communities. The final rule was changed to clarify transportation coordination activities in which Head Start transportation providers will participate whenever possible. The phrase "coordinate transportation services as follows" was deleted from the final rule as it is unnecessary.

Section 1310.23(a)(3) (re-designated as § 1310.23(b)(3) in the final rule)

The NPRM stated that where no coordinated transportation system exists in a community, the Head Start grantee should make every effort to provide the impetus for the formation of a transportation coordinating council.

Comments. Respondents suggested that the language needs to more strongly emphasize recognition that, with the exception of the local education agency (LEA), Head Start may be the only transportation service provider operating in some communities.

Response. The phrases "make every effort" and "where feasible" in the NPRM were intended to reflect responsiveness to individual community needs. The requirement in the final rule specifies that when there is no coordinated transportation system, Head Start agencies will identify any other agencies providing transportation and support the establishment of a local transportation coordinating council where reasonable.

Section 1310.23(a)(4) (deleted from the final rule)

This item specified that records be maintained to document compliance with the coordination requirements.

Comments. Respondents objected to keeping additional records.

Response. We agree with the respondents that this paragraph posed an unnecessary burden and have deleted it from the final rule. However, programs are expected to support the continuity and efficiency of community transportation whenever possible.

VI. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in this Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This final rule implements the statutory authority to promulgate regulations for the safe transportation of Head Start children.

Congress made no additional appropriation to fund this new authority, however, and so any money spent toward the purchase of vehicles, additional personnel, training or other purposes related to this regulation is money that would have been spent otherwise by the program or other programs from the same appropriation amount. We believe that we have focused these rules in ways that

encourage maximum cost-effectiveness in transportation spending decisions.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions 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." This rule does not have federalism impacts as defined in the Executive Order.

The Head Start Bureau surveyed the States to determine the applicability of State pupil transportation regulations to the Head Start program and learn about each States pupil transportation system. The Bureau also consulted extensively with Head Start programs and the Department of Transportation in the development of the regulation.

Family Well-Being Impact

As required by Section 654 of the Treasury and General Government Appropriation Act of 1999, we have assessed the impact of this final rule on family well-being. This rule will improve the safety of preschool children being transported to and from Head Start programs and promote pedestrian and passenger safety training to adults and children.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. These regulations would affect small entities. However, it should be noted that many Head Start agencies already provide transportation services in accordance with State and local requirements. Furthermore, the increased costs associated with implementing this regulation's provisions are small and well within grantees' capacity to manage. The total estimate of \$18.9 million, less than one-third of one-percent of Head Start's annual budget, is comprised of three requirements. These are: \$4.8 million to employ additional bus monitors for those relatively few programs currently operating vehicles without monitors;

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\$10 million to recruit and retain qualified bus drivers with Commercial Driver's Licenses for programs currently using drivers without the credential; and \$4.1 million to purchase child safety restraint systems. ACF acknowledges that compliant vehicles can, in some cases, be more costly than non-compliant vehicles. However, these additional costs are generally offset by the fact that compliant vehicles may last longer, accommodate more children, and incur lower insurance costs than non-compliant vehicles.

Currently, approximately 75 percent of all programs offer transportation services to some or all of their enrolled children and about 53 percent of all Head Start enrolled children receive transportation services. It is not anticipated that the implementation of the rule will cause any significant change in the numbers of children being transported.

We believe that meeting the requirements of this regulation is feasible and will not impose excessive burden because we are providing a five-year phase-in period for compliance with vehicle requirements, a three-year compliance period for child safety restraint systems, and a twelve-month compliance period for other provisions of the rule. The five-year implementation period was adopted in response to comments elicited by the NPRM indicating that the useful life of a vehicle may be longer than the three years proposed in the NPRM. Therefore, the potential financial burden posed by the regulation will be significantly offset by avoiding the premature replacement of vehicles. The five-year period is further supported by the fact that 20-30 percent of the vehicles operated by Head Start are replaced each year. The rule offers ample margins to absorb the useful life of most existing vehicles. The financial burden on Head Start agencies that acquire vehicles meeting the standards in these regulations is further eased by a provision in the Head Start Act which authorizes the Secretary to allow Head Start grantees to use grant funds to pay the cost of amortizing the principal and the interest on loans to finance the purchase of vehicles (42 U.S.C. 9839(g)(2)(C)). Finally, grantees have been instructed for several years to purchase only conforming vehicles with Federal funds, so the majority of vehicles in the existing fleet are school buses or qualify as allowable alternate vehicles. For the reasons outlined above, no additional costs are anticipated related to vehicle replacement.

