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U.S. Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

**Public Citizen's Comments on Federal Motor Vehicle Safety Standards (FMVSS);
Definition of Multifunction School Activity Bus (MFSAB); Notice of Proposed Rulemaking
(NPRM)**

**NHTSA Should Focus Its Rulemaking Activities on More Significant Problems Afflicting
Highway Safety**

The National Highway Traffic Safety Administration (NHTSA) proposes to establish a subcategory of small school buses known as "multifunction school activity buses" (MFSAB). MFSABs would be used by child care facilities, coordinated transportation systems and by schools for extracurricular activities. Unlike standard school buses that stop frequently along roadways, because a MFSAB would not transport students between home and school, the agency proposes to renounce the requirement for traffic controls. A multifunction school activity bus would therefore be exempt from traffic control features such as the four-way/ eight-way alternating flashing lights required by Federal Motor Vehicle Safety Standard (FMVSS) 108 and the stop-arm required by FMVSS 131. However, the relatively small vehicle class would be required to comply with all other school bus crash avoidance requirements as well as all crashworthiness and post-crash requirements.

Due to federal restrictions on funds for the purchase school buses that exclusively transport students and school personnel that operate in competition with a private school bus operator, the agency believes that creating a MFSAB vehicle class will help Head Start programs and coordinated transportation providers¹ purchase crashworthy buses. The MFSAB will qualify as an allowable alternative vehicle under Head Start Regulations set forth in 45 CFR § 1310.12 "Required Use of School Buses or Allowable Alternate Vehicles." The agency notes this rulemaking action is needed in order to "resolve the conflict between current NHTSA requirements that all new school buses be equipped with [traffic control devices]...and State

¹ "Coordinated transportation systems" provide a wide range of transportation services that can include transporting children to or from Head Start Programs and transporting senior citizens to social service facilities. *See* 67 FR 67373, 67374.

laws that do not permit the use of those devices on trips that do not involve transporting children between home and school.”²

We recognize the importance of enabling Head Start programs to purchase vehicles that meet the crash avoidance and protection requirements for school buses, and do not object to the agency’s proposal. Public Citizen believes however, that this rulemaking also provides an ideal opportunity to address a far greater risk to college students, youth groups and others who ride in dangerously rollover-prone 15-passenger vans. With a slight change to the current proposal, by creating a new category of buses named Multi-Function Activity Buses rather than Multi-Function *School* Activity Buses, NHTSA can ensure that all buses weighing less than 15,000 pounds meet the school bus crash avoidance, crashworthiness and post-crash requirements required for school buses, which do not apply to 15-passenger vans. Like a MFSAB, a Multi-Function Activity Bus would not transport children between school and home, and would therefore not be required to have traffic control devices installed.

In creating the Multi-Function Activity Bus vehicle class, the agency would still be able to resolve the regulatory conflict hamstringing Head Start programs from purchasing crashworthy vehicles with federal funding. In addition to preventing countless deaths and injuries, taking this action will eliminate the need for regulatory agencies such as NHTSA, the National Transportation Safety Board (NTSB) and the National Center for Statistics and Analysis (NCSA) to conduct further research into 15-passenger van safety and will permit these agencies to focus their research efforts on other threats to highway safety.

The 15-Passenger Van is a Regulatory Pariah that Must be Brought Under the Federal Motor Vehicle Safety Program

Fifteen-passenger vans exist in regulatory limbo as loophole vehicles under federal law. Because they are designed to carry over 10 passengers, they are classified as buses, yet they need not meet the more stringent crash protection standards required of both large and small school buses. Yet, the vehicles also need not satisfy certain protective federal motor vehicle safety standards that apply to smaller vans, sport utility vehicle (SUVs) and passenger cars.³ They are also essentially orphaned by the ongoing work at the nation’s highway safety agency. They are not included in NHTSA’s New Car Assessment Program, which conducts crash tests of vehicles and publishes the results, nor are they a subject of the agency’s research and pending new rule on a rollover risk testing program. Fifteen-passenger vans are more like light vehicles (in fact, they are built on the chassis of light cargo vans) than the large motorcoaches and specialty buses with which they are currently classified.

