

200-01 upon a written determination of the acceptability of the standard by the Contracting Officer with the concurrence of the relevant Discipline Working Group.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-AG60

Defense Federal Acquisition Regulation Supplement; Balance of Payments Program Exemption for Commercial Information Technology—Construction Material (DFARS Case 2009-D041)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the exemption from the Balance of Payments Program for construction material that is commercial information technology. DATES: Effective Date: October 29, 2010. FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703-602-0328.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement in the clauses at 252.225-7044, Balance of Payments Program—Construction Material, and 252.225-7045, Balance of Payments Program—Construction Material under Trade Agreements, the exemption from the Balance of Payments Program for construction material that is commercial information technology.

DoD published a proposed rule in the Federal Register (75 FR 32636) on June 8, 2010. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact

on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to provide an exception to the Balance of Payments Program for commercial information technology to be used in overseas construction projects.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) does not apply because the proposed rule contains no information collection requirements.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

2. Section 252.225-7044 is amended by revising the clause date, revising paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b)(3), and adding new paragraph (b)(2) to read as follows:

252.225-7044 Balance of Payments Program—Construction Material.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL (OCT 2010)

* * * * *

(b) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

3. Section 252.225-7045 is amended by:

a. Revising the clause date, revising paragraph (c)(1), redesignating paragraph (c)(2) as paragraph (c)(3), and adding new paragraph (c)(2); and

b. In Alternate I, by revising the clause date, revising paragraph (c)(1), redesignating paragraph (c)(2) as paragraph (c)(3), and adding new paragraph (c)(2).

The revisions and additions read as follows:

252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (OCT 2010)

* * * * *

(c) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

ALTERNATE I (OCT 2010)

* * * * *

(c) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

[FR Doc. 2010-27304 Filed 10-28-10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2008-0613]

RIN 2127-AK49

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages, School Bus Passenger Seating and Crash Protection

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In this final rule, we respond to petitions for reconsideration of a final rule published on October 21, 2008, which upgraded NHTSA's school bus passenger crash protection requirements. This document denies most of the requests in the petitions for reconsideration.

To the extent we grant petitions, we make slight changes to the regulatory text of the October 2008 final rule to clarify the rule. We make clearer the procedure specifying how we will measure the height of school bus passenger torso belts, and we are clarifying that a requirement that seat belts be integral to the passenger seat (a requirement adopted to reduce the

likelihood of passengers getting injured by or tangled in loose belts) also applies to seats that have wheelchair positions or side emergency doors behind them, even if the seats are in the last row of vehicles. We are also slightly revising the procedure for testing the self-latching requirement for school bus seat cushions, to specify the weight that is placed on the seat cushion in Newtons, to specify that the downward force is applied in a one to five second timeframe, and to specify that activation of the self-latching mechanism is assessed using the seat cushion retention test. Those provisions make the language more consistent with that of a pre-existing seat cushion retention test in the standard.

DATES: The effective date of this final rule is April 27, 2011.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than December 13, 2010.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, Mr. Charles Hott, Office of Crashworthiness Standards (*telephone:* 202-366-0247) (*fax:* 202-366-4921), NVS-113. For legal issues, Ms. Dorothy Nakama, Office of the Chief Counsel (*telephone:* 202-366-2992) (*fax:* 202-366-3820), NCC-112. These officials can be reached at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background—October 21, 2008 Final Rule

In a final rule published on October 21, 2008 (73 FR 62744, NHTSA Docket No. 2008-0163), we (NHTSA) upgraded the school bus¹ occupant protection requirements of various Federal motor vehicle safety standards, primarily by amending FMVSS No. 222, “School bus passenger seating and crash protection” (49 CFR 571.222), and also by amending the requirements of FMVSS No. 207, “Seating systems,” No. 208, “Occupant crash protection,” and No. 210, “Seat belt assembly anchorages,” relating to the strength of the seating system and seat belt anchorages.^{2,3}

The final rule provided the most up-to-date information known to the agency on seat belts on large school buses. In the final rule, we explained the findings of NHTSA’s school bus research program conducted in response to the Transportation Equity Act for the 21st Century (TEA-21) and discussed principles that the agency weighed about belts on large buses. The document affirmed that States should have the choice of ordering seat belts on their large (over 4,536 kg (10,000 pounds (lb)) GVWR) school buses, but also affirmed that accident data and crash research findings did not support a conclusion that a Federal mandate for seat belts on large school buses was warranted. The final rule adopted performance and installation requirements for voluntarily-installed seat belts on large school buses to ensure the strength of the anchorages and that the belts will not degrade compartmentalization.⁴

¹ “School bus” is defined in 49 CFR 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. A “bus” is a motor vehicle, except a trailer, designed for carrying more than 10 persons. In this final rule, when we refer to “large” school buses, we refer to those school buses with gross vehicle weight ratings (GVWRs) of more than 4,536 kilograms (kg) (10,000 pounds (lb)). These large school buses may transport as many as 90 students. “Small” school buses are school buses with a GVWR of 4,536 kg (10,000 lb) or less. Generally, these small school buses seat 15 persons or fewer, or have one or two wheelchair seating positions.

² The October 21, 2008 final rule includes a detailed explanation of the rationale for the rulemaking. See 73 FR 62744.

³ The notice of proposed rulemaking (NPRM) preceding this final rule was published on November 21, 2007 (72 FR 65509; Docket No. NHTSA-2007-0014).

⁴ FMVSS No. 222 provides passenger crash protection using the “compartmentalization” concept. Compartmentalization ensures that passengers are cushioned and contained by the seats in the event of a school bus crash by requiring school bus seats to be positioned in a manner that provides a compact, protected area surrounding

The October 21, 2008 final rule’s most significant changes to FMVSS No. 222 involved:

- Requiring small school buses, which are currently required to have lap belts for passenger seating positions, to have a lap/shoulder belt at each passenger seating position (a “lap/shoulder belt” is a Type 2 seat belt assembly under FMVSS No. 209 (see S3));
- Increasing the minimum seat back height requirement from 508 millimeters (mm) (20 inches (in)) from the seating reference point (SgRP) to 610 mm (24 in) for all school buses;
- Incorporating performance requirements and other specifications into the standard to ensure that lap/shoulder belts in small school buses and voluntarily-installed lap and lap/shoulder belts in large school buses have sufficient strength and are compatible with compartmentalization; and,
- Requiring all school buses that have seat bottom cushions that are designed to flip up or be removable, typically for easy cleaning, to have a self-latching mechanism.

The first three upgrades were based on the findings of NHTSA’s school bus research program, discussed in detail in the preamble to the final rule, which the agency conducted in response to TEA-21.⁵ Requiring small school buses to have lap/shoulder belts for all passengers and raising the seat back height on all school buses to 610 mm (24 in) makes the highly protective interior of the school bus even safer. Further, as new designs of lap/shoulder belts intended for large school buses are emerging in the marketplace, the third initiative will require lap/shoulder belts to be complementary with compartmentalization, ensuring that the high level of passenger crash protection is enhanced and not degraded by any seat belt system.

each seat. If a seat is not compartmentalized by a seat back in front of it, compartmentalization must be provided by a padded and protective restraining barrier. The seats and restraining barriers must be strong enough to maintain their integrity in a crash, yet flexible enough to be capable of deflecting in a manner which absorbs the energy of the occupant. They must meet specified height requirements and be constructed, by use of substantial padding or other means, so that they provide protection when they are impacted by the head and legs of a passenger. Compartmentalization minimizes the hostility of the crash environment and limits the range of movement of an occupant. The compartmentalization approach ensures that high levels of crash protection are provided to each passenger independent of any action on the part of the occupant.

⁵ The fourth initiative, for self-latching mechanisms, responds to an NTSB recommendation to NHTSA (H-84-75).

II. Petitions for Reconsideration and Comments—Overview

NHTSA received petitions for reconsideration of the final rule from: school bus manufacturers Blue Bird Corporation (Blue Bird) and IC Bus, LLC (IC); seat manufacturers C.E. White Company (CEW) and M2K, LLC (M2K); and from the Marietta City School District (MCSD) of Ohio. With regard to changes to the regulatory text adopted by the October 2008 final rule, petitioners requested NHTSA to reconsider: The stringency of the FMVSS No. 210 requirements adopted for large school buses (IC believed the requirements were unnecessarily high); the application of FMVSS No. 207 to small school bus seats with lap/shoulder belts (Blue Bird believed the standard need not apply to the vehicles); the requirement for seat width (M2K believed all seats should be allowed to be a minimum of 257 mm (10.1 in) wide; the specifications in the final rule for measuring the school bus torso belt adjusted height (Blue Bird requested further clarification); the types of seats which must have integral seat belts (Blue Bird suggested that the requirement should apply to seats that have wheelchair positions or side emergency doors behind them); and, the test requirements for self-latching seat cushions (Blue Bird, M2K, MCSD).

