Commission for approval of the agreement before coordination is initiated with other administrations by the licensee of the exclusive frequency assignment.

PART 87—AVIATION SERVICES

1. The authority citation in part 87 continues to read:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Paragraph (d)(1) of § 87.303 is revised to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435–1525 MHz and 2360–2390 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of manned or unmanned aircraft and missiles, or their major components. The bands 1525–1535 MHz and 2310–2360 MHz are also available for these purposes on a secondary basis. Permissible uses of these bands include telemetry and telecommand transmissions associated with the launching and reentry into the earth's atmosphere as well as any incidental orbiting prior to reentry of manned or unmanned objects undergoing flight tests. In the 1435–1530 MHz band, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5 and 1525.5 MHz. In the 2360–2390 MHz band, the following frequencies may be assigned on a co-equal basis for telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. In 2310–2390 MHz band, all other telemetry and telecommand uses are secondary.

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[FR Doc. 95–16069 Filed 7–5–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–21, Notice 10]

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

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

ACTION: Denial of petition for reconsideration.

SUMMARY: This notice denies a petition for reconsideration submitted by Thomas Built Buses, Inc. (Thomas), requesting NHTSA to delay the effective date of certain provisions of the final rule of November 2, 1992. In that rule, NHTSA revised the minimum requirements for school bus emergency exits and specified improved access to school bus emergency doors, effective May 2, 1994.

Due to a misunderstanding within the industry about the term ''daylight opening'' in the 1992 rule, NHTSA published a final rule dated May 4, 1994 delaying implementation of the new requirements by four months, i.e., until September 1, 1994.

NHTSA has decided to deny Thomas' petition because the relief sought by the petitioner was, in effect, granted by a May 1995 final rule issued by the agency. That final rule replaced the new requirements with charts specifying the number of required school bus emergency exits based on seating capacity.

FOR FURTHER INFORMATION CONTACT: Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5320, Washington, DC 20590. Telephone (202) 366–0247.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1992, NHTSA published a final rule adding several requirements to Federal Motor Vehicle Safety Standard (Standard) No. 217, *Bus emergency exits and window retention and release,* 57 FR 49413). The effective date of the new requirements was specified as May 2, 1994.

That final rule retained the requirement that all school buses have either a rear emergency door of specified dimensions or a left-side emergency door and a push-out rear window, at the option of the manufacturer. The rule added a requirement that, among other things, the total area in square centimeters of emergency exits on school buses must collectively amount to at least 432 times the number of designated seating positions on the bus. The rule also provided that the front service door area and the previously required emergency exits are to be counted toward meeting the total emergency exit area requirement. If those areas are insufficient to meet the total emergency exit area requirement, manufacturers must provide additional exits as specified in the rule.

The rule specified that each exit was to be credited with the amount of area equal to its ''daylight opening.'' That term was defined in the rule as ''the maximum unobstructed opening of an emergency exit when viewed from a direction perpendicular to the plane of the opening.'' The preamble to the final rule did not include a further discussion of what might constitute an obstruction.

On December 3, 1992 Blue Bird petitioned for reconsideration of the November 2, 1992 final rule, arguing that the final rule failed to make school bus emergency exit requirements equivalent to non-school bus emergency exit requirements. In response to that petition and an earlier (February 1992) Blue Bird petition for rulemaking concerning sliding exit windows and the use of windows instead of other types of exits, the agency issued a Notice of Proposed Rulemaking (NPRM) on December 1, 1993 (58 FR 63321). The notice proposed to permit the installation of emergency exit windows other than pushout windows, and to allow manufacturers the option of installing either two sliding emergency exit windows or a side emergency exit door as the first means of providing the additional emergency exits on school buses. In addition, the NPRM proposed two alternate means of determining the maximum amount of area that could be credited for all types of emergency exits on school buses, and that school bus additional emergency exit requirements be expressed in the form of tables.

On January 8, 1994, Wayne Wheeled Vehicles (Wayne) requested clarification of the terms ''daylight opening'' and ''unobstructed opening.'' On March 24, 1994, NHTSA replied, in pertinent part:

> [A]n obstruction in this context [daylight opening] would include any obstacle or object that would block, obscure, or interfere with, in any way, access to that exit when opened. In determining the maximum unobstructed opening of any emergency exit, we would subtract, from the total area of the opening, the area of any portions of the opening that cannot be used for exit purposes as a result of the obstruction.

Both Blue Bird and Thomas objected to that interpretation and by letters to the agency dated April 20 and April 27, 1994, respectively, requested that NHTSA delay the effective date of the new requirements. Thomas requested a delay pending the issuance of additional interpretations as applied to other emergency exits. Blue Bird requested a delay until September 1, 1994, or alternatively, until issuance of a final rule basing the number of exits on seating capacity, thereby rendering ''daylight opening'' irrelevant.