There are also important loopholes in the laws governing 15-passenger vans that pose a unique threat to the safety of children. If a new “bus” is sold or leased to significantly transport school children either to or from school, the bus must comply with all federal school bus safety standards, which are designed to provide occupants with a higher level of safety than regular bus

² *Id.*

³ A chart comparing the applicability of Federal Motor Vehicle Safety Standards to cars, multi-purpose passenger vehicles and large and small school buses is attached to these comments.

standards.⁴ Because 15-passenger vans do not meet key federal motor vehicle safety crash standards (FMVSS) for school buses, the law prohibits the sale or lease of *new* 15-passenger vans for significant use in primary and secondary school-related transport.

Although both NHTSA and the NTSB recommend that states require that all school children be transported in buses meeting the FMVSS requirements for school buses, neither agency has the jurisdiction to issue such a regulation. Under current law, pupil transportation is regulated by the states. Therefore, schools are not currently prohibited from buying or leasing *used* 15-passenger vans. NHTSA does, however, have the authority to adopt this vehicular orphan into a more protective regulatory family by reclassifying it as part of a new vehicle class.

In April 2001 and again in April 2002, NHTSA issued consumer advisories⁵ warning 15-passenger van drivers of ways to reduce the risk of rollover. Also, the agency released a study evaluating the rollover propensity of 15-passenger vans that found the rollover rate to be proportionally linked to the number of vehicle occupants. The NTSB published a study⁶ on pupil transportation in nonconforming vehicles,⁷ sent safety recommendations to the Chief Executive Officers of Ford Motor Company and General Motors Corporation,⁸ and recently published an evaluation of the rollover risk of 15-passenger vans.⁹ In addition, Public Citizen released a report and held a press conference to inform consumers about the rollover risk of these vans and to recommend that manufacturers retrofit 15 passenger vans with dual rear wheels as a short term solution and redesign them for the future.¹⁰

Between 1990 and 2000, 864 occupants of 15-passenger vans died in crashes, 424 of them in single-vehicle rollover crashes, producing a vehicle death rate that is far higher than it should be given the relatively small number of these vehicles that are on the road, as well as an

⁴ See 49 U.S.C. § 30125.

⁵ See NHTSA Consumer Advisory, April 9, 2001, <http://www.nhtsa.dot.gov/nhtsa/announce/press/2001/pressdisplay.cfm?year=2001&filename=ca-010409.html>; *NHTSA Repeats Rollover Warning To Users of 15-Passenger Vans*, April 15, 2002, <http://www.nhtsa.dot.gov/nhtsa/announce/press/pressdisplay.cfm?year=2002&filename=pr27-02.html>.

⁶ National Transportation Safety Board, Highway Special Investigation Report, *Pupil Transportation in Vehicles Not Meeting Federal School Bus Standards*, June 8, 1999, NTSB/SIR-00/02.

⁷ The term “nonconforming vehicle” is used to describe vehicles used for school transportation that don’t meet Federal School Bus Standards.

⁸ Safety recommendation letter from National Transportation Safety Board to William Clay Ford, Jr., Chairman and Chief Executive Office, Ford Motor Company and Mr. G. Richard Wagoner, Jr., President and Chief Executive Officer, General Motors Corporation, Nov. 1, 2002, H-02-29.

⁹ National Transportation Safety Board, Safety Report: *Evaluation of the Rollover Propensity of 15-passenger Vans*, October 15, 2002, NTSB/SR-02/03.

¹⁰ Public Citizen, C. Tab Turner, *Stopping Rollovers: The Dual Rear Wheel Solution for 15-Passenger Vans*, November 2002.

extraordinarily high death rate in rollover crashes.¹¹ When loaded in excess of 10 occupants, the rollover propensity of 15-passenger vans increases by a factor of three.¹² In fact, 15-passenger vans have a rollover ratio¹³ of 85 percent compared to a ratio of 28.3 percent for vans with fewer than 5 occupants.¹⁴ According to a NTSB Safety Report adopted October 15, 2002:

“...15-passenger van accidents are involved in a higher percentage of rollover accidents than are passenger cars and smaller vans. About 52 percent of the 15-passenger vans involved in single-vehicle, fatal accidents experience a rollover compared to 33 percent of the passenger automobiles involved in such accidents. Additionally, 81 percent of the 15-passenger van occupant fatalities occur in single-vehicle rollover accidents.”¹⁵

The National Transportation Safety Board Recommends that NHTSA Better Regulate Bus Crashworthiness