The potential burden imposed by the transportation regulation's requirement

for bus monitors is lessened by the fact that Head Start agencies that directly operate transportation services already employ more than 7,500 bus monitors. Many other organizations providing transportation services to children enrolled in Head Start also currently, either voluntarily or in response to State or local regulation, staff vehicles providing transportation to Head Start and Early Head Start agencies with bus monitors in addition to the driver. This part of the regulation has a three-year implementation period to ease the impact by providing planning time for transportation providers not currently employing or using volunteer bus monitors. In addition, many bus monitors fulfill dual roles, such as kitchen aide or teacher aide and bus monitor. This may be financially advantageous to both the employee and the employer and represents a mechanism to further reduce the impact of the provisions.

The regulation specifies that agencies must offer transportation assistance to families when transportation services are not provided through the Head Start program. This requirement is consistent with section 1304.41(a)(2) which directs grantees and delegate agencies to "promote the access of children and families to community services that are responsive to their needs * * *". Because such assistance is an integral element of the ongoing work of grantees and delegate agencies, the provision poses no additional burden.

The decision to require two-way communication capacity on vehicles was carefully weighed in consideration of both its contributions to improved safety and increased cost. Many vehicles that transport children are now supplied with two-way communication devices. While the requirement represents an expense for some operators, the flexibility regarding type of equipment and the steadily decreasing cost for communication equipment suggest a minimal financial burden.

Head Start and Early Head Start grantees and delegate agencies that currently rely on drivers who do not possess Commercial Drivers Licenses (CDLs) may find an increased cost associated with recruiting and retaining drivers with that license or retaining transportation services from another organization that supplies drivers with CDLs. However, in 1993, the Administration for Children and Families issued an Information Memorandum (ACYF-IM-9310) advising Head Start grantees and delegate agencies of the requirement that any vehicle designed to carry 16 or more passengers must be operated by a

driver with a CDL. Many drivers providing Head Start transportation services currently possess CDLs and there is not an anticipated increase in the overall number of drivers, therefore, the burden of the provision is diminished.

Substantial attention was dedicated to assessing alternative methods for improving transportation safety through channels other than the provisions of this regulation. Extensive research, the strongly worded recommendations of the National Transportation Safety Board and Head Start's 35-year history providing transportation services to very young children guided development of each of the regulation's provisions.

For example, some respondents suggested that the adult-to-child ratio while children are being transported should be the same as the one required in Head Start classrooms. That would result in, depending on the children's ages, between one adult for every nine children and one adult for every four children. Another commenter indicated that bus monitors are not necessary at all as the driver can handle vehicle operation and child safety needs without assistance. The decision to require a minimum of one bus monitor per vehicle ensures that children's safety needs will be met, the driver can focus primarily on operating the vehicle, and that the burden is reasonable. One monitor is considered adequate during transportation, but not in the classroom, because children are not mobile while riding the vehicle and the space is contained. The NPRM provisions required the exclusive use of vehicles meeting the Federal standards for a school bus in providing Head Start transportation services. The provision was modified in the final rule to permit the use of an allowable alternate vehicle. The alternate vehicle provides a higher degree of flexibility for transportation providers and is responsive to many of the comments elicited by the NPRM.

We believe that as Head Start agencies become more familiar with these requirements, any additional burden will be rendered less significant through the improved transportation safety for Head Start children. For these reasons, the Secretary certifies that these rules will not have a significant impact on substantial numbers of small entities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104-4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments,

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in the aggregate, or by the private sector, of \$100,000,000 or more in any one year (adjusted annually for inflation). This rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of \$100,000,000 or more in any one year. Resources presently allocated by Head Start programs for transportation services are substantial and may be supplemented as necessary to meet additional requirements posed by the rule over the course of the implementation period.

