

included. Incorporation of the Criteria would make it part of the regulations, regardless of whether the text appears in the Code of Federal Regulations. Also, material is incorporated as it exists on the date of the approval and a notice of any change in the materials must be published in the **Federal Register**. In terms of practical applications, codification of the Criteria would provide a means for the agency to request comments on only the criterion that would be amended or revised from year to year, as opposed to incorporation-by-reference which would typically be an all-or-nothing proposition—a new edition would either be accepted in its entirety or rejected in its entirety. Although the agency could incorporate-by-reference portions of the Criteria while rejecting specific items, this approach would almost certainly make understanding the reference unnecessarily difficult from both an enforcement perspective and an industry perspective. Therefore, the agency has concluded that incorporation-by-reference is not a practical alternative to codification of the Criteria text.

In response to commenters who offered legal arguments suggesting that the agency must adopt the Criteria, the FMCSA does not believe those arguments have merit. The Criteria represent enforcement tolerances, and should not be construed to be regulations. The FMCSRs require compliance with all applicable requirements at all times. There is nothing in the FMCSRs that makes operating a commercial motor vehicle in interstate commerce, while violating any of the requirements contained therein, an acceptable practice. The agency recognizes that violations do occur and does not expect that motor carrier operations cease completely until 100 percent compliance is achieved. However, certain violations represent such serious safety risks to the motoring public that they must be corrected immediately. The Criteria presents a list of such violations developed over a period of more than 20 years by Federal, State and Provincial safety professionals, with input from the motor carrier industry, vehicle and equipment manufacturers, researchers, and other interested parties. The use of the Criteria is a matter of policy within FMCSA, so that the decision by Federal personnel to place a vehicle out-of-service is not an arbitrary action based solely on the discretion of the inspector. Likewise, the use of the Criteria by State officials is covered through either a documented policy, or State laws and

regulations. The actions of State officials are based on the authority vested in them under their State statutes and should not be construed as arbitrary determinations by individual inspectors.

FMCSA Decision

In consideration of the responses to the ANPRM, and for the reasons explained above, FMCSA has decided not to adopt the Criteria, either through codification of the text or through incorporation-by-reference, into the FMCSRs. FMCSA believes it is in the public interest that these enforcement tolerances be managed through a partnership between the Federal, State, and Provincial governments from the United States, Canada, and Mexico, with participation by the industry, motor vehicle and equipment manufacturers, researchers and other interested parties. The use of uniform international enforcement tolerances is necessary to ensure highway safety and to facilitate the efficient transportation of passengers and freight between States and Provinces, and between countries in North America.

Therefore, this rulemaking proceeding is terminated.

Issued on: July 11, 2003.

Annete M. Sandberg,

Acting Administrator.

[FR Doc. 03-18599 Filed 7-23-03; 8:45 am]

BILLING CODE 4910-EX-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2003-14306]

RIN 2127-AA44

Flammability of Interior Materials in School Buses

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

ACTION: Notice of termination of proposed rulemaking.

SUMMARY: This notice terminates a rulemaking proceeding that NHTSA began in 1988 to consider upgrading Standard No. 302's flammability resistance requirements for school bus interiors. The rulemaking was initiated in response to a severe 1988 crash in Carrollton, Kentucky, in which a former school bus being used as a church activity bus burst into flames after colliding head-on with a pickup truck.

After reviewing the available information and public comments, the agency has decided to terminate this rulemaking because: The risks presented by school bus fires pose a minimal safety problem; the agency's 1992 upgrade of Standard No. 217's emergency exit requirements to allow faster evacuation from school buses has reduced further the risks posed by fire; the bus involved in the Carrollton fire was built before upgraded Federal school bus standards went into effect in 1977 and did not meet the exit and fuel system integrity requirements; upgrading Standard No. 302 would result in significant costs; and further research would be necessary before the agency could propose a test protocol, utilizing scarce agency resources.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Charles Hott, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366-0247. For legal issues: Mr. Christopher Calamita, Vehicle Safety Rulemaking and Harmonization Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, Telephone: (202) 366-2992.

SUPPLEMENTARY INFORMATION:

I. Background

In the late 1980s, school bus safety received substantial public and Congressional attention, especially in the aftermath of two catastrophic crashes. On May 14, 1988, in Carrollton, Kentucky, a former school bus¹ being used as a church activity bus burst into flames after colliding head-on with a pickup truck. This was a severe crash, with a combined impact speed exceeding 100 miles per hour. Twenty-seven of the 67 bus occupants died in the fire that ensued. On September 21, 1989, in Alton, Texas, a school bus became submerged in a water-filled pit after colliding with a tractor-semi trailer. Twenty-one of the 81 students in the bus drowned because they were unable to escape.

In its investigation of the Carrollton crash, the National Transportation Safety Board (NTSB) concluded:

¹ The bus was manufactured in 1977 shortly before April 1, 1977, prior to the effective date of a final rule improving Standard No. 217's emergency exit capacity requirements and Standard No. 301's fuel system integrity requirements. As a result, the Carrollton bus lacked safety features, such as fuel tank guards and improved access to emergency exits, required on most large school buses that were built after 1977.