With regard to several issues that were either outside the scope of this rulemaking or otherwise not properly the subject of a petition for reconsideration, NHTSA received comments from Public Citizen (PC), CEW and IC. PC requested that the agency require lap/shoulder seat belts in large school buses and that NHTSA investigate “whether compartmentalization can effectively restrain occupants in side-impact and rollover crashes.” CEW and IC asked NHTSA to change the GVWR cut off delineating “large” school buses from “small” school buses, from 4,536 kg (10,000 lb) GVWR to 6,577 kg (14,500 lb) (suggested by CEW) or 7,257 kg (16,000 lb) (suggested by IC). PC and the American Association for Justice (AAJ) objected to the agency’s discussion in the final rule of the assessment of the law relating to preemption of State tort law.⁶

⁶ Apparently interpreting the discussion as an assertion of preemption of state tort law, AAJ objected to the discussion just as it has objected to similar discussions in other NHTSA rulemaking actions since 2007. Public Citizen expressed similar objections to the preemption discussion in the preamble.

III. Petitions for Reconsideration of Amendments Adopted by Final Rule

a. Stringency of FMVSS No. 210 Requirements

Final Rule—In the final rule, we specified one anchorage strength requirement (i.e., 13,334 N (3,000 lb) applied to the torso and pelvic body blocks) for both large and small school buses with lap/shoulder seat belts. We explained in the final rule our reasons for keeping a single requirement in FMVSS No. 210 (73 FR at 62765), notwithstanding data from the post-NPRM testing^{7,8} that indicated that a large school bus pulse generates about 67 percent of the FMVSS No. 210 force, assuming two belted seating positions. (For three belted positions, it was determined that the same peak dynamic load generates 44 percent of the FMVSS No. 210 force.⁹) Included among our reasons for keeping a single requirement in FMVSS No. 210, equal to the more severe small school bus case, was that the 13,334 N (3,000 lb) FMVSS No. 210 requirement provides a safety margin we deem appropriate, and that a single requirement facilitates better efficiency in the testing. Further, NHTSA’s testing and the comments from school bus seat manufacturers led us to conclude that the 13,334 N (3,000 lb) requirement would not be difficult to meet. We also noted that commenters did not provide cost and weight data showing any cost savings resulting from a reduced loading for a larger class of school buses.

With regard to safety performance, we set the requirement at 13,334 N (3,000 lb) based in part on the recognition that anchorage strength provides the foundation upon which the restraint system is built. We believed that there was a safety need to require the anchorages on large school buses to meet the more stringent FMVSS No. 210 requirement because the safety margin provided by the requirement better ensures that the anchorages will be strong enough to deal with loading in excess of that exerted on the anchorages in the NHTSA research program, either because of use or misuse by larger occupants, the stiffness and mass of the vehicle (e.g., vehicles closer in mass to a small school bus than a large school bus will experience a more severe crash

⁷ “NHTSA Technical Analysis to Support the Final Rule Upgrading Passenger Crash Protection in School Buses,” September 2008.

⁸ “NHTSA Vehicle Research and Test Center’s Technical Report on Dynamic and Quasi-Static Testing for Lap/Shoulder Belts in School Buses,” September 2008.

⁹ This calculation assumes a bench seat with three fixed or flex-seating positions and that three 5th percentile female occupants would be generating the dynamic loading.

pulse), or because the crash could be more severe than the crash characteristics considered in the research program.

Petitions for Reconsideration—In its petition for reconsideration, IC requested that NHTSA reduce the anchorage strength requirement from 13,334 N (3,000 lb) to $\frac{2}{3}$ of the small bus requirement (the current FMVSS No. 210 requirement), due to our recognition in the final rule that large school buses experience lower crash forces than do small school buses. (IC had previously expressed this view in its comments on the NPRM.) IC believed that NHTSA’s testing and analysis suggest that a more appropriate strength requirement for large school buses would be $\frac{2}{3}$ of the small bus requirement. IC stated that it only builds large school buses “and could specifically develop a seating system that effectively protects the occupant and is more cost effective than the seat for a small school bus.” Based on its conversations with current seat suppliers, IC estimated that there could be a cost savings to a school district of \$10–\$15 per seat, or \$220–\$330 per typical 66 passenger bus. The petitioner stated that setting the FMVSS No. 210 requirement higher than necessary will drive up the cost of vehicles.

NHTSA’s Response—We are denying IC’s request. The petitioner’s views are repetitive of views it expressed in comments to the NPRM, to which NHTSA responded in the preamble of the final rule (73 FR at 62765).

We reiterate the agency’s position discussed in the final rule. We agree that the mass of the bus plays an important role in the amount of force that seat belt anchorages undergo in a crash. However, as we explained in the final rule preamble, we did not and do not believe that the data from the school bus research program should be used to define the upper bounds of the performance that should be prescribed for the seat belt anchorages. The frontal crash test into a fixed rigid barrier represents a crash between two vehicles of the same weight. The data, generated from a controlled laboratory environment, are inherently bounded to some degree in representing the force to which the anchorages could be exposed in a real-world environment.

In the laboratory sled test, the force measured on the anchorages was produced using test dummies of a certain mass, a crash pulse of a certain severity, and particular school bus seats. The final rule referenced sled tests with 50th percentile male dummies in school bus seats and a crash pulse representing a 30 mph full frontal rigid barrier crash

test of a 71 passenger Type C (conventional) school bus. The GVWR of this bus was 13,154 kg (29,000 lb) and the seat anchorage loads obtained were specific to the type and weight of the bus, crash type, and the size of the seated occupants. The anchorage loads would be higher for larger occupants (such as 95th percentile adult males which correspond to the size of some high school football players) and school buses closer in weight to a small school bus than the larger Type C school bus. As discussed in the final rule, since anchorage strength provides the foundation upon which the restraint system is built, there is a vital need to require the anchorages to meet the more stringent yet practicable FMVSS No. 210 requirements to ensure an adequate safety factor. Having this safety margin better ensures that the anchorages will be strong enough to withstand loads in excess of the load produced by the sled test, loads possibly resulting from “worst case” scenarios, *e.g.*, the use or misuse of the seat belts by larger occupants, use of an inordinately stiff and heavy seat, or a collision of high severity.

The 13,334 N (3,000 lb) FMVSS No. 210 load has been used to test seat belt anchorages for decades. Seat belt anchorages certified as meeting the requirements have a reliable and proven safety record. Our testing indicated that the same FMVSS No. 210 strength requirements for small and large school buses are practicable and would not be difficult to meet, a finding which was supported by comments from school bus seat manufacturers. While the crash pulse experienced by large school buses may be less severe than that of small school buses in similar collisions, applying the FMVSS No. 210 loads to seat belts that are voluntarily installed on large school buses will increase the likelihood that any seat belt that is installed will perform well under a wide range of crash conditions, occupant sizes, and seat belt use/misuse conditions.

Although it may appear that the anchorages of large school bus seats are required to be designed to a greater safety margin than those of small school bus seats, it is important to note that the additional FMVSS No. 207 seat inertial loading is only applied to small school bus seats during the FMVSS No. 210 test. We estimated that the combined FMVSS No. 210 and FMVSS No. 207 loads applied simultaneously exceed the actual measured total dynamic load on a small school bus seat with three seating positions by 50 percent and is approximately equivalent to the actual dynamic loads on a seat with two

seating positions.¹⁰ This additional FMVSS No. 207 seat load is not applied to large school bus seats—in part due to the wider safety margin (133 percent) associated with the FMVSS No. 210 strength requirement.

IC stated in its petition that most, if not all, bus manufacturers already build in a “safety margin” when producing their vehicles to ensure that the vehicle will meet the requirements in a compliance test, and so the “safety margin” that NHTSA has built into the regulation is compounded by the vehicle manufacturer’s safety margin.” While we are encouraged to know that some manufacturers build a safety margin in their vehicles, the agency cannot rely on a safety margin that is voluntary on the part of the manufacturer for its regulations.

IC presented no new data that supports its position that the anchorage strength for large school buses should be less than that for small school buses, except for an estimate of cost savings for a “two-thirds load seat,” which we find tenuous. As IC itself noted in its petition, “At this time it is difficult to accurately estimate the potential cost savings that would be associated with seating systems that meet 2/3 of the current FMVSS 210 requirement because such seating systems are not currently designed or available.”

