

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA–2016–0096; Notice 2]

**Forest River, Inc., Denial of Petition for Decision of Inconsequential Noncompliance**

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

**ACTION:** Denial of petition.

**SUMMARY:** Forest River, Inc. (Forest River), has determined that certain model year (MY) 2012–2016 Starcraft and 2014–2016 StarTrans buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 217, *Bus Emergency Exits and Window Retention and Release*. Forest River filed two separate noncompliance reports on April 14, 2016, and revised them both on June 7, 2016. Forest River also petitioned NHTSA on May 31, 2016, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**FOR FURTHER INFORMATION CONTACT:** Daniel Lind, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366–7235, facsimile (202) 366–5930.

**SUPPLEMENTARY INFORMATION:****I. Overview**

Forest River has determined that certain MY 2012–2016 Starcraft and 2014–2016 StarTrans buses do not fully comply with paragraph S5.5.1 of FMVSS No. 217, *Bus Emergency Exits and Window Retention and Release* (49 CFR 571.217). Forest River filed two separate noncompliance reports on April 14, 2016, and revised them both on June 7, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Forest River also petitioned NHTSA on May 31, 2016, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published in the **Federal Register** (82 FR 47076), with a 30-day public comment period, on October 10, 2017. No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at: <http://www.regulations.gov/>. Then follow the online search instructions to locate docket number “NHTSA–2016–0096.”

**II. Buses Involved**

Affected are approximately 476 MY 2014–2016 StarTrans Bus Senator 2, Senator HD, Candidate 2, President, and PS 2 model buses manufactured between May 16, 2014 and April 6, 2016; and approximately 7,716 MY 2012–2016 Starcraft Bus Xpress, Starquest, Starlite, Allstar, Allstar XL, MVP, Ultrastar, and XLT model buses manufactured between January 1, 2012 and April 6, 2016.

**III. Noncompliance**

Forest River explains that the noncompliance results from the misplacement of the emergency egress labels on the rear emergency exit window of the subject buses. Specifically, the emergency egress labels on the affected buses were centered on the window and are located within 25 centimeters of each of the release mechanisms, and not within 16 centimeters, as required by paragraph S5.5.1 of FMVSS No. 217. The labels are approximately 9 centimeters (incorrectly specified as 11 centimeters in the petition) from where they are required to be on the rear emergency exit window.

**IV. Rule Requirements**

Paragraph S5.5.1 of FMVSS No. 217 includes the requirements relevant to this petition:

- In buses other than school buses, and except for windows serving as emergency exits in accordance with paragraph S5.2.2.3(b) and doors in buses with a GVWR of 10,000 pounds or less, each emergency exit door shall have the designation “Emergency Door” or “Emergency Exit,” and every other emergency exit shall have the designation “Emergency Exit” followed by concise operating instructions describing each motion necessary to unlatch and open the exit, located within 16 centimeters of the release mechanism.

**V. Summary of Forest River’s Arguments**

Forest River described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Forest River submitted the following reasoning:

(a) Since the promulgation of the FMVSS No. 217 original final rule, the primary purpose in requiring the emergency exit markings to be located within a set distance from the release mechanism has been to ensure that they are: (1) Located near the point of release and (2) are visible to passengers. *See* 37 FR 9394, 9395 (May 10, 1972, final rule). Both of these safety objectives are still met in the affected Forest River vehicles.

(b) All of the emergency egress windows are located on the rear wall of the affected buses. The markings are readable and the instructions on how to operate the release mechanism are concise and understandable as currently installed. The release mechanism is painted red, and contrasts with the black window frame and hardware. The emergency exit marking, centered in the window, is unobstructed by any other part of the window or the vehicle and should be readily apparent to passengers. Consequently, the location of the emergency egress designation labels in relation to the release mechanism do not compromise safety with regard to a passenger’s ability to identify an emergency egress location or easily operate the release mechanism.

(c) The affected vehicles are transit buses, generally operated by private companies and would typically have trained drivers operating the vehicles and present to assist passengers exiting the vehicle in the event of an emergency. With a trained professional driver present, an emergency exit marking that is located approximately 9 centimeters (stated as “4 inches” in the petition) further than allowed from the release mechanism is unlikely to have any tangible impact on passenger safety.

(d) The agency has previously granted petitions for inconsequential noncompliance under FMVSS No. 217 for conditions with the potential for a more direct and serious impact on safety. *See* 63 FR 32694, New Flyer of America, Inc. (granting petition for inconsequential noncompliance where buses were manufactured with only one emergency exit instead of two); and 70 FR 14748, IC Corporation (granting petition for inconsequential noncompliance where school buses were manufactured with two emergency doors under the same post and roof bow panel space).

