

levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive order to include regulations that 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.” This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any “tribal implications” as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 5, 2006.  
**James Jones,**  
*Director, Office of Pesticide Programs.*  
 Therefore, it is proposed that 40 CFR chapter I be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:  
**Authority:** 21 U.S.C. 321(q), 346a and 371.

**§ 180.143 [Removed]**

2. Section 180.143 is removed.  
 3. Section 180.301 is amended by revising paragraph (a) to read as follows:

**§180.301 Carboxin; tolerances for residues.**

(a) *General.* Tolerances are established for the combined residues of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its metabolites determined as aniline and expressed as parent compound, in or on food commodities as follows:

Commodity	Parts per million
Barley, grain .....	0.2
Barley, straw .....	0.2
Bean, dry, seed .....	0.2
Bean, succulent .....	0.2
Canola, seed .....	0.03
Cattle, fat .....	0.05
Cattle, meat .....	0.05
Cattle, meat byproducts .....	0.1
Corn, field, forage .....	0.2
Corn, field, grain .....	0.2
Corn, field, stover .....	0.2
Corn, pop, grain .....	0.2
Corn, pop, stover .....	0.2
Corn, sweet, forage .....	0.2
Corn, sweet, kernel plus cob with husks removed .....	0.2
Corn, sweet, stover .....	0.2
Cotton, undelinted seed .....	0.2
Egg .....	0.05
Goat, fat .....	0.05
Goat, meat .....	0.05
Goat, meat byproducts .....	0.1
Hog, fat .....	0.05
Hog, meat .....	0.05
Hog, meat byproducts .....	0.1
Horse, fat .....	0.05
Horse, meat .....	0.05
Horse, meat byproducts .....	0.1
Milk .....	0.05
Oat, forage .....	0.5
Oat, grain .....	0.2
Oat, straw .....	0.2
Onion, bulb .....	0.2
Peanut .....	0.2
Peanut, hay .....	0.2
Poultry, fat .....	0.1
Poultry, meat .....	0.1
Poultry, meat byproducts .....	0.1
Rice, grain .....	0.2
Rice, straw .....	0.2
Safflower, seed .....	0.2
Sheep, fat .....	0.05
Sheep, meat .....	0.05

Commodity	Parts per million
Sheep, meat byproducts .....	0.1
Soybean, seed .....	0.2
Wheat, forage .....	0.5
Wheat, grain .....	0.2
Wheat, straw .....	0.2

\* \* \* \* \*

4. Section 180.355 is amended by revising the table in paragraph (a) to read as follows:

**§180.355 Bentazon; tolerances for residues.**

(a) *General.* \* \* \*

Commodity	Parts per million
Bean, dry, seed .....	0.05
Bean, succulent .....	0.5
Corn, field, forage .....	3.0
Corn, field, grain .....	0.05
Corn, field, stover .....	3.0
Corn, pop, grain .....	0.05
Corn, sweet, kernel plus cob with husks removed .....	0.05
Cowpea, forage .....	10.0
Cowpea, hay .....	3.0
Flax, seed .....	1.0
Pea, dry, seed .....	1.0
Pea, field, hay .....	8.0
Pea, field, vines .....	3.0
Pea, succulent .....	3.0
Peanut .....	0.05
Peanut, hay .....	3.0
Pepper, nonbell .....	0.05
Peppermint, tops .....	1.0
Rice, grain .....	0.05
Rice, hulls .....	0.25
Rice, straw .....	3.0
Sorghum, forage .....	0.20
Sorghum, grain .....	0.05
Sorghum, grain, stover .....	0.05
Soybean, seed .....	0.05
Soybean, forage .....	8.0
Soybean, hay .....	8.0
Spearmint, tops .....	1.0

\* \* \* \* \*

**§§ 180.1238 and 180.1239 [Removed]**

5. Sections 180.1238 and 180.1239 are removed.

[FR Doc. E6–11016 Filed 7–13–06; 8:45 am]

BILLING CODE 6560–50–S

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. NHTSA 2006–24342]

**Federal Motor Vehicle Safety Standards**

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

**ACTION:** Denial of Petitions for Rulemaking and Defect Determination.

**SUMMARY:** This document denies a petition for rulemaking and defect determinations submitted by Mr. James E. Hofferberth to prevent the installation by States of seat belts in large school buses and declare school buses equipped with seat belts to be safety defects. After reviewing the petition, NHTSA concludes that there is no justification for changing its longstanding position that States may require seat belts at passenger seating positions in large public school buses. We also conclude that there is no basis to declare that school buses equipped with seat belts have safety-related defects, or to recall existing school buses installed with seat belts. The petitioner did not provide any data that NHTSA has not considered in the past.