In a Highway Special Investigation Report published after the investigation of four bus crashes in nonconforming vehicles, the National Transportation Safety Board (NTSB) recommended to the 50 States and the District of Columbia:

“all vehicles carrying more than 10 passengers (buses) and transporting children to and from school and school related activities, including, but not limited to, Head Start programs and day care centers, meet the school bus structural standards or the equivalent as set forth in 49 Code of Federal Regulations Part 571.”¹⁶ *Emphasis added.*

The NTSB recommendation applies to all vehicles meeting the statutory definition of a “bus” as defined in 49 CFR § 571.3. The NTSB recommends that *all vehicles carrying more than 10 passengers meet the school bus structural standards or the equivalent, as set forth in 49 Code of Federal Regulations Part 571.*

¹¹ Conversation of Rajesh Subramanian, Statistician, National Center for Statistics and Analysis (NCSA) with Edward Ricci, Policy Analyst, Public Citizen, Nov. 7, 2002.

¹² W. Riley Garrott, Barbara Rhea, Rajesh Subramanian, and Gary J. Heydinger, *The Rollover Propensity of 15-Passenger Vans*. April 2001, NHTSA Research Note.

¹³ Rollover ratio is the number of all single-vehicle rollover accidents divided by the number of all single-vehicle accidents. National Transportation Safety Board, Safety Report: *Evaluation of the Rollover Propensity of 15-passenger Vans*, October 15, 2002, NTSB/SR-02/03 at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ National Transportation Safety Board, Highway Special Investigation Report, *Pupil Transportation in Vehicles Not Meeting Federal School Bus Standards*, June 8, 1999, NTSB/SIR-00/02 at 28.

NHTSA’s Current Proposal Lacks Ambition; NHTSA Must Seize this Opportunity to Mitigate the Threat of 15-Passenger Vans

NHTSA should be true to the agency’s mission of preventing injuries and saving lives by dropping “school” from the title of the current proposal and creating a vehicle class designated as a multi-function activity bus. This class should include all buses with a gross vehicle weight rating (GVWR) less than 15,000 lbs and its definition must require that these vehicles comply with all of the requirements with which 15-passenger vans currently fail to satisfy including:

- FMVSS 201 Upper Interior Impact Protection,
- FMVSS 206 Door Locks and Door Retention Components,
- FMVSS 214 Side Impact Protection,
- FMVSS 216 Roof Crush Resistance,
- FMVSS 220 School Bus Rollover Protection,
- FMVSS 221 School Bus Body Joint Strength &
- FMVSS 222 School Bus Passenger Seating and Crash Protection.

By creating this new vehicle class, in addition to other proposals in the rule, NHTSA will:

1. Subject deadly 15-passenger vans to the same crash avoidance, crash worthiness and post-crash standards that apply to school buses. Reclassifying these vehicles will not only satisfy the recommendation of the NTSB,¹⁷ but also realizes the intent of the statute governing school buses and equipment.¹⁷
2. Exempt multi-function activity buses (+9not used for transportation to and from school) from the requirements of FMVSS 108 and 131.
3. Enable Head Start Agencies and coordinated transportation services to use Federal Transit Authority funding to purchase crashworthy vehicles.

We support these results and urge the agency to take up our challenge.

This rulemaking presents a great opportunity to address a significant and deadly safety gap. Fifteen-passenger vans are routinely used to transport groups of vulnerable passengers such as children, college students, church groups and the elderly on field trips, to conventions, on church outings, and to athletic events. Yet church leaders, school officials and others may be totally unaware that the vans have special handling needs and are laterally unstable, top-heavy, with a high risk of rolling over in an emergency maneuver. NHTSA must seize this opportunity to safeguard American lives from deadly 15-passenger vans.

¹⁷See 49 U.S.C. § 30125.