Congressional Review

This rule is not a major rule as defined in 5 U.S.C., Chapter 8.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This final rule contains no new information collection requirements.

List of Subjects in 45 CFR Part 1310

Head Start, Reporting and recordkeeping requirements, Transportation.

(Catalog of Federal domestic Assistance Program Number 93.600, Project Head Start)

Dated: September 6, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: October 11, 2000.

Donna E. Shalala,
Secretary.

For the reasons set forth in the Preamble, 45 CFR Chapter XIII is amended by adding Part 1310 as follows:

PART 1310—HEAD START TRANSPORTATION

Subpart A—General

- Sec.
- 1310.1 Purpose.
- 1310.2 Applicability.
- 1310.3 Definitions.

Subpart B—Transportation Requirements

- 1310.10 General.
- 1310.11 Child Restraint Systems.
- 1310.12 Required use of School Buses or Allowable Alternate Vehicles.
- 1310.13 Maintenance of vehicles.
- 1310.14 Inspection of new vehicles at time of delivery.
- 1310.15 Operation of vehicles.
- 1310.16 Driver qualifications.
- 1310.17 Driver and bus monitor training.

Subpart C—Special Requirements

- 1310.20 Trip routing.

- 1310.21 Safety education.
- 1310.22 Children with disabilities.
- 1310.23 Coordinated transportation.

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—General

§ 1310.1 Purpose.

Under the authority of sections 640(i) and 645A(b)(9) of the Head Start Act (42 U.S.C. 9801 *et seq.*), this part prescribes regulations on safety features and the safe operation of vehicles used to transport children participating in Head Start and Early Head Start programs. Under the authority of sections 644(a) and (c) and 645A(b)(9) of the Head Start Act, this part also requires Head Start, Early Head Start, and delegate agencies to provide training in pedestrian safety and to make reasonable efforts to coordinate transportation resources to control costs and to improve the quality and the availability of transportation services.

§ 1310.2 Applicability.

(a) This rule applies to all Head Start and Early Head Start agencies, and their delegate agencies (hereafter, agency or agencies), including those that provide transportation services, with the exceptions provided in this section, regardless of whether such transportation is provided directly on agency owned or leased vehicles or through arrangement with a private or public transportation provider. Transportation services to children served under the home-based Option for Head Start and Early Head Start services are excluded from the requirements of 45 CFR 1310.12, 1310.15(c), and 1310.16. Except when there is an applicable State or local requirement that sets a higher standard on a matter covered by this part, agencies must comply with requirements of this part. (b) Sections 1310.12(a) and 1310.22(a) of this part are effective January 18, 2006. Sections 1310.11 and 1310.15(c) of this part are effective January 20, 2004. Paragraph (c) of this section and § 1310.12(b) of this part are effective February 20, 2001. All other provisions of this part are effective January 18, 2002.

(c) Effective February 20, 2001 an agency may request a waiver of specific requirements of this part, except for the requirements of this paragraph. Requests for waivers must be made in writing to the responsible Health and Human Services (HHS) official, as part of an agency's annual application for financial assistance or amendment thereto, based on good cause. "Good cause" for a waiver will exist when adherence to a requirement of this part

would itself create a safety hazard in the circumstances faced by the agency. Under no circumstance will the cost of complying with one or more of the specific requirements of this part constitute good cause. The responsible HHS official is not authorized to waive any requirements of the Federal Motor Vehicle Safety Standards (FMVSS) made applicable to any class of vehicle under 49 CFR part 571. The responsible HHS official shall have the right to require such documentation as the official deems necessary in support of a request for a waiver. Approvals of waiver requests must be in writing, be signed by the responsible HHS official, and be based on good cause.

§ 1310.3 Definitions.

Agency as used in this regulation means a Head Start or Early Head Start or delegate agency unless otherwise designated.

Agency Providing Transportation Services means an agency providing transportation services, either directly or through another arrangement with a private or public transportation provider, to children enrolled in its Head Start or Early Head Start program.