(e) Forest River is not aware of any complaints, warranty claims, accidents, injuries, or other field incidents related to the emergency egress markings not meeting the requirements of the standard. Forest River has corrected the noncompliance on all the remaining windows in its possession. Forest River has also advised that Lippert Components, Inc. (LCI), the manufacturer of the windows and emergency exit marking labels, has corrected the noncompliance in its own production beginning on April 7, 2016.

Forest River’s complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov/> and following the online search instructions

to locate the docket number listed in the title of this notice.

In summation, Forest River believes that the described noncompliance in the subject buses is inconsequential as it relates to motor vehicle safety, and that its petition to exempt Forest River from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and remedying the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Prior to making a decision, NHTSA contacted Forest River for clarification on three aspects of its petition. First, NHTSA sought confirmation that Forest River's petition sought an exemption from the notification and remedy requirements for both StarTrans and Starcraft buses. Second, NHTSA sought clarification regarding the measured distance between the actual label location and the required location of the label. Third, NHTSA sought clarification regarding whether the rear emergency exit window can be opened by operating a single release mechanism. In response, Forest River verified that it sought an exemption for both Starcraft and StarTrans buses. Forest River also confirmed that the measured distance between the actual label location and the requirement should have read “. . . a difference of approximately 9 centimeters. . . .” Lastly, Forest River confirmed that both release mechanisms must be operated in order to open the rear emergency exit window.

## VI. NHTSA's Analysis

### A. General Principles

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (the “Safety Act”) with the express purpose of reducing motor vehicle accidents, deaths, injuries, and property damage. *See* 49 U.S.C. 30101. To this end, the Safety Act empowers the Secretary of Transportation to establish and enforce mandatory Federal Motor Vehicle Safety Standards (FMVSS). *See* 49 U.S.C. 30111. The Secretary has delegated this authority to NHTSA. *See* 49 CFR 1.95.

NHTSA adopts a FMVSS only after the agency has determined that the performance requirements are objective and practicable and meet the need for motor vehicle safety. *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or an item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such

risks, manufacturers whose products fail to comply with a FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a free remedy. *See* 49 U.S.C. 30118–30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be “inconsequential” to motor vehicle safety. It therefore established a procedure under which NHTSA may consider whether it is appropriate to exempt a manufacturer from its notification and remedy (*i.e.*, recall) obligations. *See* 49 U.S.C. 30118(d), 30120(h). The agency's regulations governing the filing and consideration of petitions for inconsequentiality exemptions are set out at 49 CFR part 556.

Under the Safety Act and Part 556, inconsequentiality exemptions may be granted only in response to a petition from a manufacturer, and then only after notice in the **Federal Register** and an opportunity for interested members of the public to present information, views, and arguments on the petition. In addition to considering public comments, the agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data from the public does not require NHTSA to grant a manufacturer's petition. Neither the Safety Act nor Part 556 define the term “inconsequential.” Rather, the agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. In some instances, NHTSA has determined that a manufacturer met its burden of demonstrating that a noncompliance is inconsequential to safety. For example, a label intended to provide safety advice to an owner or occupant may have a misspelled word, or it may be printed in the wrong format or the wrong type size. Where a manufacturer has shown that the discrepancy with the safety requirement is unlikely to lead to any misunderstanding, NHTSA has granted an inconsequentiality exemption, especially where other sources of correct information are available. *See, e.g.*, General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (Dec. 20, 2016).

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the

type of event against which the recall would otherwise protect.<sup>1</sup> NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. “Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.”<sup>2</sup> “[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.”<sup>3</sup>

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.<sup>4</sup> Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.<sup>5</sup>

<sup>1</sup> *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance*, 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

<sup>2</sup> *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21666 (Apr. 12, 2016).

<sup>3</sup> *United States v. Gen. Motors Corp.*, 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it “results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future”).

<sup>4</sup> *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance*, 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance*, 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

<sup>5</sup> *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance*, 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco, Inc.; Denial of Application for Decision of Inconsequential Noncompliance*, 64 FR 29408, 29409 (June 1, 1999).