NHTSA concluded that the term ''daylight opening'' had been arguably ambiguous prior to the Wayne interpretation. Therefore, by final rule dated May 4, 1994 (59 FR 22997), the agency allowed manufacturers the option of complying with the clarified new requirements or continuing to comply with the previous emergency exit requirements of the standard, that is, a rear emergency exit door or a left side emergency exit door and a rear pushout window, until September 1, 1994.

The Petition

Thomas' petition for reconsideration expressed concern about NHTSA's response of April 1, 1994 to an earlier Thomas request for an interpretation of what constitutes an obstruction and how close to the door an object must be to be considered an obstruction. NHTSA responded by referring Thomas to the Wayne interpretation. Thomas argued in its petition that although the Wayne interpretation may have answered Wayne's questions, Thomas was still unable to calculate ''daylight opening'' and was still unable to determine the number of required emergency exits for each vehicle.

In its petition, Thomas stated that since its rear emergency doors and pushout windows satisfy the requirements of S5.4 regarding the passage of a parallelepiped and ellipsoid respectively, Thomas should be able to regard those exits as unobstructed and thus credit the full area of those openings. Following the same reasoning, Thomas suggested that it should be allowed to credit the full area of its front service door. Under the Wayne interpretation, however, Thomas stated that its 45 inch by 24 inch side emergency exit door would be credited by NHTSA as only a 45 by 12-inch opening.[1]

Thomas stated that because of the requirement for a 12 inch aisle leading to a side door exit, a 32 inch door is now more common than the 24 inch door. The wider door provides more space between the front of the seat back and the front vertical side of the door opening. Thomas asserted that additional space is sufficient to provide usable exit area. Thomas argued that since NHTSA recognizes that pushout windows that can accommodate an ellipsoid are useful emergency exits, NHTSA ought to give credit for areas of door openings that can also accommodate the ellipsoid. Thomas argued that if an area such as the area between the front of the seat back and the forward vertical edge of a 32 inch doorway will accommodate an ellipsoid, the agency should consider that area as usable exit space also.

Finally, Thomas argued that one of the shortcomings in the November 1992 final rule was that the number of capacity-based emergency exits required by that rule differs between manufacturers because differences in manufacturers' door sizes and designs result in differences in their calculations of the amount of ''daylight opening.'' Thomas asserted that the Wayne interpretation injected another variable into that calculation. Therefore, because of its continuing uncertainty in calculating ''daylight opening'' and determining the proper number of emergency exits, Thomas recommended that NHTSA do one of the following:

1. Define the parameters for determining whether a portion of an exit can be regarded as usable exit space, and thus counted toward the total required amount of exit space;

2. Specify minimum exit sizes and replace the new exit requirements with a chart specifying the number of required school bus emergency exits based on seating capacity; or

3. Delay the new requirements until NHTSA issues a final rule adopting one the agency's December 1, 1993 proposals for limiting the amount of area that can be credited to an exit and adopts the same type of chart mentioned in the second recommendation.

Agency Response to the Petition

Thomas' petition, submitted to NHTSA on June 1, 1994, was styled as a petition for reconsideration of the May 4, 1994 final rule which extended the effective date of the emergency exit requirements of the November 2, 1992 final rule. The arguments set forth in the petition, however, only addressed the issue of ''daylight opening'' and purported to explain why the Wayne interpretation was wrong or at least inadequate to address Thomas' concerns. NHTSA believes, therefore, that the Thomas petition, rather than asking NHTSA to reconsider the agency's extension of the effective date of the new emergency exit requirements, is in reality a request for further interpretation of ''daylight opening.''

Regardless of whether Thomas' submission can be properly regarded as a petition for reconsideration, the relief sought by Thomas has, in effect, already been granted. On May 9, 1995 (60 FR 24562) the agency published a final rule amending Standard No. 217 in accordance with the proposals in the December 1, 1993 NPRM. In addition to amending the requirements concerning the use of exit windows in lieu of doors and the requirements for non-school buses, the final rule also deleted the term ''daylight opening.'' That deletion eliminated the need to calculate the daylight opening area of each exit to determine the number of additional emergency exits required for a school bus of a given capacity. In addition, the final rule specified minimum sizes of required emergency exits and set out the required number of emergency exits in the form of tables.

Since the relief sought by Thomas has already been granted, its petition for reconsideration is denied.

Authority: 49 U.S.C. 322, 30111, and 30162; delegation of authority at 49 CFR 1.50.

Issued on June 29, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

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[1] In the Wayne interpretation, NHTSA stated that if a side emergency exit door were partially obstructed by a seat, the area behind the seat bounded by the sides of the opening, a horizontal line tangent to the top of the seat back, and a vertical line tangent to the rearmost portion of the top of the seat back would be subtracted from the total area of the opening in determining the ''maximum unobstructed opening'' of the exit.