Allowable Alternate Vehicle means a vehicle designed for carrying eleven or more people, including the driver, that meets all the Federal Motor Vehicle Safety Standards applicable to school buses, except 49 CFR 571.108 and 571.131.

Bus monitor means a person with specific responsibilities for assisting the driver in ensuring the safety of the children while they ride, board, or exit the vehicle and for assisting the driver during emergencies.

Child Restraint System means any device designed to restrain, seat, or position children who weigh 50 pounds or less which meets the requirements of Federal Motor Vehicle Safety Standard No. 213, Child Restraint Systems, 49 CFR 571.213.

Commercial Driver's License (CDL) means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR part 383, to an individual which authorizes the individual to operate a class of commercial motor vehicles.

Delegate Agency means a local public or private not-profit or for-profit agency to which a Head Start or Early Head Start agency has delegated all or part of its responsibility for operation of a Head Start program.

Early Head Start Agency means a public or private non-profit or for-profit agency or delegate agency designated to operate an Early Head Start program

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pursuant to Section 645A of the Head Start Act.

Early Head Start Program means a program of services provided by an Early Head Start Agency funded under the Head Start Act.

Federal Motor Vehicle Safety Standards (FMVSS) means the National Highway and Traffic Safety Administration's standards for motor vehicles and motor vehicle equipment (49 CFR part 571) established under section 30111 of Title 49, United States Code.

Fixed route means the established routes to be traveled on a regular basis by vehicles that transport children to and from Head Start or Early Head Start program activities, and which include specifically designated stops where children board or exit the vehicle.

Head Start Agency, means a local public or private non-profit or for-profit agency designated to operate a Head Start program pursuant to Section 641 of the Head Start Act.

Head Start Program means a program of services provided by a Head Start agency or delegate agency and funded under the Head Start Act.

National Driver Register means the National Highway Traffic Safety Administration's automated system for assisting State driver license officials in obtaining information regarding the driving records of individuals who have been denied licenses for cause; had their licenses denied for cause, had their licenses canceled, revoked, or suspended for cause, or have been convicted of certain serious driving offenses.

National Standards for School Buses and School Bus Operations means the recommendations resulting from the Eleventh National Conference on School Transportation, May 1990, published by the National Safety Council, Chicago, Illinois.

Reverse beeper means a device which automatically sounds an intermittent alarm whenever the vehicle is engaged in reverse.

School Bus means a motor vehicle designed for carrying 11 or more persons (including the driver) and which complies with the Federal Motor Vehicle Safety Standards applicable to school buses.

Seat Belt Cutter means a special device that may be used in an emergency to rapidly cut through the seat belts used on vehicles in conjunction with child restraint systems.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the

United States, or any agency or instrumentality of a State exclusive of local governments.

Transportation Services means the planned transporting of children to and from sites where an agency provides services funded under the Head Start Act. Transportation services can involve the pick-up and discharge of children at regularly scheduled times and pre-arranged sites, including trips between children's homes and program settings. The term includes services provided directly by the Head Start and Early Head Start grantee or delegate agency and services which such agencies arrange to be provided by another organization or an individual. Incidental trips, such as transporting a sick child home before the end of the day, or such as might be required to transport small groups of children to and from necessary services, are not included under the term.

Trip routing means the determination of the fixed routes to be traveled on a regular basis for the purpose of transporting children to and from the Head Start or Early Head Start program or activities.

Subpart B—Transportation Requirements

§ 1310.10 General.

(a) Each agency must assist as many families as possible who need transportation in order for their children to attend the program in obtaining that transportation.

(b) When an agency has decided not to provide transportation services, either for all or a portion of the children, it must provide reasonable assistance to the families of such children to arrange transportation to and from its activities. The specific types of assistance being offered must be made clear to all prospective families in the program's recruitment announcements.

(c) Each agency providing transportation services is responsible for compliance with the applicable requirements of this Part. When an agency provides transportation through another organization or an individual, the agency must ensure the compliance of the transportation provider with the requirements of this part.

