(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof.

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2.

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) *Obligation.* In addition to its obligations under the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts entities from among the Energy Policy Act target groups.

(End of clause)

952.226–72 Energy Policy Act subcontracting goals and reporting requirements.

As prescribed in 926.7007(c), insert the following clause:

Energy Policy Act Subcontracting Goals and Reporting Requirements (XXX 199X)

(a) *Definition.—Energy Policy Act target groups,* as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or populations for Hispanic Americans, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof.

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2.

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) *Goals.* The contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities:

(1) Small business concerns controlled by socially and economically disadvantaged individuals or women: * * * percent;

(2) Historically Black colleges and universities: * * * percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: * * * percent.

[* * * These goals will appear elsewhere in this contract.]

(c) *Reporting requirements.* (1) The contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12 month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the Contracting Officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

952.226–73 Energy Policy Act target group certification.

As prescribed in 926.7007(e), insert the following provision:

Energy Policy Act Target Group Certification (XXX 199X)

(a) *Certification.* The offeror certifies that it is:

(1) _____ An institution of higher education that meets the requirements of 34 CFR 602.2(a), and has a student enrollment that consists of at least 20 percent:

(i) Mexican American, Puerto Rican, Cuban, or other Hispanic students, or any combination thereof, or populations for Hispanic Americans, or

(ii) American Indian, Eskimos, Aleuts, native Hawaiians, or any combination thereof; or

(2) _____ An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) _____ A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637 (d)) or by a woman or women.

(b) By submission of an offer, the offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the Contracting Officer that the offeror is an entity from the Energy Policy Act target group identified.

(End of provision)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS [AMENDED]

4. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99–145 (42 U.S.C. 7256a), as amended.

5. Part 970 is amended to add a new subpart 970.26, Other Socioeconomic Programs, consisting of section 970.2601, Implementation of Section 3021 of the Energy Policy Act of 1992, to read as follows:

Subpart 970.26—Other Socioeconomic Programs

970.2601 Implementation of section 3021 of the Energy Policy Act of 1992.

The goal requirements of section 3021 of the Energy Policy Act of 1992, and the attendant reporting requirements, shall be included in the subcontracting plan for the management and operating contract and shall apply to the annual dollar obligations specifically provided to the M&O contractor for competitively awarded subcontracts that fulfill Energy Policy Act requirements. See 970.7104–12(f).

Subpart 970.71—Management and Operating Contractor Purchasing

6. Section 970.7104–12 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) as follows:

970.7104–12 Small business and small disadvantaged business concerns.

* * * * *

(f) Management and operating contractors may provide in their purchasing systems and methods for the application of preferences to Energy Policy Act target groups, taking into consideration the provisions of 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992.

* * * * *

[FR Doc. 94–16701 Filed 7–8–94; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 94–56; Notice 1]

RIN 2127–AF01

Federal Motor Vehicle Safety Standards; Air Over Hydraulic Brake Systems

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice responds to a petition submitted by John Kourik. The notice proposes to amend the requirements in Standard No. 121, *Air Brake Systems,* to include a definition of air-over-hydraulic brake subsystems. The agency believes that this proposed definition would clarify the classification of vehicles equipped with these subsystems and thus eliminate the need for manufacturers to request, and the agency to respond to, interpretations about them.

DATES: *Comments.* Comments must be received on or before September 9, 1994.

Proposed Effective Date. The proposed amendments in this notice would become effective 30 days after publication of a final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Tinto, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5229).

SUPPLEMENTARY INFORMATION:

Background

Air-over-hydraulic brake systems typically consist of an air brake system from the treadle valve to an air brake chamber that provides the mechanical force to actuate a hydraulic-operated master cylinder. In turn, the hydraulic master cylinder actuates the brake shoes or pads. The air brake chamber unit combined with the hydraulic-operated master cylinder is called the "power cluster" and generally serves as the separating point between the air- and hydraulic-actuated portions of the air-over-hydraulic brake system.

Air-over-hydraulic brake systems are installed on about one percent of medium and heavy trucks sold in the United States. This percentage represents about 2,000 vehicles, most of which are Class 6 vehicles with gross vehicle weight ratings (GVWRs) between 19,501 and 26,000 pounds.