**FOR FURTHER INFORMATION CONTACT:** For legal issues: Ms. Dorothy Nakama, Office of the Chief Counsel, phone (202) 366-2992.

For technical issues: Mr. Charles R. Hott, Office of Crashworthiness Standards, NVS-113, phone (202) 366-0247.

You can reach both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On April 26, 2005, NHTSA received a petition from Mr. James E. Hofferberth to preempt and prevent the installation of seat belts in large school buses (gross vehicle weight rating greater than 4,536 kg (10,000 pounds) (also called "full-sized school buses" by the petitioner) and declare school buses equipped with seat belts defective. He petitioned to:

1. Preempt, prevent and preclude the possibility of the installation of seat belts or safety belts in full sized school buses.

2. Declare school buses equipped with seat belts or safety belts as defective relative to safety and order that all such vehicles be recalled and repaired immediately to full compliance with letter and intent of the applicable motor vehicle safety standard.

3. Initiate criminal, civil or any alternative punitive action available to [the Secretary of Transportation] under the law against any individual or organization that ordered or performed the installation of seat belts or safety belts in school buses.

4. Require that any device installed in full sized school buses be proven to neither reduce the overall safety of children of all relevant sizes and ages during transportation related to school activities with due consideration to all

factors affecting that safety nor preclude or diminish in any way the safety provision of the motor vehicle safety standards related to school buses.

In his petition, Mr. Hofferberth stated his belief that several State and local governments have enacted or are considering requirements for seat belts or safety belts in full sized school buses, that full sized school buses are subject to established Federal motor vehicle safety standards (FMVSS), that installation of seat belts or safety belts in full sized school buses overrides or precludes the effectiveness of the safety features required in full sized school buses, and that the installation of seat belts or safety belts in full sized school buses creates an unnecessary and unacceptable risk of injury and fatality to school bus passengers.

He also submitted supplemental information and analysis on November 16, 2005<sup>1</sup>. He reviewed cited tests in the agency's April 2002 report to Congress, "School Bus Safety: Crashworthiness Research," and concluded that abdominal injury measurements, which he alleged were not included in the report to Congress, for lap and shoulder belted occupants were between 1.6 and 2.3 times higher than for comparable unbelted occupants. For lap belted occupants, he stated that the abdominal injury measurements were between 2.9 and 5.6 times higher than for comparable unbelted occupants, and that these loadings of the belted occupants were well above the threshold of serious to fatal injury. He stated that abdominal loading of the unbelted child was 135 pounds, and this type of loading is substantially less injurious than when belts are used to apply the loads, and would not be likely to cause serious abdominal injury. He believed that the increases in injury severity for belted occupants are consistent with "seat belt syndrome" and provided a bibliography of various research reports and articles on the subject.

Mr. Hofferberth argued that the modification of standard seats to accommodate belt loading increased the head, neck and chest injury readings for all unbelted occupants and degraded the level of safety performance provided by standard seats designed for use with the compartmentalization requirements of FMVSS No. 222.

The petitioner stated that section 103(d) of the National Traffic and Motor Vehicle Safety Act (recodified at 49 U.S.C. 30103(b)) provides that no "State

or political subdivisions [sic] of a State shall have any authority either to establish or continue in effect, with respect to any motor vehicle or item of motor vehicle equipment any motor vehicle [sic] safety standard applicable to the same aspect of [performance of such vehicle or item of] equipment which is not identical to the Federal standard." It was his opinion that the "aspect" which overlaps the "motor vehicle or item of motor vehicle equipment" regulated by FMVSS No. 222 is the level of injury protection provided by the school buses and the compartmentalization restraint equipment and performance required by FMVSS No. 222. Therefore, he argued that FMVSS No. 222 preempts all State and local requirements relating to the installation of belt restraints in full size school buses, and that the use of belt restraints installed in full size school buses should be prohibited until such time as the belts can be removed or otherwise rendered inoperable.

#### Analysis of the Petition for Rulemaking

The agency has conducted a review of the rulemaking petition in accordance with 49 CFR Section 552.6. We are denying the petition, based on that review.

NHTSA is responsible for establishing Federal motor vehicle safety standards (FMVSSs) to reduce the number of fatalities and injuries from motor vehicle crashes, including those involving school buses. NHTSA also works with the States on school bus safety and occupant protection programs. New school buses must meet safety standards for various aspects of school bus safety, including the passenger crash protection requirements of FMVSS No. 222. Rather than requiring passenger seat belts on large school buses, FMVSS No. 222 provides crash protection through a concept called "compartmentalization." Children are compartmentalized in a protective envelope consisting of strong, closely-spaced seats that have energy-absorbing seat backs. Through compartmentalization, children are protected without the need to buckle up.