(d) Each agency providing transportation services, must ensure that each vehicle used in providing such services is equipped with:

- (1) a communication system to call for assistance in case of an emergency;
- (2) safety equipment for use in an emergency, including a charged fire extinguisher that is properly mounted

near the driver's seat and a sign indicating its location;

(3) a first aid kit and a sign indicating the location of such equipment; and

(4) a seat belt cutter for use in an emergency evacuation and a sign indicating its location.

(e) Each agency providing transportation services must ensure that any auxiliary seating, such as temporary or folding jump seats, used in vehicles of any type providing such services are built into the vehicle by the manufacturer as part of its standard design, are maintained in proper working order, and are inspected as part of the annual inspection required under § 1310.13(a) of this subpart.

(f) Each agency providing transportation services must ensure that all accidents involving vehicles that transport children receiving such services are reported in accordance with applicable State requirements.

(g) Each agency must ensure that children are only released to a parent or legal guardian, or other individual identified in writing by the parent or legal guardian. This regulation applies when children are not transported and are picked up from the classroom, as well as when they are dropped off by a vehicle. Agencies must maintain lists of the persons, including alternates in case of emergency, and up-to-date child rosters must be maintained at all times to ensure that no child is left behind, either at the classroom or on the vehicle at the end of the route.

§ 1310.11 Child Restraint Systems.

Effective January 20, 2004, each agency providing transportation services must ensure that each vehicle used to transport children receiving such services is equipped for use of height- and weight-appropriate child safety restraint systems.

§ 1310.12 Required use of School Buses or Allowable Alternate Vehicles.

(a) Effective January 18, 2006, each agency providing transportation services must ensure that children enrolled in its program are transported in school buses or allowable alternate vehicles that are equipped for use of height- and weight-appropriate child restraint systems, and that have reverse beepers. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(b) Effective February 20, 2001, each Head Start and Early Head Start agency receiving permission from the responsible HHS official to purchase a vehicle with grant funds for use in

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providing transportation services to children in its program or a delegate agency's program must ensure that the funds are used to purchase a vehicle that is either a school bus or an allowable alternate vehicle and is equipped

(1) for use of height- and weight-appropriate child restraint systems; and
(2) with a reverse beeper.

(c) As provided in 45 CFR 1310.2(a), paragraph (b) of this section does not apply to vehicles purchased for use in transporting children served under the home-based option for Head Start and Early Head Start.

§ 1310.13 Maintenance of vehicles.

Each agency providing transportation services must ensure that vehicles used to provide such services are maintained in safe operating condition at all times. The organization operating the vehicle must establish and implement procedures for:

(a) a thorough safety inspection of each vehicle on at least an annual basis through an inspection program licensed or operated by the State;

(b) systematic preventive maintenance on such vehicles; and

(c) daily pre-trip inspection of the vehicles by the driver.

§ 1310.14 Inspection of new vehicles at the time of delivery.

Each agency providing transportation services must ensure that bid announcements for school buses and allowable alternate vehicles for use in transporting children in its program include the correct specifications and a clear statement of the vehicle's intended use. Such agencies must ensure that there is a prescribed procedure for examining such vehicles at the time of delivery to ensure that they are equipped in accordance with the bid specifications and that the manufacturer's certification of compliance with the applicable FMVSS is included with the vehicle.

§ 1310.15 Operation of vehicles.

Each agency providing transportation services, either directly or through an arrangement with another organization or an individual, to children enrolled in its program must ensure that:

(a) On a vehicle equipped for use of such devices, any child weighing 50 pounds or less is seated in a child restraint system appropriate to the height and weight of the child while the vehicle is in motion.

(b) Baggage and other items transported in the passenger compartment are properly stored and secured and the aisles remain clear and

the doors and emergency exits remain unobstructed at all times.

(c) Effective January 20, 2004, there is at least one bus monitor on board at all times, with additional bus monitors provided as necessary, such as when needed to accommodate the needs of children with disabilities. As provided in 45 CFR 1310.2(a), this paragraph does not apply to transportation services to children served under the home-based option for Head Start and Early Head Start.

(d) Except for bus monitors who are assisting children, all vehicle occupants must be seated and wearing height- and weight-appropriate safety restraints while the vehicle is in motion.

