PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.70 Research and development streamlined contracting procedures—test.

2. Section 235.7002 is amended by revising paragraph (a) (2) to read as follows:

235.7002 Applicability.

(a) * * *

(1) * * *

(2) Navy: Naval Research Laboratory contracting office; Naval Surface Warface Center contracting offices when contracting for the Carderock, Crane, Dahlgren, Indian Head and Port Hueneme divisions; Naval Undersea Warfare Center contracting office.

* * * * *

3. Section 235.7003 is amended by adding paragraph (d) (9) to read as follows:

235.7003 Reporting requirements.

* * * * *

(d) * * *

(9) At a minimum any request for modification of the research and development streamlined contracting format or procedures, and any request for one time only use of FAR and DFARS provisions and clauses and nonstandard provisions and clauses approved for agency use, that are not in the research and development streamlined contracting format at 235.7006 must include the information required by 201.402(3) (i) through (ix).

235.7004–1 [Amended]

4. Section 235.7004–1 is amended by revising in paragraph (b) the reference ''235.7006(c) (A.1)'' to read ''235.7006(d) (A.1).''

235.7004–2 [Amended]

5. Section 235.7004–2 is amended by revising in paragraph (b) the reference ''235.7006(c) (A.1)'' to read ''235.7006(d) (A.1).''

235.7004–3 [Amended]

6. Section 235.7004–3 is amended by revising in paragraph (c) the reference ''235.7006(c)'' to read ''235.7006(d).''

7. Section 235.7006 is amended by revising in the first sentence of paragraph (a) the reference ''paragraph (c)'' to read ''paragraph (d),'' by revising in the last sentence of paragraph (a) the reference ''(See 235.7006(c) (A.1) (v))'' to read ''(See 235.7006(d) (A.1) (v));'' by redesignating paragraph (c) as paragraph (d); and by adding a new paragraph (c) to read as follows:

235.7006 The research and development streamlined contracting format.

* * * * *

(c) Test Oversight Committee members may authorize for their respective agencies, on a one time only basis, the use of FAR and DFARS provisions and clauses, and nonstandard provisions and clauses approved for agency use, that are not in the research and development streamlined contracting format at 235.7006. Any other modification of the research and development streamlined contracting format or procedures requires approval of the Director of Defense Procurement. Each Test Oversight Committee member shall ensure that the supporting data is accurate and complete.

* * * * *

8. Section 235.7006, Exhibit-Research and Development Streamlined Contracting Format, is amended by adding two contract clauses at the end of the listing at Part II, Section I; by removing and reserving ''K.24'' in the listing at Part IV, Section K; by revising ''(L.15)'', ''(L.18)'' and by revising ''(L.19)'' in Part IV, Section L; and by revising the introductory text at Part IV, Section M to read as follows:

Exhibit-Research and Development Streamlined Contracting Format

* * * * *

Part II—Contract Clauses

Section I, Contract Clauses

(1) Federal Acquisition Regulation clauses.

* * * * *

*(I.167) * * *

*(I.168) 252.223–7006 Prohibition on Disposal of Toxic and Hazardous Materials

*(I.169) 252.249–7002 Notification of Program Termination or Reduction

* * * * *

Part IV—Representations and Instructions

Section K, Representations, Certifications and Other Statements of Offerors or Quoters

* * * * *

*(K.24) [Reserved]

* * * * *

Section L. Instructions, Conditions, and Notices to Offerors or Quoters

* * * * *

(L.15) 52.216–1 Type of Contract (See 235.7006(d)(B.1))

* * * * *

(L.18) 52.233–2 Service of Protest (See 235.7006(d)(A.1)(xvii))

[*](L.19) 52.237–1 Site Visit

* * * * *

Section M, Evaluation Factors for Award

Use of the standard evaluation factors is preferred. If the standard evaluation factors are modified in any way, the modifications must be clearly expressed so that the result is unambiguous. Additions to and deletions from the contents of this Section M must be clearly annotated in the solicitation summary (see 235.7006(d)(A.1)(vii).)

