

new school buses to be equipped with traffic control devices, and State laws that do not permit the use of the traffic control devices on the types of trips that the new buses will be making. The new buses are not required to have those devices since the buses, unlike regular yellow school buses, are not intended for the roadside picking up and dropping off of children during service between home and school. While the MFSABs are not required to be equipped with the traffic control devices, they are, however, required to meet all requirements in the school bus crashworthiness standards, all other requirements in the school bus crash avoidance safety standards, and all post-crash school bus standards.

We anticipate that this final rule will also facilitate efforts by the Federal Transit Administration to provide funding to Head Start programs and coordinated transportation providers to purchase the school buses. Currently, that Administration is prohibited from providing financial assistance to purchase regular yellow school buses that exclusively transport students and school personnel in competition with a private school bus operator. We anticipate that the new buses will be used for coordinated transportation purposes by State and local social services agencies, which may, for example, use the new buses to transport children from Head Start facilities to school in the morning, and to transport senior citizens later in the day.

Finally, enabling schools and other institutions to choose the new buses instead of a 15-passenger van will provide them with a safer transportation alternative since the new buses comply with all school bus requirements in the Federal Motor Vehicle Safety Standards except those relating to traffic control devices.

## II. Background—Relevant NHTSA Laws and Policies

NHTSA's statute requires any person selling or leasing a new vehicle to sell or lease a vehicle that meets all applicable standards issued by the agency. Under our regulations, a "bus" is any vehicle (including a van) that has a seating capacity of 11 persons or more. The statute defines a "school bus" as any vehicle that is designed for carrying 11 or more persons and that is likely to be "used significantly to transport preprimary, primary, and secondary students to or from school or an event related to school." (Emphasis added.) 49 U.S.C. 30125.

More broadly, we deem a bus likely to be used significantly to transport preprimary, primary, or secondary

students to or from school or school-related events if, for example, it will be used for any of the following purposes on a regular basis: Pick students up from home to take them to school; pick them up from a place other than home (e.g., a before-school care facility) and drop them off at school; or pick them up from school and drop them off at home or a place other than home (e.g., an after-school care facility). The term "school" does not include pre-school (nursery) centers, or Head Start programs.

We have informed motor vehicle dealers that new buses sold to child-care providers and other entities that routinely drop students off at school or pick them up from school are required to be buses that meet the school bus safety standards, even though the purchasing organizations are not schools themselves. (See, e.g., July 23, 1998 letter to Mr. Don Cote, Northside Ford, filed in this docket at 13704–51)

In our interpretations of Section 30125, we have stated that a bus that is sold for school transportation must meet all standards applicable to school buses, including the four-way/eight-way alternating flashing lights required by FMVSS No. 108 and the stop-arm required by FMVSS No. 131.<sup>1</sup> Thus, even if school buses will be used only to transport children on activity trips or other trips that do not include home-to-school transportation, dealers currently cannot sell a school bus unless those buses are equipped with flashing lights and stop arms. This is true even if these devices are not likely to be used on such trips. It is also true even if State law does not allow them to be used on such trips or requires them to be removed before making such trips.

One reason we are issuing this final rule is that after selling or leasing school buses, dealers cannot remove the four-way/eight-way flashing lights and stop-arms from them. Under 49 U.S.C. Section 30122, "Making safety devices and elements inoperative," manufacturers, distributors, dealers, or motor vehicle repair businesses may not "knowingly make inoperative" any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard. Before the issuance of this final rule, all school buses had to be equipped with the four-way/eight-way flashing lights and stop arms. Since it does not appear to make sense to have

<sup>1</sup> The flashing lights are required by FMVSS No. 108 to operate automatically when the bus entrance door is opened. The stop arm is required by FMVSS No. 131 to operate automatically when the lights are flashing, except that a manual override device may be provided by the vehicle manufacturer.

dealers sell school buses with equipment that the buyer wants removed, we are defining a new category of school buses without four-way/eight-way flashing lights and stop arms.

## III. Notice of Proposed Rulemaking

On November 5, 2002 (67 FR 67373) (DOT Docket No. NHTSA–2002–13704), we published in the **Federal Register** a notice of proposed rulemaking (NPRM) to create a new school bus category, the "Multifunction School Activity Bus" (MFSAB). We proposed to except the new category from the requirement for school bus warning lamps at S5.1.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, reflective devices and associated equipment*, 49 CFR 571.108, and from the requirement for stop signal arms in FMVSS No. 131, *School bus pedestrian safety devices*, 49 CFR 571.131. We proposed to limit the category to buses with a gross vehicle weight rating of 6,804 kilograms (15,000 pounds) or less, and invited comment as to whether the new buses should have a label warning drivers that the buses were not for home-to-school service. We denied aspects of the Rabun-Gap petition relating to seat strength, seat spacing, and seat width for reasons set forth in the NPRM. A full explanation of why we granted or denied aspects of Rabun-Gap's petition is in the November 5, 2002 NPRM at 67 FR 67373.

## IV. Public Comments to the NPRM and NHTSA's Response

NHTSA received a total of 48 public comment submissions in response to the NPRM. Some commenters commented more than once, and several submissions had identical or similar wording. We received comments from Alabama Department of Education, Amalgamated Transit Union (ATU), American Academy of Pediatrics (AAP), Black Gold Regional Schools Educational Authority, Blue Bird Body Company, Brownsville Independent School District (of Brownsville, Texas), Department of California Highway Patrol, Correctrack Inc., Transportation Consultant John Fairchild, Ford Motor Company, Hurst-Euless-Bedford Independent School District (of Bedford, Texas), IC Corporation, Indiana Department of Education, Kibois Area Transit System (of Stigler, Oklahoma), Les Entreprises Michel Corbeil Inc. (Corbeil), Maine Department of Education, National Association of Independent Schools (NAIS), National Association of State Directors of Pupil Transportation Services (NASDPTS), National Automobile Dealers