

■ 11. Section 2400.47 is revised to read as follows:

**§ 2400.47 Summer Institute's relationship to fellowship.**

Each year, the Foundation normally offers during July a four-week graduate-level Institute on the principles, framing, ratification, and implementation of the United States Constitution at an accredited university in the Washington, DC, area. The Institute is an integral part of each fellowship.

■ 12. Section 2400.48 is revised to read as follows:

**§ 2400.48 Fellows' participation in the Summer Institute.**

Each fellow is required as part of his or her fellowship to attend the Institute (if it is offered), normally during the summer following the Fellow's commencement of graduate study under a fellowship.

**§ 2400.50 [Amended]**

■ 13. Section 2400.50 is amended by removing "For their participation in the Institute, Fellows are paid" and adding, in its place, "At the Foundation's discretion, Fellows may be paid".

**§ 2400.53 [Amended]**

■ 14. Section 2400.53 is amended by adding a new sentence at the end to read "A waiver of the time limit may be given for full-time students who require more than 36 credit hours or 54 quarter hours to complete their approved degree."

■ 15. Section 2400.55 is amended by revising paragraphs (f) and (i) to read as follows:

**§ 2400.55 Certification for stipend.**

\* \* \* \* \*

(f) The amount and nature of income from any other grants or awards;

\* \* \* \* \*

(i) A full Plan of Study over the duration of the fellowship, including information on the contents of required constitutional courses. Senior Fellows must provide evidence of their continued full-time employment as teachers in grades 7–12.

■ 16. Section 2400.56 is revised to read as follows:

**§ 2400.56 Payment of stipend.**

Payment for tuition, required fees, books, room, and board subject to the limitations in §§ 2400.52 through 2400.55 and §§ 2400.59 through 2400.60 will be paid via Electronic Funds Transfer to each Fellow at the beginning of each term of enrollment and upon the Fellow's submission of a completed Payment Request Form which includes

the current University bulletin of cost information.

**§ 2400.58 [Amended]**

■ 17. In § 2400.58, paragraph (a) is amended by removing the words "fewer than" and adding, in their place, the words "at least"; and paragraph (b) is amended by removing the words "the Foundation will seek to recover" and adding, in their place, the words "the Fellow must repay".

**§ 2400.60 [Amended]**

■ 18. In § 2400.60, paragraph (a) is amended by removing the words "unless they are credited to the minimum number of credits required for the degree" at the end of the paragraph.

**§ 2400.61 [Amended]**

■ 19. Section 2400.61 is amended by adding a new sentence at the end to read "All postponements are given at the Foundation's discretion and will normally not extend for more than one year."

■ 20. Section 2400.63 is revised to read as follows:

**§ 2400.63 Excluded graduate study.**

James Madison Fellowships do not provide support for study toward doctoral degrees, for the degree of master of arts in public affairs or public administration. The Foundation may at its discretion, upon request of the Fellow, provide tuition only assistance toward teacher certification.

[FR Doc. 04–5585 Filed 3–11–04; 8:45 am]

BILLING CODE 6820–05–P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA–99–5157]

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

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

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** NHTSA published a final rule in April 2002 that amended the Federal motor vehicle safety standard on bus emergency exits and window retention and release. The agency received several petitions for reconsideration of the rule. At present, the rule is to take effect on

April 21, 2004. To allow for more time to respond to the petitions, this document delays the effective date of the final rule.

**DATES:** The effective date of the final rule published on April 19, 2002 (67 FR 19343) and amended on April 22, 2003 (68 FR 19752), is delayed until April 21, 2006. Any petitions for reconsideration of today's final rule must be received by NHTSA not later than April 26, 2004.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical issues you may call: Mr. Charles Hott, Office of Crashworthiness Standards, at (202) 366–0247. Mr. Hott's FAX number is: (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her FAX number is: (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standard No. 217, *Bus emergency exits and window retention and release*, (49 CFR 571.217) (FMVSS No. 217), specifies requirements for the retention of windows other than windshields in buses, and for operating forces, opening dimensions, and markings for bus emergency exits. The purpose of FMVSS No. 217 is to minimize the likelihood of occupants being thrown from the bus in a crash and to provide a means of readily accessible emergency egress.

**2002 Final Rule**

On April 19, 2002 (67 FR 19343) (DMS Docket No. NHTSA–99–5157), NHTSA published a final rule amending FMVSS No. 217 to reduce the likelihood that wheelchair securement anchorages<sup>1</sup> would be installed such that a wheelchair secured thereto would block access to emergency exit doors. For a side emergency exit door, the final rule restricted these anchorages from being placed in an area bounded by transverse vertical planes 305 mm (12 inches) forward and rearward of the center of the door aisle and a longitudinal vertical plane through the longitudinal centerline of the school bus.

For a rear emergency exit door, the final rule restricted the anchorages from being placed in an area bounded by:

<sup>1</sup> Defined at S4 of 49 CFR 571.222.

(a) longitudinal vertical planes tangent to the left and right sides of the door opening;

(b) a horizontal plane 1,145 mm (45 inches) above the bus floor; and

(c) a transverse vertical plane that is either: (1) 305 mm (12 inches) forward of the bottom edge of the door opening (for school buses with a gross vehicle weight rating (GVWR) over 4,536 kg (over 10,000 lb), or

(2) 150 mm (6 inches) forward of the bottom edge of the door opening within the bus occupant space (for school buses with a GVWR of 4,536 kg or less)(10,000 lb or less).