Currently, there are four States that require seat belts in all school buses. New York, New Jersey and Florida require lap belts, and California requires lap and shoulder belts in all school buses. NHTSA does not maintain a record of local school boards that also may require seat belts on buses. However, a University of South Florida

<sup>1</sup> For a full copy of Mr. Hofferberth's supplemental information, please refer to [dms.dot.gov](http://dms.dot.gov) (Docket Number 24342).

(USF) study<sup>2</sup> revealed that many districts might require such systems even though it is not mandatory in their State. At the time of the USF study, only New York required seat belts in all school buses.

Federal preemption of State motor vehicle safety standards is governed by Section 30103(b) of 49 U.S.C. 30101 et seq. (the "Vehicle Safety Act"). Section 30103(b)(1) states:

When a motor vehicle safety standard is in effect under this chapter [49 USCS §§ 30101 et seq.], 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 USCS §§ 30101 et seq.]. However, the United States Government, a State, or a 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 otherwise applicable standard under this chapter [49 USCS §§ 30101 et seq.].

NHTSA has previously addressed the preemption issue raised by the petitioner<sup>3</sup>. A State law that requires seat belts on all large school buses conflicts with FMVSS No. 222 and is preempted. However, the last sentence of § 30103(b) permits a State to prescribe a standard for school buses obtained for its own use that imposes a higher performance requirement than that required by the otherwise applicable FMVSS. (We have interpreted the phrase "vehicles procured for (the State's) own use" to include public school buses and those under contract to transport children to and from public school. However, school buses purchased by private schools would not be included). Thus, as the last sentence of § 30103(b) makes clear, States are free to require seat belts on school buses which the State purchases for its own use.

NHTSA has permitted the co-existence of seat belts with compartmentalization requirements on large school buses since the beginning of FMVSS No. 222. NHTSA published the final rule establishing FMVSS No. 222 on January 28, 1976 (41 FR 4016). This regulation became effective for all newly manufactured school buses on and after April 1, 1977. In the rulemaking leading to the 1976 final

rule, four notices of proposed rulemaking (NPRM) were published.<sup>4</sup> Throughout the course of that rulemaking, the issue of requiring seat belts and/or belt anchorages on large school buses was extensively contemplated. Although the agency decided not to require the belts or anchorage systems, the agency clearly intended to allow State and local jurisdictions the choice of installing seat belts. For example<sup>5</sup>, in the October 1975 NPRM, the agency confirmed State and local jurisdictional choice to install belts when it stated (46 FR at 45171):

A greater measure of protection may be obtained [over compartmentalization alone] if a particular end user chooses to use the anchorages by installation of seat belts together with a system to assure that seat belts are worn, properly adjusted, and not misused. School bus users are free to choose whether or not to install belts.

NHTSA has consistently construed the FMVSS as not preempting State requirements concerning seat belts in large school buses where there is no showing that those requirements adversely impact compliance with the FMVSS. Seat belts on large school buses can be considered to satisfy the "higher performance" threshold of the last sentence of § 30103(b) because, when properly worn, they can supplement compartmentalization by restraining passengers in crashes other than frontal crashes, e.g., in rollovers. In its 1999 report on seat belts on large school buses, the National Transportation Safety Board (NTSB)<sup>6</sup> concluded that the compartmentalization requirement for school buses in FMVSS No. 222 is incomplete because it does not protect school bus passengers in rollovers or in lateral impacts from large vehicles, because in such accidents passengers do not always remain completely within the seating compartment. Despite the NTSB conclusion, NHTSA has not found that a sufficient safety need exists with respect to those non-frontal crashes to warrant requiring seat belts on large school buses.<sup>7</sup> However, we have

always permitted States to choose to require the safety devices over and above the Federal requirements in the school buses they purchase.

NHTSA's April 2002 report to Congress<sup>8</sup> found that the addition of lap belts slightly raised the potential risk for head injury. However, these were *severe* frontal impacts that were studied for the report. Conversely, lap belts have been on large school buses for over 30 years without any documented injuries resulting from the use of the seat belt restraint systems.<sup>9</sup> We cannot make a determination, based on the results of limited testing with belt restraints in a severe frontal condition that showed performance only slightly reduced from that of compartmentalization, that the addition of seat belts in large school buses reduces overall occupant protection.

As for abdominal loading, NHTSA does not know the basis for the petitioner's conclusions regarding the significance of the dummy abdominal measures. The abdominal measurements made in these tests were for comparative research purposes, have not been biomechanically validated, and have no injury criteria associated with them. This was discussed on page 43 of the report to Congress.

