

Association (NADA), National Child Care Association (NCCA), National School Transportation Association (NSTA), National Transportation Safety Board (NTSB), Public Schools of North Carolina, Public Citizen, Pupil Transportation Safety Institute, Inc., Rabun Gap Nacoochee School (Rabun), Texas Association for Pupil Transportation, Texas Department of Public Safety, Thomas Built Buses, U.S. Bus Corporation, Utah State Office of Education, Virginia Association for Pupil Transportation (VAPT), Wisconsin Department of Transportation, and many private citizens. The following summarizes the comments, and our response to the comments.

A. Should the Multifunction School Activity Bus Subcategory Be Created?

Most commenters wrote in favor of the proposed new school bus category. However, some individual citizens, the state of Maine and AAP wrote against the proposal. The state of Maine commented that creating a new subcategory of school buses without traffic control features "creates a level of complexity and potentially an elevated hazard level * * * without producing a significant offsetting benefit." AAP expressed concern about the MFSAB classification, stating that the traffic control features on a school bus "are meant to protect pedestrians, who account for significantly more school bus related fatalities than school bus passengers." In its May 1996 Policy Statement on School Transportation Safety (R9616), regarding deaths to children as a result of school-bus related events, AAP stated that the "majority of pedestrians killed were young children who were struck by their own school buses." NHTSA notes that activated traffic control devices on a school bus make surrounding motorists aware that children are outside and around a school bus and that the motorists should take extra precautions for the children. NHTSA and the States have other measures and programs (including school bus driver training) to lessen the chances that school children will be struck by their school buses.

NHTSA has decided to adopt the multifunction school activity bus vehicle classification, as proposed. NHTSA is conducting this rulemaking to promote flexibility in the choice of vehicles. NHTSA emphasizes that the MFSAB is not to be used by schools or school districts to transport school children on regular school bus route transportation. Because of this limitation, school children will not be exposed as pedestrians to traffic

situations that stop arm and four-way/eight-way traffic control devices are designed to control, and we have concluded that the MFSAB will not lead to an increase in school children pedestrian fatalities as the AAP comments suggested. NHTSA agrees with Maine that creating a new category of school bus adds an additional level of complexity for school districts because it creates a school bus category that cannot be used for normal home-to-school transportation. However, NHTSA does not agree that this new school bus category will increase the risk of injuries or fatalities for the reasons explained above and below.

As explained in the NPRM, this final rule makes it easier for transportation providers other than schools or school districts to buy the MFSAB, which will be a safer transportation alternative to the 15-passenger van and motor coach bus for use by Head Start programs or senior citizens. If, after carefully considering all possible bus types, the transportation provider decides that the persons it transports are best served by a school bus with traffic control features, it is free to buy such a school bus rather than the MFSAB.

B. Should the MFSAB Be a "Bus" or "School Bus?"

NADA and NCCA recommended that the new vehicle category should be a "multifunction activity bus," rather than a "multifunction school activity bus." NADA suggested that the MFSAB does not suit its intended purpose and recommended that the multifunction activity bus be defined as "a bus that is designed for purposes that include transporting students to and from school, but not to and from home." NADA stated that this definition has the advantage of avoiding the use of the term "school bus, which has a number of legal and practical Federal, State and local ramifications." NADA further suggested that NHTSA should redefine the term "school bus" more narrowly and establish a new "bus" subcategory. They suggested that NHTSA should redefine "school bus" (in 49 CFR 571.3 "Definitions") to read "a bus that is designed for purposes that include carrying students between home and school, but not a bus designed for operation as a common carrier in urban transportation."² NADA also stated that the "sold or introduced in interstate

² At present, "school bus" is defined at 49 CFR Section 571.3 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."

commerce" language in the present definition of school bus, "places an undue focus on the new vehicle sale or lease transaction and inherently requires sellers or lessors to ascertain a purchaser's intended use," and that the primary burden of standards compliance should be placed on manufacturers of these vehicles.

For the following reasons, NHTSA has decided not to adopt NADA's and NCCA's recommendations for the redefinitions of "school bus" and "bus." First, redefining these terms would be outside the scope of the rulemaking, as NHTSA in the NPRM proposed a definition of "multifunction school activity bus," not redefinitions of "school bus" or "bus." Second, statutory language specifies that only a new school bus may be sold "significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school." (See 49 U.S.C. 30125(a)). This statutory definition takes precedence over any regulatory definition, and amending 49 CFR 571.3 ("Definitions") would not alter the statute. Therefore, defining the MFSAB as a "bus" would put NHTSA in the anomalous situation of fining sellers and lessors that sell or lease new "buses" to child care centers or other transportation providers that use the MFSAB to take children to and from school or on school-related activities. Thus, defining the MFSAB as a "bus" would defeat the purpose of this rulemaking.

Third, NHTSA does not agree that in ensuring that nonconforming new buses are not sold for school transportation purposes, the emphasis on sellers or lessors of new motor vehicles poses a burden on sellers or lessors or on NHTSA. NHTSA's position was explained in an interpretation letter of May 9, 2001 to Collins Bus Corporation, a bus manufacturer. When a day care center wished to purchase a bus to transport children to their homes, Collins asked for guidance about assurances the day care center had to provide a dealer or manufacturer that the intended use does not dictate a school bus. Collins noted that the user is the only person who can actually know how the bus will be used during its life. As part of our answer, we stated that although NHTSA does not currently presume that day care centers universally are engaged in the transportation of children to and from school:

* * * where it is likely that the purchaser or lessor of a new bus is a day care center, in light of the widespread publicity that has surrounded the issue, we expect a dealer to inquire as to whether the vehicle would also