Cost savings in the range of \$10–\$15 per seat appears high; the petitioner did not submit information explaining the basis for this cost estimate. As stated in the final rule preamble, we do not believe it is difficult from an engineering standpoint to meet the FMVSS No. 210 load requirement. We are not convinced that a two-thirds load seat would be engineered that differently from a full load FMVSS No. 210 seat. Further, as explained above, even if the seats are different, we believe that any added structure or reinforcement of the seat is a necessary measure to increase the likelihood of adequate performance of the seat and seat belt anchorages in misuse situations or in severe crashes.

IC further stated that the loading requirement for a flex seat, which has a seating position designed for a small occupant, should not be required to meet the same loading requirements as the current FMVSS No. 210. IC suggested that the load requirements for the “small occupant seating position” (*see* definition, FMVSS No. 222) be based on the weight of a 95th percentile 10-year-old multiplied by the measured pulse deceleration, which the petitioner suggested to be 13.5 g.

¹⁰ See 73 FR at 62758.

We are maintaining the FMVSS No. 210 anchorage load requirements at all flex-seat seating positions even though we acknowledge that some of the seating positions may likely contain smaller riders (and not exclusively larger riders) when the seat is at full capacity. However, as previously stated, anchorage strength provides the foundation upon which the restraint system is built and so providing a higher factor of safety as it relates to the applied test load for large occupants is not unreasonable. We established that our standard requires a minimum level of anchorage strength for larger occupants (or larger students) since it is conceivable that, when riding alone, they may have the option to sit in the center seating position of a flex-seat, for example, where the seat belt anchorage may potentially be loaded to a relatively high level in a crash scenario. Additionally, our testing of flex-seats suggests that there are no practicability concerns for meeting the FMVSS No. 210 load requirements.

IC suggested that there is a “distinctive difference” between school buses with a GVWR greater than 7,257 kg (16,000 lb) as compared to school buses with a GVWR less than or equal to 7,257 kg (16,000 lb). “School buses with a GVWR of less than 16,000 lbs. are most often based on a passenger or light truck vehicle. School buses with a GVWR greater than 16,000 lbs. are most often an integrated vehicle designed specifically for that application and components and systems are usually similar to medium and heavy duty trucks.” IC stated that if NHTSA is not inclined to lower the FMVSS No. 210 strength requirement for school buses greater than 4,536 kg (10,000 lb) GVWR, IC petitioned to change the requirement for school buses with a greater than 7,257 kg (16,000 lb) GVWR to two-thirds of the current FMVSS No. 210 strength requirement.

NHTSA is declining IC’s suggestion to lower the FMVSS No. 210 strength requirements for school buses with a GVWR greater than 7,257 kg (16,000 lb) for the same reasons we have denied IC’s petition to lower the FMVSS No. 210 requirements for large school buses overall. The crash pulse used in our sled tests where the maximum seat anchor loads during the sled tests were approximately two-thirds of those in a FMVSS No. 210 test was that of a school bus with a GVWR of 13,154 kg (29,000 lb) in a frontal crash into fixed rigid barrier. The seat anchor forces would be greater than those measured in the sled tests with a more severe crash pulse (*e.g.*, a lighter school bus crashing into a heavier and stiffer vehicle) and with

heavier occupants in heavier seats. IC provided no data to suggest that school buses with a GVWR greater than 7,257 kg (16,000 lb) will have seat belt anchorage loads two-thirds that of the current FMVSS No. 210 requirement under all passenger and crash conditions. We believe that a single criterion for application of FMVSS No. 210 loads to school bus seats is practicable. The anchorage strength provides the foundation upon which the restraint system is built and so providing a higher factor of safety as it relates to the applied test load for large school buses is not unreasonable. In addition, we are not applying the additional FMVSS No. 207 seat inertial loads to large school buses due to the wider safety margin associated with the uniform FMVSS No. 210 requirement. We require the additional FMVSS No. 207 loads to be applied simultaneously with the FMVSS No. 210 loads for small school buses.

With regard to IC's suggestion that the GVWR cut-off between large and small school buses should be set at a higher GVWR level, the agency's response to this and a related CEW suggestion is discussed later in this preamble. The agency is declining to make the change in this final rule.

In conclusion, for the reasons discussed above, we have determined that the FMVSS No. 210 loading requirement is appropriate for seat belts voluntarily installed on large school buses. Therefore, in this final rule, we will not lower the seat belt anchorage loads for large school buses.

b. Applying FMVSS No. 207 to Small School Buses

Final Rule—In the final rule, we decided it was necessary to apply FMVSS No. 207 to small school buses with lap/shoulder belts to minimize the possibility of the seats' failure by forces acting on them as a result of vehicle impact.¹¹ This decision disagreed with Blue Bird's comment on the NPRM, in which Blue Bird recommended not applying FMVSS No. 207 to small school buses. Blue Bird believed that FMVSS No. 207 was excessive because "the required FMVSS 210 loading captures the seat inertial loading at a deceleration level exceeding the 20g required by FMVSS 207."

In the final rule, we discussed our reasons for concluding that there was a safety need to apply FMVSS No. 207 to

small school buses. Among the reasons, we explained that the dynamic seat anchor loads measured in NHTSA's sled testing of small school bus seating systems (tests using a small school bus crash pulse with restrained test dummies in the bench seat under evaluation, and belted and unbelted test dummies in seats aft of the bench seat under evaluation) matched, or replicated with a reasonable safety margin, the total load on the seat from the combined FMVSS No. 207 and FMVSS No. 210 loads. In the agency's analysis, we included the rear loading to school bus seats from belted and unbelted occupants in the aft row.

Petition for Reconsideration—In its petition for reconsideration, Blue Bird disagreed with the final rule's requirement to apply FMVSS No. 207 loading to small school buses with lap/shoulder seat belt assemblies. Blue Bird stated that the additional load is not necessary if the loading from rear passengers is not taken into consideration, and provided an analysis of the loading without contact from rear passengers to the seat back.

Blue Bird stated that neither the NPRM nor the final rule mention any intent to have small school bus passenger seats withstand the loads resulting from contact by passengers seated behind them. Blue Bird expressed the belief that its analysis shows FMVSS No. 210 loading of small school bus passenger seats equipped with lap/shoulder seat belt assemblies captures the seat's inertial loading defined by FMVSS No. 207 with room to spare. Therefore, in Blue Bird's view, applying FMVSS No. 207's loading simultaneously is excessive. Blue Bird further argued that if the loading resulting from contact by occupants rearward of the seat is a concern, a separate rulemaking pertinent to that condition should be initiated.

NHTSA's Response—We are denying this request. To justify its view that FMVSS No. 210 alone was sufficient to ensure loading by the lap/shoulder seat belt assemblies, Blue Bird presented an analysis in its petition for reconsideration of the final rule similar to what Blue Bird submitted as its comment to the NPRM. In the analysis in its petition for reconsideration of the final rule, Blue Bird applied the ratio of small to large school bus loading reported in the final rule and assumed that there is no rear loading to school bus seats from belted occupants in the rear row (or argued that such rear loading should not be considered). It estimated the anchorage loads using the measured belt loads and computed inertial loads for the seat under

consideration without including the rear loading from belted occupants in the rear row.

We believe that Blue Bird's assertion that rear loading should be excluded from consideration is incorrect. The agency's analysis used the maximum loads measured directly at the seat attachment to the vehicle (Table 3.1 in the Technical Analysis supporting the final rule, *see* Docket No. NHTSA-2008-0163) and thus did not rely on a theoretical summation of belt loads and inertial loads as Blue Bird's did. Our analysis of the test data showed that the seat anchorage loads for a given crash pulse and seat type depend on the number of occupants in lap/shoulder belts, the occupants' size, and the contact from passengers rearward of the seat.

The agency's sled testing of school bus seats used a small school bus crash pulse and replicated a typical real world configuration of seats with belted 50th percentile male dummies in one row of school bus seats and both belted and unbelted 50th percentile male dummies in the row directly rear of the seats under consideration. In all the tests where there were belted or unbelted occupants in the row of seats to the rear of the seating row where the attachment loads were measured, the rear row occupants contacted the seats in front of them. The total seat anchorage loads measured in these sled tests included the seat back loading from the rear seat occupants. Therefore, the assertion that the agency did not take these loads into consideration is not correct. Blue Bird's analysis did not take into consideration all the loads experienced by the seat during a crash event, since it does not account for the loading of the seat from rear occupants.

