

users that students should not be dropped off at home or other bus stops.” NHTSA does not have the statutory authority to regulate where and how students are to be picked up or dropped off. Operational requirements such as this are matters of State law.

The Amalgamated Transit Union encouraged NHTSA to prohibit school districts from using passenger vans to transport children to and from school and school-related activities. Because regulation of vehicle use is a matter of State law, NHTSA cannot adopt this recommendation. However, NHTSA and the National Transportation Safety Board have been on record as recommending that school children be transported in school buses (including the MFSAB), and not in buses that do not meet NHTSA’s school bus standards.

School Bus Color

Corbeil (a school bus and bus manufacturer), the National Child Care Association, John Fairchild, and U.S. Bus Corporation recommended that the final rule contain a provision prohibiting the MFSAB from being painted National School Bus Glossy Yellow. This recommendation will not be adopted because NHTSA did not propose to regulate MFSAB color in the NPRM and thus, the issue is outside the scope of this rulemaking. Although NHTSA does not at present regulate school bus color, all States require school buses that provide home-to-school transportation to be painted National School Bus Glossy Yellow, as recommended in Highway Safety Program Guideline No. 17, “Pupil Transportation Safety.”

NHTSA is also aware that some States allow “activity buses” used by schools to be painted a color other than National School Bus Glossy Yellow. When this final rule takes effect, each State will determine whether MFSABs used by schools for activity trips, child care facilities for point-to-point school transportation, or coordinated transportation systems for various transportation services, must be painted a color other than National School Bus Glossy Yellow. NHTSA is not aware of any safety problems associated with color identification in buses that are already performing these services. Should it appear that there is a safety need, NHTSA will consider regulating school bus color.

School Bus Driver Training

John Fairchild recommended that NHTSA develop specific training materials related to operational issues for the MFSAB drivers and riders.

NASDPTS recommended that any potential MFSAB misuse be addressed through school bus driver training rather than by a warning label.

School bus driver training is primarily a responsibility of State and local governments. However, NHTSA will consider developing educational materials, to be used voluntarily by school transportation trainers, that discuss restrictions on the use of MFSABs, especially involving to and from school transportation for school children.

V. Final Rule

After reviewing the public comments, NHTSA has decided to adopt a new school bus category, the “multifunction school activity bus,” with the following characteristics:

1. The MFSAB is classified as a “school bus,” not a “bus.”
2. There is no upper weight limit on the MFSAB.
3. The MFSAB must meet FMVSS No. 222, as FMVSS No. 222 is presently written.
4. The MFSAB must meet all warning label requirements applicable to school buses. There is no label unique to the MFSAB.
5. Because school bus color is regulated by State law, NHTSA does not prohibit the MFSAB from being painted National School Bus Glossy Yellow.

VI. How This Final Rule Affects Other Federal Agencies

A. U.S. Department of Health and Human Services (DHHS)—Head Start Bureau

With this final rule, we intend to create a subcategory of school buses that qualify as “allowable alternate vehicles” under DHHS’ Head Start regulations, 45 CFR 1310.12, and thus could be used to transport Head Start Program participants.

B. Federal Transit Administration (FTA)

We anticipate that creation of the MFSAB will aid the efforts of Regional Transit Authorities (which must serve the general public) and Head Start both to meet State law and to satisfy the limitations on the availability of funding from the FTA. Since the MFSABs do not have the school bus flashing lights and stop arms, NHTSA expects that transit authorities and other transportation providers can readily obtain FTA funding to buy MFSABs, provided that such vehicles are not used as school buses to provide home-to-school service. Further, as noted above, in many States, the flashing lights and stop arms are permitted only on “school buses” (as defined by State law).

C. National Transportation Safety Board (NTSB)

By making available a category of school bus that may be somewhat less expensive than the school bus with traffic control devices, NHTSA anticipates that the final rule will help child transportation providers in implementing the NTSB’s recommendation that children be transported in buses that “meet the school bus structural standards or the equivalent set forth in 49 Code of Federal Regulations Part 571.”

VII. Leadtime

All public commenters addressing the leadtime issue urged that this final rule take effect as soon as possible.

Accordingly, this final rule is effective thirty days from the date this document is published in the **Federal Register**.

Optional early compliance with this final rule is provided as of the date this document is published in the **Federal Register**.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a “significant regulatory action” as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation’s regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, “Regulatory Planning and