* * * * *

[FR Doc. 95–7429 Filed 3–24–95; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–26; Notice 06]

RIN 2127–AF31

Federal Motor Vehicle Safety Standard; Convex Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, NHTSA amends the safety standard on rearview mirrors to reduce the duplication of the views provided by System B mirrors, which provide a view of test cylinders in the area around the front of a school bus and near the rear wheels, and System A mirrors, which provide a view of the area beneath the System A mirrors, along both sides of the bus and to the rear of the bus. The System B mirrors must also provide a view of the ground that overlaps with the view of the ground provided by System A mirrors. As a result of this final rule, the System A mirrors will no longer be required to provide a view of the ground forward of the rear wheels.

The effect of this final rule is that manufacturers will no longer have to install either an additional convex mirror, which creates a larger blind spot for the driver, or replace the existing convex mirror with a highly curved convex mirror that produces more distorted images.

This final rule is issued in response to a petition for rulemaking from Blue Bird Body Company.

DATES: This final rule is effective April 26, 1995. Petitions for reconsideration of this final rule must be received not later than April 26, 1995.

ADDRESSES: Petitions for reconsideration of this final rule should refer to the docket and notice number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that 10 copies be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety

Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Mr. Hott's phone number is (202) 366–0247.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 111, *Rearview mirrors,* (Std. No. 111) specifies requirements for the performance and location of rearview mirrors on motor vehicles. Std. No. 111 is intended to reduce the number of deaths and injuries that would otherwise occur if the driver of a motor vehicle did not have a clear and reasonably unobstructed view of the area around the vehicle, especially to the side and rear of the vehicle. With respect to a school bus, Std. No. 111 seeks to ensure that the driver is provided with an adequate view of the area around his or her vehicle, especially when stopped. This reduces the risk of the bus striking students as they board or leave the bus.

Among other requirements, Std. No. 111 specifies that each school bus shall have two outside rearview mirror systems on each side. System A consists of two sets of mirrors mounted adjacent to the driver, one set on the left side of the bus and the other on the right side. Each set includes a flat driving mirror of unit magnification and typically a convex driving mirror. The System A mirror system (the driving mirrors) must provide, among other things, a view of the area of ground, beginning with the ground beneath the System A mirrors and extending at least 200 feet rearward. System B consists of convex cross view mirrors that are mounted ahead of the driver for spotting students when they are near the front of the bus and as they board or leave the bus. To the extent that a seated driver cannot directly see test barrels or cylinders in specified locations around the front of the bus and 12 feet outboard of the rear wheels, the System B mirrors must provide views of the tops of those cylinders. To ensure that there is no blind spot between the views provided by the two mirrors systems, the System B mirrors must also provide a view of the ground that overlaps with the view of the ground provided by the System A mirror system. As a practical matter, this requirement results in the System B mirrors at least partially duplicating the view provided by the System A mirrors of the area of ground extending from the ground beneath the System A mirrors to the ground adjacent to the rear wheels of the bus.

Blue Bird Petition for Rulemaking

Blue Bird Body Company (Blue Bird) petitioned the agency to amend Std. No. 111 by changing the field-of-view requirements for System A mirrors. Blue Bird stated that to comply with the requirement to provide a view beneath the system A mirrors, the System A mirrors on each side of the bus must consist of a flat (unit magnification) mirror plus either a small radius of curvature convex mirror or two convex mirrors. Blue Bird argued that either approach would be impracticable and inconsistent with motor vehicle safety. According to the petitioner, a small radius of curvature mirror would provide unreasonably small and distorted images that would make the mirror unsafe for a driver to use while driving. To avoid the problem of small and distorted images, Blue Bird stated that any convex mirror that is part of System A should have a radius of curvature of at least 35 inches. The petitioner said that adding a second convex mirror would create a larger blind spot in the direct line of sight of the driver past the location of the System A mirrors.