Applicability of FMVSS to Multipurpose Passenger Vehicles (MPVs), 15-Passenger Vans (15-P), Small School Buses (SSB)¹⁸ and Large School Buses (LSB)¹⁹

Pre-Crash Standard	#	MPV	15-P	SSB	LSB
"Controls and Displays"	101	✓	✓	✓	✓
"Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect"	102	✓	✓	✓	✓
"Windshield Defrosting and Defogging Systems"	103	✓	✓	✓	✓
"Windshield Wiping and Washing Systems"	104	✓	✓	✓	✓
"Hydraulic Brake Systems" ²⁰	105	✓ (GVWR > 7,716lbs)	✓	✓	✓
"Brake Hoses"	106	✓	✓	✓	✓
"Lamps, Reflective Devices, and Associated Equipment"	108	✓	✓	✓	✓
"New Pneumatic Tires"	109	See FMVSS # 119	See FMVSS # 119	See FMVSS # 119	See FMVSS # 119
"Tire Selection and Rims"	110	See FMVSS # 120	See FMVSS # 120	See FMVSS # 120	See FMVSS # 120
"Rearview Mirrors"	111	✓	✓	✓	
"Hood Latch System"	113	✓	✓	✓	✓
"Motor Vehicle Brake Fluids"	116	✓	✓	✓	✓
"Retreaded Pneumatic Tires"	117				
"Power-Operated Window, Partition, and Roof Panel Systems"	118	✓			
"New Pneumatic Tires for Vehicles Other Than Passenger Cars"	119	✓	✓	✓	✓
Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars"	120	✓	✓	✓	✓
"Air Brake Systems"	121			✓	✓
"Accelerator Control Systems"	124	✓	✓	✓	✓
"New Non-Pneumatic Tires for Passenger Cars"	129				
"School Bus Pedestrian Safety Devices"	131			✓	✓
"Passenger Car Brake Systems"	135	✓ (GVWR □ 7,716lbs)			
"Rollover Warning Label"	49 CFR §575.105	✓ (wheelbase □ 110 in)			

¹⁸ School Bus with a GVWR □ 10,000 lbs

¹⁹ School Bus with a GVWR >10,000 lbs

²⁰ 49 CFR § 571.105, S5.5 requires that each vehicle with a GVWR greater than 10,000 lbs be equipped with an antilock brake system that controls the wheels of at least one front and one rear axle.

Occupant Protection Standards	#	MPV	15-P	SSB	LSB
"Occupant Protection in Interior Impact"	201	✓	✓ (Upper - Interior Head Protection Excluded)	✓	
"Head Restraints" (Outboard Front Seating Positions)	202	✓	✓	✓	✓
"Head Restraints" (Rearward Seating Positions)	202			See FMVSS # 222	See FMVSS # 222
"Impact Protection for the Driver from the Steering Control System" (Driver)	203	✓	✓	✓	
"Steering Control Rearward Displacement"	204	✓	✓	✓	
"Glazing Materials"	205	✓	✓	✓	✓
"Door Locks and Door Retention Components"	206	✓			
"Seating Systems" (Driver)	207	✓	✓	✓	✓
"Occupant Crash Protection" (Driver)	208	✓	✓	✓	✓
"Occupant Crash Protection" (Passenger Safety Belts)	208	✓	✓	✓	
"Seat Belt Assemblies"	209	✓	✓	✓	✓
"Seat Belt Assembly Anchorages"	210	✓	✓	✓	✓
"Windshield Mounting"	212	✓	✓	✓	
"Side Impact Protection"	214	✓ (Static Test Only for GVWR > 6000 lbs)	✓ (Static Test Only)	✓	
"Roof Crush Resistance"	216	✓ (Only for GVWR □ 6000 lbs)		See FMVSS # 220	See FMVSS # 220
"Bus Emergency Exits and Window Retention and Release"	217		✓	✓	✓
"Windshield Zone Intrusion"	219	✓	✓	✓	
"School Bus Rollover Protection" ²¹	220			✓	✓
"School Bus Body Joint Strength"	221			✓	✓
"School Bus Passenger Seating and Crash Protection"	222			✓	✓
"Child Restraint Anchorage Systems"	225	✓ (Only for GVWR □ 8500 lbs)	✓	✓	

²¹ 49 CFR § 571.220, S4.(b) requires each emergency exit of the vehicle be capable of opening both during and following the application of force. Roof exits excluded.

Postcrash Standards	#	MPV	15-P	SSB	LSB
"Fuel System Integrity" ²² (Front, rear and lateral barrier test)	301	✓	✓	✓	✓
"Flammability of Interior Materials"	302	✓	✓	✓	✓
"Fuel System Integrity of Compressed Natural Gas Vehicles"	303	✓	✓	✓	✓
"Compressed Natural Gas Fuel Container Integrity"	304	✓	✓	✓	✓

²² 49 CFR § 571.301 S6.5 requires that large school buses be able to withstand a moving contoured barrier crash test at any point and angle.