Our analysis of the results of the sled testing showed that the combined FMVSS Nos. 207 and 210 loading levels match the dynamic loading level fairly closely for the seat configuration with two belted 50th percentile male occupants in the front and rear rows. This analysis supports the fact that the FMVSS No. 207 load is not redundant for small school buses and should be considered along with the FMVSS No. 210 loads.

We do not agree with Blue Bird's view that the agency made "no mention of any intent to have small school bus passenger seats withstand the loading resulting from contact by passengers seated behind them" in either the NPRM or final rule. The petitioner stated that we did not provide notice that we would be considering loads from rear passengers when we proposed to apply the FMVSS No. 207 requirements to

¹¹ S1, *Purpose and Scope*, of FMVSS No. 207 states: "This standard establishes requirements for seats, their attachment assemblies, and their installation to minimize the possibility of their failure by forces acting on them as a result of vehicle impact."

small school bus passenger seats. We disagree, as the purpose and scope of FMVSS No. 207 is to minimize the possibility of the failure of the seat's attachment to the vehicle as a result of forces during a vehicle impact. As such, it would have been remiss of the agency not to have considered all forces, including the forces on the seat from rear occupants, particularly unbelted occupants striking the seat backs, in its analysis.

Throughout the rulemaking, NHTSA discussed the importance it attached to developing performance criteria that accounted for the interaction between fore-and-aft passengers in school bus seats with lap/shoulder belts. The quasi-static test adopted by the final rule for testing school bus passenger seats with lap/shoulder belts was expressly developed to recognize the interaction between fore-and-aft passengers in bus seats. In the NPRM, NHTSA stated that the quasi-static test requirement was proposed "to test school bus seats with lap/shoulder belts, to help ensure that seat backs incorporating lap/shoulder belts are strong enough to withstand the forward pull of the torso belts in a crash and the forces imposed on the seat from unbelted passengers to the rear of the belted occupants." NPRM, 72 FR at 65514. (See also final rule, 73 FR at 62766. The agency developed the quasi-static test to ensure "that seat backs incorporating lap/shoulder belts are strong enough to withstand the forward pull of the torso belts in a crash and the forces imposed on the seat from unbelted passengers.")

In the NPRM and final rule (73 FR at 62766), we also described the sequence of events that the agency sought to replicate with the quasi-static test. NHTSA observed this sequence in a sled test involving two unbelted 50th percentile male dummies positioned behind a school bus bench seat containing two restrained 50th percentile male dummies.

1. The knees of the unbelted dummy to the rear struck the back of the forward seat, causing some seat back deflection.
2. The seat back was loaded by the shoulder belt of the restrained dummy in the forward seat.
3. The shoulder belt load was reduced as the seat back to which it was attached deflected forward.
4. The shoulder belt loads reduced to approximately zero when the unbelted dummies' chests struck the forward seat back.
5. The forward seat back deflected further forward as the energy from the unbelted dummies was absorbed.

With the emphasis NHTSA gave throughout the rulemaking to the forces

imparted on the seating system from passengers to the rear of the belted occupant, the agency provided ample notice that it would be considering the force generated by rear-seated occupants on a seating system in determining whether FMVSS No. 207 should apply to school bus seating systems.¹²

Considering the above, the agency provided notice that the load from the rear seat passenger would be considered. For those reasons, we will not revisit this issue with a separate rulemaking action to include the load from those passengers. Blue Bird's petition for reconsideration on the FMVSS No. 207 issue is thus denied.

c. Minimum Lateral Anchorage Separation

Final Rule—In the final rule, S5.1.7 of FMVSS No. 222 was amended to require that each passenger seating position with a lap/shoulder restraint system have a minimum seat belt lower anchor lateral spacing of: 280 mm (11.0 in) for flexible occupancy seats with the maximum number of occupants; and 330 mm (13 in) for flexible occupancy seats with the minimum occupancy configuration and for seats with fixed occupant capacity. Under FMVSS No. 210, movable (e.g., sliding) anchorages for an occupant seating position cannot be capable of being closer than 165 mm (6.5 in).

Petition for Reconsideration—In its petition for reconsideration, M2K states that the final rule's minimum lateral anchorage spacing requirement (280 mm for flexible occupancy seats with the maximum number of occupants; and 330 mm for flexible occupancy seats with the minimum occupancy configuration and for seats with fixed occupant capacity) is substantially more restrictive of seat design than the current FMVSS No. 210 requirement (S4.3.1.4), which specifies a minimum lateral spacing of 165 mm (6.5 in). M2K stated that data do not exist to demonstrate that the FMVSS No. 210 anchorage spacing is insufficient. It believed that the minimum lateral anchorage spacing should be the same distance as the hip breadth specified in the final rule update of FMVSS No. 208, which specifies the following occupant anthropometry in S7.1.4 of that standard: Hip breadth of 50th percentile 6-year-old child = 213 mm (8.4 in); hip

breadth of 50th percentile 10-year-old child = 257 mm (10.1 in).

M2K asks that the minimum lateral anchorage spacing be equal to the hip width of a 10-year-old (257 mm (10.1 in)) for all school bus passenger seats regardless of whether the seats are designed for "fixed" or "flexible" occupancy seat configurations. Despite being less than the 280 mm (11.0 in) requirement, M2K argued that the 257 mm (10.1 in) value established more stringent design criteria for school buses than the current FMVSS No. 210 requirement of 165 mm (6.5 in) for passenger vehicles and light trucks. The petitioner stated its belief that the 257 mm (10.1 in) value achieves NHTSA's stated goal of increasing protection for child occupants by preventing compressive loading of the iliac crests. M2K recommended that this recommendation would not exclude any of the three current "flex-seat" designs produced by IMMI, CE White, and M2K. M2K believed that the 257 mm (10.1 in) minimum spacing should apply to both fixed and laterally moveable anchorages on lap/shoulder seat belts for flex-seats, as well as for lap belts on fixed-capacity seats.

NHTSA's Response—We are denying this request. The agency specified a minimum lateral anchorage spacing to provide better pelvic load distribution for school bus passengers in frontal impacts. When anchorages are narrower than the occupant pelvis, the lap belt can wrap around the iliac crests and cause compressive loading. As discussed below, a minimum lateral spacing of 257 mm (10.1 in) recommended by M2K does not meet our objective of ensuring that excessive compressive loads are not induced by the school bus seat belt anchorages; the petitioner provided no information supporting its contrary view.

To determine the appropriate value for lateral anchorage separation for the final rule, the agency measured the lower anchorage spacing of several school bus seats with flexible and fixed occupancy. We determined that flexible occupancy seat designs in maximum occupancy configuration are able to achieve a lateral separation of the lower anchorages of no less than 280 mm (11.0 in) simultaneously in any seating position. This minimum lateral spacing of the lower anchorages specified in the final rule for flex-seats in its maximum occupancy configuration is slightly larger than the hip breadth of a typical 10-year-old child (257 mm or 10.1 in) and provides better pelvic load distribution than the 257 mm (10.1 in) lateral anchorage spacing. The 257 mm (10.1 in) lateral anchorage spacing

¹² In the NPRM, while considering the need for the FMVSS No. 207 test requirements for school buses, the agency compared the seat anchor loads in a dynamic sled test with belted occupants in the subject seat and unbelted occupants in the rear with the seat anchor loads generated in the proposed FMVSS Nos. 210, 207, and 222 quasi-static load tests. See 72 FR 65518.

recommended by M2K will be insufficient for occupants larger than an average 10-year-old, such as a 95th percentile 10-year-old with a hip breadth of 275 mm (10.8 in¹³). Further, reducing the anchorage spacing to 257 mm (10.1 in) as recommended by the petitioner would not gain additional seating positions for typical school bus seats. M2K provided no data or support for its assertion that a 257 mm (10.1 in) minimum lateral anchorage spacing requirement would prevent compressive loading of the iliac crests.

The 330 mm (13 in) minimum lateral lower anchor spacing specified in the final rule for flexible occupancy seats with the minimum occupancy configuration and for seats with fixed occupant capacity were based on our measurements of typical school bus seats. The 330 mm (13 in) lower anchor spacing is practicable and corresponds to the hip width of 5th percentile female and results in no loss in occupancy for typical school bus seat widths of 762, 991, and 1,143 mm (30, 39, and 45 in). In addition, we believe the 330 mm (13 in) minimum lateral anchor spacing will result in good load distribution on the pelvis for adult size occupants while the 257 mm (10.1 in) lateral anchor spacing recommended by the petitioner may result in excessive compressive loads on the pelvis.