Blue Bird stated that the current requirement for System A mirrors was inconsistent with previous agency statements about problems associated with using highly convex (i.e., small radius) mirrors for driving. Blue Bird further stated that nothing in the NPRM that led to the final rule establishing the requirements for System A mirrors implies that there is a need for those mirrors to provide a view of the area directly below them. Blue Bird asked the agency to immediately amend S9.2(b)(1) and S9.2(b)(2) to specify that System A mirrors (on each side of the bus) need only provide views of the area of the ground that extends rearward from the test cylinders near the rear wheels to a distance not less than 200 feet measured rearward from the rear surface of the mirrors. If the requirements were so amended, the System A mirrors would no longer be required to provide a view of the area of ground that extends from the ground below the mirrors to the cylinders by the rear wheels. This would enable school bus manufacturers to comply with the requirements by providing a flat mirror and a single convex mirror whose curvature would be large enough so that it would not distort the images in the manner described by Blue Bird.

At a meeting with NHTSA personnel, Blue Bird further stated that the installation and use of a driving mirror with a small radius of curvature may result in unsafe driving practices since it distorts image size and shape. The distortions makes it difficult for a bus driver to judge the distance between his or her bus and following vehicles when the driver is attempting to change lanes. Blue Bird alleged that a small radius of curvature mirror provides images of oncoming vehicles that are initially very small and difficult to recognize but then very quickly become much larger and greatly distorted as the vehicles approach the mirror.

Notice of Proposed Rulemaking

On July 11, 1994 (59 FR 35300), NHTSA published a notice of proposed rulemaking (NPRM) to amend Std. No. 111 so that System A mirrors on school buses would no longer be required to provide a view of the area of ground extending from the ground directly beneath the System A mirrors to the test cylinders by the bus's rear wheels. The agency issued this NPRM because it was concerned about the safety effects of the additional or overly small radius of curvature convex mirrors used in System A to provide a view of the ground beneath the System A mirrors.

NHTSA expressed concern that the current requirement may compromise safety because using a small radius of curvature convex mirror would make it more difficult for the driver to use the System A mirrors as driving mirrors because the distorted image from the convex mirror could cause confusion about the actual distance of approaching vehicles. The agency tentatively concluded that using two larger radius of curvature convex mirrors would reduce the driver's direct line of sight as the result of creating a larger blind spot in the vicinity of the System A mirrors. The agency tentatively concluded further that these visual problems resulting from requiring both systems to provide a view of the ground directly beneath the system A mirrors outweigh the safety benefits of that particular overlapping view.

The agency also stated its belief that the proposed amendment would not adversely affect pedestrian safety because System B mirrors would still be required to provide a view of the ground directly below the System A mirrors, as well as the areas alongside the bus to the rear wheels. Further, the two systems would still be required to provide overlapping views of the ground, although not at a location so far forward as the area beneath the System A mirrors.

In an attempt to obtain more detailed information about the extent and significance of the potential safety problems, NHTSA posed the following questions: To what extent does adding a second convex mirror to either set of System A mirrors increase the blind spot created for a driver attempting to look past the System A mirrors? How

significant a safety problem is caused by the increase in the blind spot? How significant a safety problem is caused by the driver's inability, while driving a bus, to use all of the mirrors in a set of System A mirrors that includes a convex mirror with a radius of curvature less than 35 inches? If a manufacturer added a second convex mirror to a System A mirror system, couldn't the driver use the preexisting high radius of curvature mirror as the driving mirror?

Blue Bird had asked NHTSA to ''immediately issue'' its requested change to the standard. In the NPRM, NHTSA discussed why it was required to issue a proposal before deciding to adopt the requested change.

Public Comments and NHTSA Response

In response to the NPRM, NHTSA received a total of five comments. Three comments were from school bus manufacturers; Blue Bird, Mid Bus, Inc. and Thomas Built Buses. The Florida Department of Education and the National Truck Equipment Association also submitted comments. All commenters supported the proposed changes. None of the commenters provided any detailed information about the extent or significance of the potential safety problems.