### B. Response to Forest River's Arguments

NHTSA reviewed Forest River's arguments that the subject noncompliance is inconsequential to motor vehicle safety. Forest River contends that the emergency egress label for the rear window exit being located 25 centimeters distant from the two red dual release mechanisms, rather than within the 16 centimeters required by FMVSS No. 217, poses little, if any, risk to motor vehicle safety. NHTSA does not agree, as described below:

The purpose of FMVSS No. 217 is to minimize the likelihood of occupants being thrown from the bus and to provide a means of *readily accessible emergency egress* (emphasis added) (See 49 CFR 571.217 S2). The requirements at S5.5.1, *Emergency Exit Identification*, of FMVSS No. 217, at issue here, are specific to identifying emergency exits, identifying the release mechanism(s) for emergency exits, and the associated operating instructions for the release mechanism(s). These requirements are threefold: (1) An exit must be identified as an "Emergency Exit," (2) the identification as an "Emergency Exit" must be followed by "concise operating instructions," and (3) both the "Emergency Exit" identification and "concise operating instructions" must be located "within 16 centimeters" of the release mechanism(s) for the associated emergency exit. In the present case, the rear emergency window is identified as an "Emergency Exit" via a sole label centered along the rear emergency window. However, this sole label fails to meet the other two requirements of S5.5.1—the label does not contain "concise operating instructions describing each motion necessary to unlatch and open the exit," and the label is not "within 16 centimeters of the release mechanism." These two points are further discussed below.

Regarding the instructions, the rear emergency exit window has two release mechanisms which operate independently of each other. As such, both mechanisms need to be operated to open the emergency exit window. The petitioner installed one label centered along the window that, in part, reads: "Pull red handle up. Push window out." These instructions are incomplete, as they only reference a single red handle. Following the instructions on the label, a passenger would operate one release mechanism and attempt to push the window out. However, the emergency exit window would not open, as the second release mechanism would remain latched. As such, we are not persuaded by Forest River's statement

that the instructions on how to operate the release mechanism are concise and understandable as currently installed, because there are indeed two such mechanisms that must be used for the emergency exit to open.

Regarding the location, the sole label is centered along the rear emergency exit window, with its outermost edge located at a distance of 25 cm from the nearest edge of the release mechanism. In its petition, Forest River argues that because the color of the release mechanism contrasts with the window frame and hardware, and the label is centered in the window and unobstructed, the label "should be readily apparent to passengers." As a result of this presumption by Forest River, it concludes that the location of the label does not compromise safety with regard to a passenger's ability to identify an emergency egress location. However, the fundamental issue in this instance is not the identification of the emergency egress location, rather it is the identification of the two release mechanism locations. As such, NHTSA is not persuaded by Forest River's presumptive argument that the location of this label does not compromise safety, because it does not address the identification of the two release mechanism locations or state that both handles must be pulled.

Regarding the bus driver, NHTSA does not accept Forest River's argument that transit bus drivers can always be counted on to assist passenger emergency egress. The condition or availability of the bus driver is highly dependent on the severity of the event.

### C. Remaining Arguments

Forest River referenced two inconsequential noncompliance petitions NHTSA had previously granted to support its petition. According to Forest River, these petitions had a direct and serious impact on safety. The first petition, from New Flyer of America, Inc. (see 63 FR 32694), involved transit buses that had only one emergency exit on the right side of the bus instead of two, as required. These buses had 3.28 times the required exit area, with two emergency exit windows on the left side, one emergency exit window on the right side and two roof exits. Thus, the buses had the minimum number of emergency exits required by FMVSS No. 217. However, these exits were not distributed properly. Instead of a second emergency exit on the right side, these buses had an additional roof exit. The agency decided that the additional roof exit provided for an additional level of safety during a rollover event, and

granted the petition. NHTSA does not agree that granting this prior petition supports Forest River's arguments in this case. Here, the issue is identifying the emergency exit release mechanisms and their operation.

The second petition cited by Forest River involved two side emergency exit doors located opposite each other and within the same post and roof bow panel space. That petition argued that the requirement prohibiting two exit doors from being located opposite each other appeared to be related to the structural integrity of a bus body with this configuration. The petitioner indicated that it had no reports of any structural failures in the area around the emergency doors, but stated that it would extend to owners of the noncompliant vehicles a 15-year warranty for any structural or panel failures related to the location of the doors. NHTSA agreed with the petitioner that in that case, the noncompliance did not compromise safety in terms of emergency exit capability in proportion to maximum occupant capacity, access to side emergency doors, visibility of the exits, or the ability of bus occupants to exit after an accident. Again, NHTSA does not agree that granting this prior petition supports granting Forest River's petition here, because the identification of the emergency exits in that case was not at issue.

### VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Forest River has not met its burden of persuasion that the subject FMVSS No. 217 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Forest River's petition is hereby denied and Forest River is obligated to provide notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

Joseph Kolly,

Acting Associate Administrator for Enforcement.

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### DEPARTMENT OF THE TREASURY

#### List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986,