We also note that M2K appears to believe that the minimum anchorage spacing does not apply to sliding anchorages.¹⁴ That understanding is not correct. In determining the minimum width for sliding anchorages, we will assess the minimum anchorage separation simultaneously achievable by the anchorages. That is, a sliding anchorage may increase the anchorage separation for one position while decreasing the separation for the other seating position. However, the configuration that results in the reduced anchorage separation must meet the specified minimum anchorage spacing requirement of 280 mm (11.0 in) simultaneously for all positions.

d. Clarifications of Torso Anchorage Location

Final Rule—NHTSA adopted requirements for the height of the torso belt anchorage to address the comfort of

¹³ Snyder *et al.*, "Anthropometry of infants, children and youth to age 18 for product safety design." University of Michigan report UM-HSRI-77-17, 1977, http://mreed.umtri.umich.edu/mreed/downloads/anthro/child/Snyder_1977_Child.pdf.

¹⁴ This was based on our reading of M2K's petition, which was in a sparsely-worded bullet format. One bullet states: "Spacing requirement only applies to fixed-anchorage seat belts, not sliding anchorages." (Emphasis in text.) No further discussion was provided by the petitioner.

the torso (shoulder) belt and to ensure that the torso belt anchorage is not below the shoulder, which could result in compressive loads on the occupant's spine in a frontal crash. The final rule amended FMVSS No. 210 to require that the torso belt anchor point (where the torso belt first contacts the uppermost torso belt anchorage) be fixed or adjustable to at least 400 mm (15.7 in) above the SgRP for a small occupant seating position of a flexible occupancy seat or at least 520 mm (20.5 in) above the SgRP for all other seating positions. (S4.1.3.2(a), FMVSS No. 210.)

The final rule also required that the height of the torso belt be adjustable from the torso belt anchor point to within at least 280 mm (11 in) vertically above the seating reference point SgRP. Id. The height of the torso belt, as adjusted, is measured by determining the "school bus torso belt adjusted height" as the term is defined in S3 of FMVSS No. 210. "School bus torso belt adjusted height" was added to FMVSS No. 210 to provide an objective means of determining the height position of the adjusted torso belt. "School bus torso belt adjusted height" is defined in S3 as: the vertical height above the SgRP of the point at which the torso belt deviates more than 10 degrees from the horizontal plane when the torso belt is pulled away from the seat by a 20 N (4.5 lb) force at a location on the webbing approximately 100 mm (3.94 in) from the adjustment device and the pulled portion of the webbing is held in a horizontal plane.

Petition for Reconsideration—In its petition for reconsideration, Blue Bird asked NHTSA to clarify the definition of "school bus torso belt adjusted height," particularly with respect to the phrase "deviates more than 10 degrees from the horizontal plane." Blue Bird stated that it is not possible to pull the webbing in a horizontal plane and maintain the original point of belt contact because the arc of the belt forces load the application device downward since the lower anchor point is fixed.

NHTSA's Response—The request is granted. We are clarifying the definition of "school bus torso belt adjusted height" and adding a new Figure 5 in FMVSS No. 210 to set forth in a clearer, more detailed manner how the torso belt adjusted height measurement will be made. The revised definition removes the confusing phrase "deviates more than 10 degrees from the horizontal plane" and adds a new figure to indicate that the measurement is made to a horizontal segment of the torso belt that is located between 25 mm to 75 mm (1 in to 3 in) forward of the adjustment device while applying a horizontal 20 N

(4.5 lb) force to the belt in the forward direction. The 20 N (4.5 lb) horizontal force is applied in the forward direction through the webbing at a location greater than 100 mm (3.94 in) forward of the adjustment device (as shown in the new Figure 5) after the retractor has been locked. Figure 5 also illustrates that slack should remain in the portion of the belt between its bottom anchorage and the point of force application. This slack allows the upper portion of the torso belt, between the point of force application and the adjuster, to be pulled in a horizontal plane. We believe these amendments address the petitioner's concerns.

e. Integration of the Seat Belt Anchorages Into the Seat Structure

Final Rule—The final rule specified that with the exception of the last row of seats, seat belt anchorages, both torso and lap, are required to be integrated into the seat structure. This requirement was established to prevent the incorporation of seat belt anchorages at locations that could result in belts potentially injuring unbelted school bus passengers in a crash or obstructing emergency egress.

In the final rule, based on comments received on this issue, we excluded the last row of seats from the requirement because we concurred that the risk of injury or obstruction is lessened for this row of seats. The last row of seats in conventional large and small school buses typically has two seats with a 610 mm (24 in) aisle (large buses) or 559 mm (22 in) aisle (small buses) between them, to provide access to the rear emergency exit door. FMVSS No. 217 imposes requirements for unobstructed passage through the door. Thus, at least in the immediate vicinity of the door, we determined that FMVSS No. 217 would prevent seat belts from being installed in such a way that could impede access to the emergency exit.¹⁵

Petition for Reconsideration—In its petition for reconsideration, Blue Bird suggested that some "last row" seats should not be excluded from the requirement that the belts be integrated into the seat structure. The petitioner stated that some customers order buses with seat plans that have a wheelchair position located behind the rearmost passenger seat. In other cases, the rearmost passenger seat is forward enough that a side emergency door would be rearward of it. Blue Bird stated that in those cases, the rearmost passenger seat should have its seat belt

¹⁵ The requirement for a large school bus emergency exit door opening is found in 49 CFR 571.217 S5.4.2.1(a)(1).

assembly anchorages attached to the seat structure to help prevent a trip hazard.

NHTSA's Response—We have granted this aspect of the petition. We agree with the petitioner that seats with a wheelchair position or an emergency exit behind them should be required to have the seat belt anchorages integrated into the seat structure to help assure that the belts do not present a safety hazard for unrestrained passengers or during emergency evacuation, i.e., to reduce the risk of tripping, entanglement or injury. We have revised S4.1.3.1 to make the exclusion narrower and clearer.

The final rule was ambiguous as to whether school bus seats that had a wheelchair position behind it comprised the last row of the school bus. Today's amendment makes S4.1.3.1 clear that seats in such a row are not excluded from the requirement for integral seat belts.

f. Seat Cushion Latches

Final Rule—The final rule amended S5.1.5 of FMVSS No. 222 to require latching devices for school bus seats that have latches that allow them to flip up or be removed for easy cleaning. We also established a test procedure that would require the latch to activate when a 22 kg (48.4 lb) mass is placed on top of the seat at the seat cushion's center. The 22 kg (48.4 lb) mass is representative of the weight of an average 6-year-old child. The test procedure is to ensure that an unlatched seat cushion will latch when an average 6-year-old child sits on the seat.

Petitions for Reconsideration—Marietta City School District (MCSD) of Ohio stated its belief that the requirement for self-latching seat cushions should be rescinded because the petitioner stated it presents a safety hazard or an "accident waiting to happen." MCSD suggested that students will quickly learn to unlatch the seats and push them out of place, place obstructive items in the latch area, or unlatch them as a prank.

M2K requested clarification of the test procedure for the seat cushion self-latching requirement specified in S5.1.5(a). It asked about the loading rate used to apply the 22 kg (48.4 lb) mass to the seat cushion, where on the seat cushion must the 22 kg (48.4 lb) mass be applied, and whether the 22 kg (48.4 lb) mass is a distributed load across the surface of the cushion or limited to a small percentage of the cushion area. Assuming the final rule is intended to ensure a child's weight alone will engage the latch mechanism, M2K suggested that a 213 mm x 305 mm (8.5

in x 12.2 in) rigid plate be used to "simulate the shape of a single 6-year-old" child, and that the agency should ballast the plate to ensure an evenly-distributed 22 kg (48.4 lb) mass. The petitioner suggested that the plate should be oriented longitudinally above the centerline of the seat and then dropped horizontally onto the seat cushion from a height of 250 mm (9.84 in). The petitioner further suggested that "NHTSA recommend the cushion latch mechanism make a distinct sound, similar to the 'click' of a seat belt latching, when engaged."¹⁶

In its petition for reconsideration, Blue Bird believed that the test load should be changed from "22 kg (48.4 pound)" to "23.6 kg (52 pound)." Blue Bird argued that no justification was provided for the 22 kg (48 lb) weight and the final rule (73 FR at 62760) stated that the Hybrid III 6-year-old child dummy weighed 52 lb (23.6 kg), so the test weight should be consistent with the Hybrid III 6-year-old dummy used in FMVSS No. 213, *Child Restraint Systems*.