In support of the proposed changes, Mid Bus stated that when the bus is loading or unloading, the required System A view of the ground between the surface of the mirror and the rear wheels and the System B mirror view are redundant. Mid Bus noted that System B mirrors provide the driver with a view of all the blind spots around the bus and in front of the rear wheels.

Since there were no opposing comments, NHTSA adopts, without changes, the proposed regulatory text for the reasons stated in the NPRM and this notice.

Besides supporting the proposed changes to Std. No. 111, Blue Bird recommended that the standard be amended to prohibit convex mirrors with radii of curvatures less than 35 inches as System A mirrors on school buses, if use of low radii of curvature convex mirrors would compromise safety. In its petition for rulemaking, Blue Bird had argued that convex mirrors with radii of curvature less than 35 inches would provide unreasonably small and distorted images, causing problems if the school bus driver were to look at the convex mirror while the bus was in motion.

NHTSA is not adopting Blue Bird's recommendation. NHTSA believes this final rule's changes to the System A mirror system will have the practical effect that Blue Bird seeks in requesting an outright prohibition. As a result of this final rule's changes to the System A mirror requirements, it will not be necessary for school bus manufacturers to place convex mirrors with small radii of curvature on System A mirrors. However, as is presently the case for drivers of trucks, multipurpose passenger vehicles and non-school buses, the decision whether to put on or use small radii of curvature convex mirrors will be left up to school bus manufacturers and school bus drivers. The agency believes that sufficiently trained and experienced drivers, such as those that drive commercial trucks, can adjust to and safely use the more convex mirrors.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule will have only minimal economic impacts. The final rule will not result in any cost savings or cost increases for manufacturers that have been complying with the requirements by providing a flat mirror and a single small radius of curvature convex mirror since that convex mirror will be replaced by a larger radius of curvature mirror. The final rule will result in slight cost savings for manufacturers that have been complying by providing a flat mirror and two convex mirrors. Under this final rule, those manufacturers will now be able to delete one of the convex mirrors.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, any impact on small entities from this action will be minimal since this final rule makes a minimal change that will not impose additional costs. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

C. National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. section 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. section 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S9.2 is revised to read as follows:

§ 571.111 Rearview Mirrors.

* * * * *

S9.2 System A shall be located with stable supports so that the portion of the system on the bus's left side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification with not less than 322.60 square centimeters (50 square inches) of reflective surface; and

(b) Includes one or more mirrors which together provide, at the driver's eye location, a view of:

(1) For the mirror system on the right side of the bus, the entire top surface of cylinder N in Figure 2, and that area of the ground which extends rearward from cylinder N to a point not less than 60.93 meters (200 feet) from the mirror surface.

(2) For the mirror system on the left side of the bus, the entire top surface of cylinder M in Figure 2, and that area of the ground which extends rearward from cylinder M to a point not less than 60.93 meters (200 feet) from the mirror surface.

* * * * *

Issued on: March 20, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–7348 Filed 3–24–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Determination To Retain the Threatened Status for the Coastal California Gnatcatcher Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of determination.

SUMMARY: The Fish and Wildlife Service (Service), announces a determination affirming its earlier conclusion (March 30, 1993; 58 FR 16742) that the coastal California gnatcatcher (*Polioptila californica californica*), a small, insectivorous songbird, is a distinct subspecies and, thus, meets the definition of a ''species'' pursuant to the Endangered Species Act of 1973, as amended (Act). In addition, the Service affirms its earlier conclusion (58 FR 16742) that the southern limit of this subspecies extends to about 30° north latitude near the vicinity of El Rosario, Baja California, Mexico. Based on these determinations, the Service concludes that its March 30, 1993, decision that the coastal California gnatcatcher is a threatened species was correct. Federal protection for the coastal California gnatcatcher is thus continued.

EFFECTIVE DATE: March 23, 1995.