§ 1310.16 Driver qualifications.

(a) Each agency providing transportation services must ensure that persons who drive vehicles used to provide such services, at a minimum:

(1) in States where such licenses are granted, have a valid Commercial Driver's License (CDL) for vehicles in the same class as the vehicle the driver will operate; and

(2) meet any physical, mental, and other requirements established under applicable law or regulations as necessary to perform job-related functions with any necessary reasonable accommodations.

(b) Each agency providing transportation services must ensure that there is an applicant review process for use in hiring drivers, that applicants for driver positions must be advised of the specific background checks required at the time application is made, and that there are criteria for the rejection of unacceptable applicants. The applicant review procedure must include, at minimum:

(1) all elements specified in 45 CFR 1304.52(b), with additional disclosure by the applicant of all moving traffic violations, regardless of penalty;

(2) a check of the applicant's driving record through the appropriate State agency, including a check of the applicant's record through the National Driver Register, if available in the State; and

(3) after a conditional offer of employment to the applicant and before the applicant begins work as a driver, a medical examination, performed by a licensed doctor of medicine or osteopathy, establishing that the individual possesses the physical ability to perform any job-related functions with any necessary accommodations.

(c) As provided in 45 CFR 1310.2(a), this section does not apply to transportation services to children

served under the home-based option for Head Start and Early Head Start.

§ 1310.17 Driver and bus monitor training.

(a) Each agency providing transportation services must ensure that persons employed to drive vehicles used in providing such services will have received the training required under paragraphs (b) and (c) of this section no later than 90 days after the effective date of this section as established by § 1310.2 of this part. The agency must ensure that drivers who are hired to drive vehicles used in providing transportation services after the close of the 90 day period must receive the training required under paragraphs (b) and (c) prior to transporting any child enrolled in the agency's program. The agency must further ensure that at least annually after receiving the training required under paragraphs (b) and (c), all drivers who drive vehicles used to provide such services receive the training required under paragraph (d) of this section.

(b) Drivers must receive a combination of classroom instruction and behind-the-wheel instruction sufficient to enable each driver to:

(1) operate the vehicle in a safe and efficient manner;

(2) safely run a fixed route, including loading and unloading children, stopping at railroad crossings and performing other specialized driving maneuvers;

(3) administer basic first aid in case of injury;

(4) handle emergency situations, including vehicle evacuation procedures;

(5) operate any special equipment, such as wheelchair lifts, assistance devices or special occupant restraints;

(6) conduct routine maintenance and safety checks of the vehicle; and

(7) maintain accurate records as necessary.

(c) Drivers must also receive instruction on the topics listed in 45 CFR 1304.52(k)(1), (2) and (3)(i) and the provisions of the Head Start Program Performance Standards for Children with Disabilities (45 CFR 1308) relating to transportation services for children with disabilities.

(d) Drivers must receive refresher training courses including the topics listed in paragraphs (b) and (c) of this section and any additional necessary training to meet the requirements applicable in the State where the agency operates.

(e) Each agency providing transportation services must ensure that drivers who transport children receiving

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the services qualify under the applicable driver training requirements in its State.

(f) Each agency providing transportation services must ensure that:

- (1) the annual evaluation of each driver of a vehicle used to provide such services includes an on-board observation of road performance; and
- (2) before bus monitors assigned to vehicles used to provide such services begin their duties, they are trained on child boarding and exiting procedure, use of child restraint systems, any required paperwork, responses to emergencies, emergency evacuation procedures, use of special equipment, child pick-up and release procedures and pre- and post-trip vehicle check.

Subpart C—Special Requirements

§ 1310.20 Trip routing.

(a) Each agency providing transportation services must ensure that in planning fixed routes the safety of the children being transported is the primary consideration.

(b) The agency must also ensure that the following basic principles of trip routing are adhered to:

(1) The time a child is in transit to and from the Head Start or Early Head Start program must not exceed one hour unless there is no shorter route available or any alternative shorter route is either unsafe or impractical.

(2) Vehicles must not be loaded beyond the maximum passenger capacity at any time.