NHTSA's Response—We are denying the petitions except for a few of the requests of M2K. We start by noting that this rulemaking does not require that seat bottom cushions be designed to flip-up without the use of tools. However, such seat cushion designs are popular with many school systems and are widely available in school buses purchased today. MCSD may have misunderstood the final rule in this regard.

We disagree with MCSD that requiring self-latching mechanism on seats designed to flip-up without the use of tools will result in a safety hazard.

¹⁶ M2K also recommended clarification of the test procedure for S5.1.5(b) of the seat cushion retention test. It stated that the method for testing the seat cushion is unclear and suggested clarification to the test procedure to allow, among other things, the load to be uniformly distributed across as much of the underside of the seat cushion as is practicable. M2K's suggestions are outside the scope of this rulemaking because changes to that test were not proposed in the NPRM. The procedure for performing the retention test has been in effect for over 30 years and school bus manufacturers are familiar with how the test is performed. The agency's compliance test procedure for the seat bottom cushion retention and self-latching tests are available on NHTSA's Web site at: <http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Vehicle%20Safety/Test%20Procedures/Associated%20Files/TP222-04.pdf>. The compliance test procedure for seat bottom cushion retention uses a force distribution pad of 102 mm radius between the load fixture and the cushion with a calibrated load cell between the seat cushion and load applicator. If it is not possible to use the distribution pad with 102 mm radius, a rectangular distribution pad of at least the same area is used to apply force to the seat cushion. An upward force equal to 5 times the weight of the seat cushion is applied in not less than 1 second or more than 5 seconds and maintained for 5 seconds.

The agency proposed and implemented the requirement in the final rule because current seats can be left unlatched and, in the event of a rollover crash, the seat frames could become exposed and the bottoms could detach and become projectiles. The self-latching provision established in the final rule ensures that those flip-up seats have a self latching mechanism, and thus promotes safety. The requirement implements a National Transportation Safety Board Recommendation to NHTSA (H-84-75).

To address M2K's suggestions about clarifying the test procedure for the self-latching seat requirement, this final rule makes minor revisions to the regulatory text so that the same tools and procedures can be used for the self latching test as those used for the seat retention test. We are changing the language to indicate a downward force, in Newtons (N), equivalent to the gravitational force exerted by a 22 kg mass ($22 \text{ kg} \times 9.81 \text{ m/s}^2 = 216 \text{ N}$ (48.4 lb)) that is currently specified to be placed on top of the center of the seat cushion be applied within 1 to 5 seconds and maintained for 5 seconds.¹⁷ We are also adding language clarifying that activation of the self-latching mechanism is assessed using the seat cushion retention test procedure and requirement.

We disagree with M2K's suggestion that the agency recommend that seat latch mechanisms make a distinct sound, similar to the "click" of seat belt latching, when engaged. We have no requirements in FMVSS No. 209, "Seat belt assemblies," requiring that the seat belt latching mechanism make an audible "click" sound when engaged. However, manufacturers have voluntarily included this feature for seat belt systems. We are not persuaded that requiring or recommending that the seat cushion self-latching mechanism make an audible sound when engaged is necessary. Manufacturers may include such features if there is a consumer demand for it.

We disagree with Blue Bird's statement that no justification was provided for the 22 kg (48.4 lb) weight and with Blue Bird's suggestion that the test load be changed from "22 kg (48.4 pounds)" to "23.6 kg (52 pounds)" to be consistent with the Hybrid III 6-year-old dummy in FMVSS No. 213. The NPRM and the final rule both indicated that the 22 kg (48.4 lb) mass was used to simulate the weight of an average 6-

¹⁷ Some manufacturers suggested that the 22 kg mass be dropped from a specified height. We decline this suggestion because applying the force within 1 to 5 seconds is a simple and practical method of load application and is similar to the force application in the seat retention test.

year-old child.^{18 19} In the October 21, 2008 final rule, at S7.1.4 of FMVSS No. 208, we included anthropometric data to indicate that the weight of a 50th-percentile 6-year-old child is 21.4 kg (47.3 lb). Thus, the agency used a 22 kg (48.4 lb) mass in the test and sufficient reasoning was provided in the NPRM and final rule. Furthermore, we are unconvinced that it is more desirable for the weight used in the test to match the weight of the Hybrid III 6-year-old dummy rather than the weight of an average 6-year-old child.

IV. Comments on Decisions Not Involving Regulatory Text

a. Requiring Large School Buses To Have Seat Belts

Final rule—In the final rule, we specified performance requirements for voluntarily-installed lap and lap/shoulder belts in large school buses to ensure both the strength of the anchorages and the compatibility of the seat with compartmentalization. We could not find a safety need to require passenger seat belt systems on large school buses to supplement the protection provided by compartmentalization.

Post Final Rule Comments—In a document styled as a petition for reconsideration, Public Citizen (PC) objected to the final rule's not requiring lap/shoulder passenger seat belts in new large school buses.²⁰ PC made several comments related to this issue.

1. PC asked the agency to revise its analysis of the potential benefits of lap/shoulder belts on large buses "to include updated analysis of multiple crash modes including side-impact and rollover. * * *" PC stated that NHTSA "must provide a more credible explanation of its determination of restraint performance in these other crash modes than the correlation to passenger cars."

2. PC objected to the following NPRM statement regarding NHTSA's best practices: "If ample funds were available for pupil transportation, and pupil transportation providers could order and purchase a sufficient number of school buses needed to provide school bus transportation to all children, pupil transportation providers should consider installing lap/shoulder belts on large school buses." The petitioner stated that this "undermines the safest

option for children on these buses rather than either refusing or encouraging lap/shoulder belt installation."

3. PC stated that it agrees with the National Transportation Safety Board (NTSB) comment that lap-only belts should not be permitted. PC stated that in 1999 the NTSB suggested there may be potential for greater injuries in occupants restrained using lap-only belts in side crashes. Further, PC stated that we have not discussed how raising the seat back height affects the performance of lap-only belts.

4. PC stated that NHTSA "does not discuss the effect of 'economies of scale' in reducing the incremental cost of adding belts to the buses * * *. Economies of scale and learning by doing can significantly reduce costs, but NHTSA's economic analyses makes no mention of these effects."

NHTSA's Response—The important public policy issue of whether to require the installation of seat belts for school bus passengers is before the agency in petitions for rulemaking submitted by the Center for Auto Safety, PC and a wide variety of school bus safety and medical organizations and associations. The agency will consider PC's comments in responding to those petitions.

b. Defining a "Small" School Bus

Final Rule—In the final rule, NHTSA declined the suggestions of some commenters to raise the gross vehicle weight rating (GVWR) delineation between "small" and "large" school buses from 4,536 kg (10,000 lb) to 6,576 kg (14,500 lb).²¹ The agency believed that the suggestion was beyond the scope of the rulemaking.

In administering NHTSA's school bus safety standards, the agency has historically used GVWR to determine the applicability of the FMVSS requirements and has historically used a GVWR of 4,536 kg (10,000 lb) to classify school buses. "Small" school buses (GVWR of 4,536 kg (10,000 lb) or less) have been required to have passenger seat belts while large school buses (GVWR above 4,536 kg (10,000 lb)) have not. The NPRM presented the agency's crash and sled test data relating to small and large school buses and discussed different views on the merits of having seat belts on small and large school buses. Nowhere in the NPRM was there a discussion about reclassifying some large school buses as small school buses or raising the 4,536

kg (10,000 lb) GVWR delineation. Nowhere in the NPRM was it proposed to require passenger seat belt systems in buses that are not currently required to have passenger seat belts, nor was it suggested that those buses should be subject to the other school bus safety standards applicable to small school buses.

Because the NPRM did not discuss the possibility of requiring passenger seat belt systems in buses between 4,536 kg (10,000 lb) and 6,576 kg (14,500 lb), NHTSA believed that raising the GVWR delineation to 6,576 kg (14,500 lb) and thus subjecting school buses with a GVWR between 4,536 kg (10,000 lb) and 6,576 kg (14,500 lb) to a new set of FMVSS requirements would be beyond the scope of the rulemaking. The agency thus declined to raise the GVWR cut-off in the final rule. We noted that the suggested change in that GVWR limit would not be trivial. Expanding the small school bus category as suggested would have resulted in a substantial increase in the fleet percentage of small school buses, from 7.2 to as much as 24 percent. 73 FR at 62757.