The final rule also provided that in school buses with one or more wheelchair securement anchorages, emergency exit doors and emergency exit windows labeled as such must also bear a label stating, "DO NOT BLOCK". The agency said that access to these doors and exits should never be blocked with wheelchairs or other items, such as book bags, knapsacks, sports equipment or band equipment.

The final rule specified an effective date of April 21, 2003 for these amendments.

#### Petitions for Reconsideration

NHTSA received petitions for reconsideration of the April 19, 2002 final rule from three school bus manufacturers: Thomas Built Buses; American Transportation Corporation (now known as IC Corporation); and Blue Bird Body Company. The three petitioners requested reconsideration of the final rule's use of transverse vertical and horizontal planes to define the area around the side and rear emergency exit doors where wheelchair anchorages may not be located. All three companies stated that the area should instead be defined using "the rectangular parallelepiped fixture." The fixture is described in S5.4.2.1 of the standard.

The petitioners also raised other issues for reconsideration. They requested clarification of whether the "DO NOT BLOCK" warning label specified in the final rule is required for both emergency exit doors and emergency exit windows or emergency exit doors only. They asked for clarification about the intent of the "DO NOT BLOCK" warning label. In addition, a manufacturer asked NHTSA to clarify whether emergency exits not required by FMVSS No. 217 must meet FMVSS No. 217 emergency exit requirements.

In a letter dated January 29, 2003, Blue Bird Body Corporation asked NHTSA to delay the effective date of the rule by a year. Blue Bird asked for a one-year delay to give NHTSA an additional

six months to respond to the petitions for reconsideration and to provide the school bus industry at least six months lead time to implement the changes. In a **Federal Register** document of April 22, 2003 (68 FR 19752), NHTSA delayed the effective date to April 21, 2004.

#### Present Effective Date

The petitions for reconsideration ask us to amend the final rule's method of determining the areas on a school bus where wheelchair securement anchorages must not be installed. Our response to those petitions could affect current designs of school bus exits. The agency is in the process of responding to the petitions. A 24-month extension of the effective date, to April 21, 2006, preserves the status quo until then. The benefits from the April 2002 rulemaking cannot be quantified, and are likely minor.

#### This Document Takes Effect Immediately

Because the April 21, 2004 effective date for the final rule is fast approaching, NHTSA finds for good cause that this action delaying the effective date should take effect immediately. Today's final rule makes no substantive change to the standard, but delays the effective date of the April 19, 2002 final rule for another two years while the agency responds to the petitions for reconsideration of the rule.

#### Rulemaking Analyses and Notices

##### A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, we have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979).

This final rule delays the effective date of an April 19, 2002 final rule. There are no additional costs associated with today's final rule.

##### B. Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that the amendment will not have a significant economic impact on a substantial number of small entities. The rule will not impose any new requirements or costs on

manufacturers, but instead will only preserve the *status quo* for 24 months.

##### C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), 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. Since it only delays the effective date of a final rule, this final rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained.

##### D. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act. We have determined that implementation of this action will not have any significant impact on the quality of the human environment.

##### E. Executive Order 13132, Federalism

This 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, as specified in Executive Order 13132.

##### F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings are not required before parties may file suit in court.

##### G. Unfunded Mandates Reform Act

This final rule will not result in costs of \$100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

*H. Executive Order 13045—  
Economically Significant Rules  
Disproportionately Affecting Children*

This rule is not subject to E.O. 13045 because it is not “economically significant” as defined under E.O. 12866, and does not concern an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 9, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04–5691 Filed 3–11–04; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 030221039–4086–07; I.D. 030904A]

#### **Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP’s implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,518 square nautical miles (nm<sup>2</sup>) (5,206.6 km<sup>2</sup>), east of Portsmouth, NH, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

**DATES:** Effective beginning at 0001 hours March 14, 2004, through 2400 hours March 28, 2004.

**ADDRESSES:** Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

#### **FOR FURTHER INFORMATION CONTACT:**

Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

#### **SUPPLEMENTARY INFORMATION:**

##### **Electronic Access**

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at <http://www.nero.noaa.gov/whaletrp/>.

##### **Background**

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP’s DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 4° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) Require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15-day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15-day period and asking fishermen not to set any additional gear in the DAM zone during the 15-day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm<sup>2</sup> (139 km<sup>2</sup>)) such that right whale density is equal to or greater than 0.04 right whales per nm<sup>2</sup> (1.85 km<sup>2</sup>). A

qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On March 4, 2004, NMFS Aerial Survey Team reported a sighting of three right whales in the proximity of 42° 45.5’ N lat. and 68° 55.5’ W long. This position lies east of Portsmouth, NH. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15-day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bound by the following coordinates:

43°05’N, 69°22’W (NW Corner)  
43°05’N, 68°29’W  
42°26’N, 68°29’W  
42°26’N, 69°22’W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: During March, this DAM zone overlaps both the Northeast multispecies’ Cashes Ledge Closure Area and a portion of Rolling Closure Area I. During April, this DAM zone overlaps both the Northeast