(3) Vehicles must not be required to back up or make "U" turns, except when necessary for reasons of safety or because of physical barriers.

(4) Stops must be located to minimize traffic disruptions and to afford the driver a good field of view in front of and behind the vehicle.

(5) When possible, stops must be located to eliminate the need for children to cross the street or highway to board or leave the vehicle.

(6) If children must cross the street before boarding or after leaving the vehicle because curbside drop off or pick up is impossible, they must be escorted across the street by the bus monitor or another adult.

(7) Specific procedures must be established for use of alternate routes in the case of hazardous conditions that could affect the safety of the children who are being transported, such as ice or water build up, natural gas line breaks, or emergency road closing. In selecting among alternatives, transportation providers must choose routes that comply as much as possible with the requirements of this section.

§ 1310.21 Safety education.

(a) Each agency must provide training for parents and children in pedestrian safety. The training provided to children must be developmentally appropriate and an integral part of program experiences. The need for an adult to accompany a preschool child while crossing the street must be emphasized in the training provided to parents and children. The required transportation and pedestrian safety education of children and parents, except for the bus evacuation drills required by paragraph (d) of this section, must be provided within the first thirty days of the program year.

(b) Each agency providing transportation services, directly or through another organization or an individual, must ensure that children who receive such services are taught:

- (1) safe riding practices;
- (2) safety procedures for boarding and leaving the vehicle;
- (3) safety procedures in crossing the street to and from the vehicle at stops;
- (4) recognition of the danger zones around the vehicle; and
- (5) emergency evacuation procedures, including participating in an emergency evacuation drill conducted on the vehicle the child will be riding.

(c) Each agency providing transportation services must provide training for parents that:

(1) emphasizes the importance of escorting their children to the vehicle stop and the importance of reinforcing the training provided to children regarding vehicle safety; and

(2) complements the training provided to their children so that safety practices can be reinforced both in Head Start and at home by the parent.

(d) Each agency providing transportation services must ensure that at least two bus evacuation drills in addition to the one required under paragraph (b)(5) of this section are conducted during the program year.

(e) Each agency providing transportation services must develop activities to remind children of the safety procedures. These activities must be developmentally appropriate, individualized and be an integral part of the Head Start or Early Head Start program activities.

§ 1310.22 Children with disabilities.

(a) Effective January 18, 2006 each agency must ensure that there are school buses or allowable alternate vehicles adapted or designed for transportation of children with disabilities available as necessary to transport such children enrolled in the program. This requirement does not apply to the

transportation of children receiving home-based services unless school buses or allowable alternate vehicles are used to transport the other children served under the home-based option by the grantee. Whenever possible, children with disabilities must be transported in the same vehicles used to transport other children enrolled in the Head Start or Early Head Start program.

(b) Each Head Start, Early Head Start and delegate agency must ensure compliance with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*), the HHS regulations at 45 CFR part 84, implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Head Start Program Performance Standards on Services for Children with Disabilities (45 CFR part 1308) as they apply to transportation services.

(c) Each agency must specify any special transportation requirements for a child with a disability when preparing the child's Individual Education Plan (IEP) or Individual Family Service Plan (IFSP), and ensure that in all cases special transportation requirements in a child's IEP or IFSP are followed, including:

- (1) special pick-up and drop-off requirements;
- (2) special seating requirements;
- (3) special equipment needs;
- (4) any special assistance that may be required; and
- (5) any special training for bus drivers and monitors.

§ 1310.23 Coordinated transportation.

(a) Each agency providing transportation services must make reasonable efforts to coordinate transportation resources with other human services agencies in its community in order to control costs and to improve the quality and the availability of transportation services.

(b) At a minimum, the agency must:

(1) identify the true costs of providing transportation in order to knowledgeably compare the costs of providing transportation directly versus contracting for the service;

(2) explore the option of participating in any coordinated public or private transportation systems existing in the community; and

(3) where no coordinated public or private non-profit transportation system exists in the community, make every effort to identify other human services agencies also providing transportation services and, where reasonable, to participate in the establishment of a

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local transportation coordinating
council.

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