Post Final Rule Comments—In a document styled as a petition for reconsideration, CEW objected to the agency's decision not to increase the GVWR delineation to 6,576 kg (14,500 lb). CEW did not agree that the matter was beyond the scope of this rulemaking. CEW argued that it considers Type A-2 school buses²² to be "part and parcel" of the intent of the final rule and the agency should make determinations such as whether Type A-2 school buses are more similar to small school buses than large school buses. CEW stated that it is not clear why the agency stated that requiring Type A-2 school buses would raise the percent of school buses that would be required to have seat belts from 7.2 percent to 24 percent and it should have no bearing on whether Type A-2 school buses should have seat belts. CEW stated that the impact of requiring seat belts on Type A-2 school buses should not be material to making a determination for ensuring the safety of school bus passengers. Similarly, in its petition for reconsideration, IC supported increasing the GVWR delineation between small and large school buses. IC stated that there are structural differences between school buses with a GVWR greater than 6,576 kg (16,000 lb) as compared to those with

¹⁸ 72 FR 65515, school bus NPRM.

¹⁹ 73 FR 62756, school bus final rule.

²⁰ The NPRM did not propose to require passenger seat belts on large school buses. The NPRM discussed NHTSA's reasons for deciding not to propose passenger seat belts on large school buses.

²¹ Commenters sought to subject "Type A-2" school buses, which have a GVWR that can range up to 6,576 kg (14,500 pounds), to the requirements for small school buses.

²² Type A-2 school buses are large school buses with a GVWR between 4,536 kg (10,000 pounds) and 6,576 kg (14,500 pounds). These school buses have never been required to have passenger seat belts.

a GVWR less than or equal to 6,576 kg (16,000 lb).²³

NHTSA's Response—We stand by our determination that raising the GVWR delineation between small and large school buses to 6,576 kg (14,500 lb) was beyond the scope of the rulemaking, i.e., that adequate notice and an opportunity to comment on raising the GVWR cut-off was not provided by the NPRM. In the NPRM, the agency discussed upgrading the FMVSS No. 222 requirements for small (GVWR 4,536 kg (10,000 lb) or less) school buses, from the current requirement for passenger lap belts to an upgraded requirement for lap/shoulder belts and to raise seat back height. The agency also discussed upgrading the requirement for large (GVWR greater than 4,536 kg (10,000 lb)) school buses, setting performance standards for voluntarily-installed passenger seat belts and raising the seat back height. Type A-2 school buses (GVWR between 4,536 kg (10,000 lb) and 6,576 kg (14,500 lb) are considered “large” school buses and have never been required to have passenger seat belt systems. In the NPRM, we did not broach the issue of requiring some large school buses to have lap/shoulder belts. Newly requiring seat belts on these school buses would have been a significant departure from current requirements and an issue of which the public should have been informed. Likewise, the agency would have benefited from public comment on the issue to ensure that impacts on affected parties (e.g., school bus manufacturers, purchasers, and users) were all well considered.

The CEW's comment regarding requiring the installation of seat belts for passengers on larger school buses is before the agency in petitions for rulemaking submitted by the Center for Auto Safety, PC, and other organizations and associations. The agency will consider PC's comments in responding to those petitions.

c. Preemption

Final Rule—In the October 2008 final rule, NHTSA responded to the requirements of Executive Order (E.O.) 13132 (Federalism) in part by examining whether there might be any possible basis for a judicial finding of implied preemption of State tort law. NHTSA discussed the 2000 Supreme Court case, *Geier v. American Honda Motor Co.*,

and explained that when a State requirement stands as an obstacle to the accomplishment and execution of a NHTSA safety standard, the Supremacy Clause of the Constitution makes the State requirement unenforceable. The agency did not express or suggest any intent to preempt State tort law impliedly in the final rule. We stated: “NHTSA has not discerned any potential State requirements that might conflict with the final rule * * *. We cannot completely rule out the possibility that such a conflict might become apparent in the future through subsequent experience with the standard.” 73 FR at 62778.

Comment—In a document styled as a petition for reconsideration,²⁴ AAJ objected to NHTSA's discussion in the October 2008 final rule of *Geier v. American Honda Motor Co.*, and the agency's stating that there was the possibility that a conflict might become apparent in the future between a State requirement and the FMVSS. PC stated that the agency “must remove harmful language suggesting that the agency's minimum standards imply preemption of state tort law.”

NHTSA's Response—We believe that a fundamental misunderstanding lies at the heart of petitioners' characterization of the discussion in the final rule. AAJ has mistakenly characterized the agency's discussion of implied preemption, a discussion that we included in approximately two dozen other Federal motor vehicle safety standard rulemaking notices issued from February 2007 to November 2008. We explained those discussions at length in a June 14, 2010 final rule on FMVSS No. 305 (75 FR 33515, at 33524–33525), which we believe has addressed the concerns of AAJ and PC on this subject.

To summarize the agency's discussion in the FMVSS No. 305 final rule, in each of the **Federal Register** notices discussing *Geier* and the agency's response to E.O. 13132, NHTSA sought to explain that we had examined whether there might be any possible basis for a judicial finding of implied preemption of state tort law. In all but a few of those notices, we concluded each examination without identifying any potential obstacle or conflict that might give rise to such a finding.²⁵ The FMVSS No. 305 final rule explained that the agency has increasingly

clarified and amplified its discussion responding to E.O. 13132 in an attempt to end the misunderstandings and assuage concerns about the preemption discussion. Readers are referred to that document for a full discussion of the language in question. Similarly, NHTSA has clarified the discussion of E.O. 13132 found in today's document to make it consistent with the FMVSS No. 305 discussion. The agency's discussion in that document and the clarified language in this final rule should eliminate commenters' misunderstandings about this topic.

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866 and is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA prepared a final regulatory evaluation (FRE) for the October 21, 2008 final rule.²⁶ Today's document makes slight changes to the regulatory text of the October 2008 final rule to clarify the rule.

Today's document makes clearer the procedure specifying how we will measure the height of school bus passenger torso belts, and clarifies that a requirement that seat belts be integral to the passenger seat (a requirement adopted to reduce the likelihood of passengers getting injured by or tangled in loose belts) also applies to seats that have wheelchair positions or side emergency doors behind them, even if the seats are in the last row of vehicles. We have also slightly revised the test procedure for testing the self-latching requirement for school bus seat cushions, to specify the weight that is placed on the seat cushion in Newtons, and to specify that the downward force is applied in a one to 5 second timeframe. The changes in today's final rule do not affect the determinations of the FRE prepared for the October 21, 2008 final rule.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory

²³ IC stated in its petition: “School buses with a GVWR of less than 16,000 lbs. are most often based on a passenger or light truck vehicle. School buses with a GVWR greater than 16,000 lbs. are most often an integrated vehicle designed specifically for that application and components and systems are usually similar to medium and heavy duty trucks.”

²⁴ The agency does not consider this to be a petition for reconsideration, as NHTSA's preemption discussion was not a rule.

²⁵ The October 2008 final rule on FMVSS No. 222 was one of many notices in which we did not identify any potential obstacle or conflict.

²⁶ NHTSA's FRE for the October 21, 2008 final rule discusses issues relating to the rule's potential costs, benefits and other impacts. The FRE is available at Docket No. NHTSA-2008-0163 and may also be obtained by contacting <http://www.regulations.gov> or by contacting DOT's Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone 202-366-9324.

Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. According to 13 CFR 121.201, the Small Business Administration's size standards regulations used to define small business concerns, school bus manufacturers would fall under North American Industry Classification System (NAICS) No. 336111, *Automobile Manufacturing*, which has a size standard of 1,000 employees or fewer. Using the size standard of 1,000 employees or fewer, NHTSA estimates that there are two small school bus manufacturers in the United States (Trans Tech and Van-Con). NHTSA believes that both Trans Tech and Van-Con manufacture small school buses and large school buses.

I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we simply clarify requirements in FMVSS No. 210 and clarify test procedures in FMVSS No. 222. These clarifications will impose no costs on small businesses beyond those described in the Regulatory Flexibility Act section of the final rule of October 21, 2008 (*see* 73 FR at 62777).

Executive Order 13132

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient

federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.

49 U.S.C. 30103(b)(1). It is this statutory command that preempts any non-identical State legislative and administrative law²⁷ addressing the same aspect of performance.

Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. That possibility is dependent upon there being an actual conflict between a FMVSS and the State requirement. If and when such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. *See Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000), finding implied preemption of state tort law on the basis of a conflict discerned by the court,²⁸ not on the basis of an intent to preempt asserted by the agency itself.²⁹

NHTSA has considered the nature (*e.g.*, the language and structure of the regulatory text) and objectives of today's final rule and does not discern any existing State requirements that conflict with the final rule or the potential for any future State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of state law, including state tort law.