ADDRESSES: The complete administrative records and files for this determination and all related rule promulgations and notices are available for inspection, by appointment, during normal business hours at the Fish and Wildlife Service Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Mr. Gail C. Kobetich, Field Supervisor, at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The coastal California gnatcatcher (*Polioptila californica californica*), a subspecies of the California gnatcatcher, is a small, long-tailed member of the thrush family Muscicapidae. The subspecies is restricted to California and Baja California, Mexico, and is an obligate resident of coastal sage scrub, which is one of the most depleted habitat types in the United States (58 FR 16742). The plumage color of the species is dark blue-gray above and grayish-white below. The tail is mostly black above and below. This subspecies is distinguished from the other subspecies by its darker body plumage, less extensive white on tail feathers (rectrices 5 and 6), and longer tail (Atwood 1991). The male has a distinctive black cap that is absent during the winter. Both sexes have a distinctive white eye-ring. Vocalizations of this species include a call consisting of a rising and falling series of three kitten-like mew notes (National Geographic Society 1983).

The California gnatcatcher was originally described as a distinct species (*Polioptila californica*) by Brewster (1881) based on specimens collected by Stephens in 1878. Later taxonomic treatments (e.g., Coues 1903 and Chapman 1903) reflected Brewster's (1881) conclusions. Grinnell (1926), however, later concluded that the species was a form of the black-tailed gnatcatcher (*Polioptila melanura*), which inhabits the Sonoran and Chihuahuan Deserts of the southwestern United States and northwestern Mexico. Subsequent scientific publications (American Ornithologists' Union 1931, Grinnell and Miller 1944, Friedmann 1957, American Ornithologists' Union 1957) adhered to the species limits as defined by Grinnell (1926). Three subspecies of the black-tailed gnatcatcher were recognized for southwestern California and western Baja California, Mexico: *P. m. californica* (ranging from Los Angeles County, California (formerly northward to Ventura County), south to about 30° north latitude in Baja California, Mexico), *P. m. pontilis* (resident in central Baja California), and *P. m. margaritae* (ranging from about 27° north latitude south to the Cape region of Baja California) (American Ornithologists' Union 1957).

Based on identified differences in ecology and behavior that were elucidated as a result of specimen study and statistical analysis, Atwood (1988) proposed that *Polioptila californica* was specifically distinct from *P. melanura.* This finding was subsequently formally adopted by the American Ornithologists' Union Committee on Classification and Nomenclature (American Ornithologists' Union 1989), thus affirming Brewster's (1881) original taxonomic placement with respect to species. The American Ornithologists' Union 1989 publication did not address subspecies other than to refer the reader to the American Ornithologists' Union 1957 checklist of North American birds.

The coastal California gnatcatcher, *Polioptila californica* (=*melanura*) *californica,* has been recognized as a distinct race or subspecies since Grinnell's (1926) publication (e.g., American Ornithologists' Union 1931, Grinnell and Miller 1944, Friedmann 1957, American Ornithologists' Union 1957, Garrett and Dunn 1981, Unitt 1984, Phillips 1991, Atwood 1991). As indicated above, this subspecies occurs from Los Angeles County (and, formerly, Ventura County) south to about 30° north latitude in Baja California, Mexico. Although Atwood (1988) proposed merging *P. californica californica* with a more southerly subspecies of *P. californica,* he later (1991) retracted this conclusion.

On March 30, 1993, the Service published a final rule determining the coastal California gnatcatcher (*Polioptila californica californica*) to be a threatened species (58 FR 16741). In making this determination, the Service relied, in part, on taxonomic studies conducted by Dr. Jonathan Atwood of the Manomet Bird Observatory. As is standard practice in the scientific community, the Service did not request, nor was it offered, the data collected and utilized by Atwood in reaching his conclusions. Instead, the Service cited the conclusions presented by Atwood in a peer reviewed, published scientific article pertaining to the subspecific taxonomy of the California gnatcatcher (Atwood 1991).

The Endangered Species Committee of the Building Industry Association of Southern California and other plaintiffs subsequently filed a suit challenging the listing on several grounds. In a Memorandum Opinion and Order filed in the United States District Court for the District of Columbia on May 2, 1994, the Court vacated the listing determination, holding that the