School buses constitute a very safe form of transportation. A recent NAS study<sup>10</sup> shows that there are about 815 school transportation fatal injuries per year. Only 2 percent are associated with school buses, compared to 22 percent due to walking/bicycling, and 75 percent from passenger car transportation. Every year, approximately 450,000 public school buses travel about 4.3 billion miles to transport 23.5 million children to and

use, and that most of the severe injuries and fatalities were due to passengers being seated directly in the impact zone (NTSB/SS-87/01, Safety Study, Crashworthiness of Large Post-standard School Buses, March 1987, National Transportation Safety Board). Likewise, the National Academy of Sciences (NAS) concluded that the overall potential benefits of requiring seat belts on large school buses are insufficient to justify a Federal requirement for mandatory installation. Special Report 222, Improving School Bus Safety, National Academy of Sciences, Transportation Research Board, Washington, DC, 1989. NAS also stated that the funds used to purchase and maintain seat belts might better be spent on other school bus safety programs and devices that could save more lives and reduce more injuries.

<sup>8</sup> School Bus Safety: Crashworthiness Research, National Highway Traffic Safety Administration, April 2002.

<sup>9</sup> Crash data show that there are approximately 26,000 school bus crashes annually, involved in frontal, side, rear, and rollover collisions.

<sup>10</sup> Special Report 269, "The Relative Risks of School Travel: A National Perspective and Guidance for Local Community Risk Assessment," Transportation Research Board of the National Academies, 2002.

<sup>2</sup> "To Belt or Not To Belt, Experiences of School Districts that Operate Large School Buses Equipped with Seat Belts," Final Report, August 1994, Center for Urban Transportation Research, College of Engineering, University of South Florida.

<sup>3</sup> Denial of Petition for Rulemaking, September 10, 1981 46 FR 4571, interpretation letter to Mr. Martin Chauvin, February 20, 1987.

<sup>4</sup> February 22, 1973 (38 FR 4776), July 30, 1974 (39 FR 27586), April 23, 1975 (40 FR 17855) and October 8, 1975 (40 FR 47141).

<sup>5</sup> See also April 23, 1975 NPRM, in which NHTSA proposed (but subsequently did not adopt) a provision for built-in seat belt anchorages in addition to compartmentalization requirements stating that it "finds it desirable to allow local school boards the option of installing belts, if they decide the additional protection is worth the extra expense."

<sup>6</sup> NTSB/SIR-99/04, Highway Safety Report, Bus Crashworthiness Issues, September 1999, National Transportation Safety Board.

<sup>7</sup> In its 1987 report on the crashworthiness of large, post-April 1, 1977 school buses, NTSB concluded that passengers in the cases studied would have received no net benefit from lap belt

from school and school-related activities. The school bus occupant fatality rate of 0.2 fatalities per 100 million vehicle miles traveled (VMT) is much lower than the rates for passenger cars (1.46 per 100 million VMT) or light trucks and vans (1.3 per 100 million VMT). These results reflect the safety record of large school buses that, for the most part, are not being fitted with any seat belts at passenger seating positions.

The petitioner believes that the dollars spent installing belts on large school buses could be more effectively spent purchasing additional buses to transport more children in the safest means available (in school buses). On our Web site information about seat belts in large school buses<sup>11</sup>, NHTSA does advise consideration of the overall safety consequences of bus purchasing

<sup>11</sup> [Http://www.nhtsa.dot.gov](http://www.nhtsa.dot.gov): click Traffic Safety tab: click School Buses under Browse Topics menu: click Seat Belts On School Buses

decisions, to ensure that seat belt restraints are worn properly, and that no child is left seeking a less safe form of transportation. At the same time, the agency concludes that there is no justification for changing its longstanding position that States may order seat belts at passenger seating positions in large public school buses. For these reasons, and since the petitioner did not provide any data that NHTSA has not considered in the past, the agency is denying the rulemaking petition.

#### **Analysis of the Petition for Defect Determination**

The agency has conducted a technical review of the defect petition in accordance with 49 CFR 552.6. The Office of Defects Investigation (ODI) reviewed its databases for reports and complaints related to alleged problems with school buses equipped with seat belts. That review did not reveal any

reports or complaints that would warrant opening a safety-related defects investigation. Moreover, the petitioner has not presented any data or argument that supports his basis for concluding that seat belts may pose an unreasonable risk to the safety of occupants of those buses. Based on ODI's review and lack of data to the contrary, the agency believes that there is insufficient data to warrant NHTSA commencing a defect investigation and is denying the petition.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30118, and 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 10, 2006.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

**Daniel C. Smith,**

*Associate Administrator for Enforcement.*

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**BILLING CODE 4910-59-P**