²⁷ The issue of potential preemption of state tort law is addressed in the immediately following paragraph discussing implied preemption.

²⁸ The conflict was discerned based upon the nature (*e.g.*, the language and structure of the regulatory text) and the safety-related objectives of FMVSS requirements in question and the impact of the State requirements on those objectives.

²⁹ Indeed, in the rulemaking that established the rule at issue in *Geier*, the agency did not assert preemption.

National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's final rule does not establish any new information collection requirements.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104-113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." OMB Circular A-119 "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (February 10, 1998) establishes policies to implement the NTTAA throughout Federal executive agencies. In Section 4.a. of OMB Circular A-119, "voluntary consensus standards" are defined as standards developed or adopted by voluntary consensus standards bodies, both domestic and international. After carefully reviewing the available information, NHTSA has determined that there are no voluntary consensus standards relevant to this rulemaking.

Executive Order 12988

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent

with that requirement. The preemptive effect of this final rule has been discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This final rule will not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This rulemaking is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

Executive Order 13211

Executive Order 13211 (66 FR 28355, May 18, 2001) applies to any rulemaking that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This rulemaking is not subject to E.O. 13211.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number

(RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Part 571 as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 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. Section 571.210 is amended by revising in S3, the definition for “school bus torso belt adjusted height”; revising S4.1.3.1; revising S4.1.3.2(a); and by adding Figure 5 at the end of the section, to read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages.

* * * * *

S3. Definitions.

School bus torso belt adjusted height means the vertical height above the seating reference point (SgRP) of the horizontal plane containing a segment of the torso belt centerline located 25 mm to 75 mm forward of the torso belt height adjuster device, when the torso

belt retractor is locked and the torso belt is pulled away from the seat back by applying a 20 N horizontal force in the forward direction through the webbing at a location 100 mm or more forward of the adjustment device as shown in Figure 5.

* * * * *

S4.1.3 School bus passenger seats.

S4.1.3.1 For school buses manufactured on or after October 21, 2011, seat belt anchorages for school bus passenger seats must be attached to the school bus seat structure, including seats with wheelchair positions or side emergency doors behind them. Seats with no other seats behind them, no wheelchair positions behind them and no side emergency door behind them are excluded from the requirement that the seat belt anchorages must be attached to the school bus seat structure. For school buses with a GVWR less than or equal to 4,536 kg (10,000 pounds), the seat belt shall be Type 2 as defined in S3. of FMVSS No. 209 (49 CFR 571.209). For school buses with a GVWR greater than 4,536 kg (10,000 pounds), the seat belt shall be Type 1 or Type 2 as defined in S3. of FMVSS No. 209 (49 CFR 571.209).

*S4.1.3.2 * * **

(a) For a small occupant seating position of a flexible occupancy seat, as defined in 49 CFR 571.222, the school bus torso belt anchor point must be 400 mm or more vertically above the seating reference point (SgRP) or adjustable to 400 mm or more vertically above the SgRP. For all other seating positions, the school bus torso belt anchor point must be 520 mm or more vertically above the SgRP or adjustable to 520 mm or more vertically above the SgRP. The school bus torso belt adjusted height at each seating position shall be adjustable to no more than 280 mm vertically above the SgRP in the lowest position and no less than the required vertical height of the school bus torso belt anchor point for that seating position in the highest position. (See Figure 4.)

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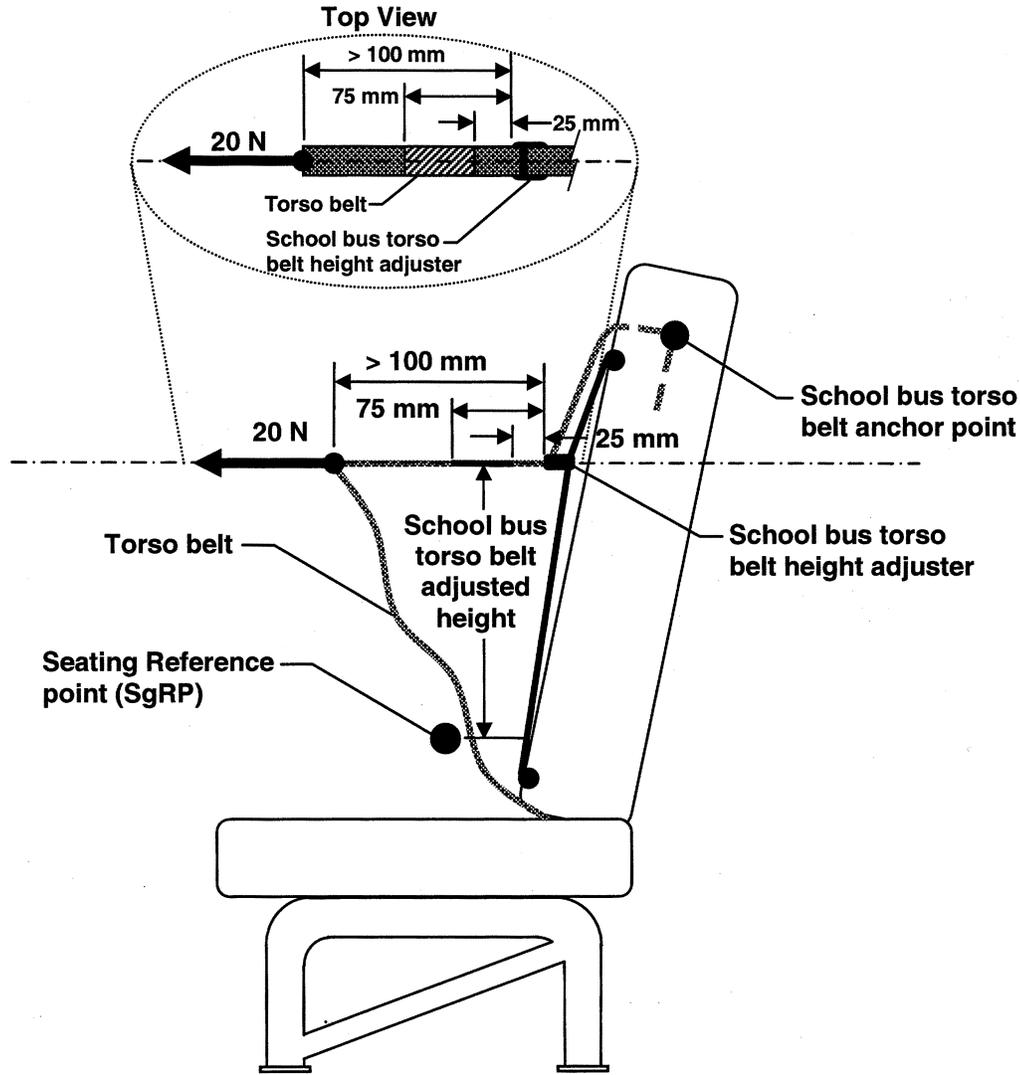


Figure 5 – Minimum school bus torso belt adjusted height measurement

■ 3. Section 571.222 is amended by revising S5.1.5 and adding S5.1.5.1 and S5.1.5.2 to read as follows:

§ 571.222 Standard No. 222; School bus passenger seating and crash protection.

* * * * *

S5.1.5 Seat cushion latching and retention.

(a) School bus passenger seat cushions equipped with attachment devices that allow for the seat cushion to be removable without tools or to flip up must have a self-latching mechanism that latches when subjected to the conditions specified in S5.1.5.1. The seat cushion shall not separate from the

seat at any attachment point when subjected to the conditions specified in S5.1.5.2 after being subjected to the conditions of S5.1.5.1.

(b) School bus passenger seat cushions that are removable only with the use of tools shall not separate from the seat at any attachment point when subjected to the conditions of S5.1.5.2.

S5.1.5.1 Release the seat cushion self-latching mechanism. Lift the seat cushion then place the seat cushion back in the down position without activating the self-latching mechanism, if possible. Apply a downward force of 216 N (48.4 pounds) to the center of the seat cushion. The downward force shall

be applied in any period of not less than 1 and not more than 5 seconds, and maintained for 5 seconds.

S5.1.5.2 Apply an upward force of 5 times the weight of the seat cushion to the center of the bottom of the seat cushion. The upward force shall be applied in any period of not less than 1 and not more than 5 seconds, and maintained for 5 seconds.

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Issued on: October 20, 2010.

David L. Strickland,
Administrator.

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