Federal motor vehicle safety standard No. 121, *Air brake systems,* currently defines "air brake system" to mean

> a system that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components. (49 CFR § 571.121)

Part 570, *Vehicle In Use Inspection Standards,* defines "Air-over-hydraulic brake system" to mean

> *a subsystem of the air brake* that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes. (49 CFR Part 570, emphasis added)

The italic portion of the definition of air-over-hydraulic subsystem explicitly states that an air-over-hydraulic brake subsystem means a subsystem of the air brake system.

In initially issuing Standard No. 121, NHTSA stated that "it should be noted that the term 'air brake system' as defined in the standard applies to the brake configuration commonly referred to as 'air-over-hydraulic,' in which failure of either medium can result in complete loss of braking ability." (36 FR 3817, February 27, 1971). The agency reiterated its position that an air-over-hydraulic brake system is subject to Standard No. 121, stating that "Standard No. 105a [Hydraulic Brake Systems] does not apply to vehicles equipped with 'air-over-hydraulic' systems, which remain within the purview of Standard No. 121 * * *." (37 FR 17970, September 2, 1972.) Moreover, NHTSA has issued several interpretations stating that a vehicle equipped with an air-over-hydraulic brake system must comply with the requirements in Standard No. 121.

NHTSA received a petition from Mr. John Kourik, requesting that the agency amend Standard No. 121 to specify that an air-over-hydraulic brake subsystem is subject to that Standard. The petitioner stated that such an amendment would avoid the need for manufacturers to request interpretations about air-over-hydraulic brake systems.

After reviewing the petition, NHTSA has decided to propose amending Standard No. 121 by expanding the current definition of air brake system to incorporate the definition of air-over-hydraulic brake subsystem. The agency notes that even though the definition of an air brake system currently includes a description of an air-over-hydraulic subsystem, it is not explicitly clear on the face of the standard that such a subsystem is classified as an air-braked system and that a vehicle equipped with such a subsystem would thus have to comply with the requirements in Standard No. 121. NHTSA believes that it would be appropriate to clarify the classification of air-over-hydraulic brake systems. By amending the definition of an air brake system to state explicitly that an air-over-hydraulic brake subsystem is classified as an air brake system, the agency would eliminate the need felt by some manufacturers to request interpretations regarding the standard's applicability to vehicles equipped with air-over-hydraulic brake subsystems.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulation Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have no mandatory effects. Instead, the proposal would only codify a longstanding agency interpretation. Therefore, this rulemaking would not have any cost impacts.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Vehicle and brake manufacturers typically would not qualify as small entities. This amendment would affect small businesses, small organizations, and small governmental units to the extent that these entities purchase vehicles. However, this amendment would have no significant cost impact on vehicles. For these reasons, vehicle manufacturers, small businesses, small organizations, and small governmental units which purchase motor vehicles would not be significantly affected by the proposed requirements. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

Finally, the agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed

rule would not significantly affect the human environment.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 121, *Air Brake Systems*, in Title 49 of the Code of Federal Regulations at part 571 as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.121, S4 would be amended by revising the definition of "Air Brake System" and by adding the definition of "Air-over-hydraulic brake subsystem" to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4 * * *

Air brake system means a system, including an air-over-hydraulic brake subsystem, that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

* * * * *

Air-over-hydraulic brake subsystem means a subsystem of the air brake that uses compressed air to transmit a force from the driver control to a hydraulic brake system to actuate the service brakes.

Issued on: July 5, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16613 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–59–P

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49 CFR Part 571

[Docket No. 89–26; Notice 5]

RIN 2127–AF31

Federal Motor Vehicle Safety Standard; Convex Cross View Mirrors on School Buses

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

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition for rulemaking submitted by the Blue Bird Body Company (Blue Bird), NHTSA has decided to propose amending Standard No. 111, *Rearview Mirrors*, with respect to the field-of-view around school buses. Specifically, the agency is proposing to rescind a provision in the Standard so that certain driving mirrors would no longer be required to provide a field-of-view of the ground forward of cylinders by the bus's rear wheels to areas directly beneath the mirror surface. The agency is concerned that the current requirement may compromise safety either by making it more difficult for the driver to use the driving mirror when the bus is in motion as the result of having a more distorted image from a more convex mirror or by reducing the driver's direct line of sight as the result of creating a larger blind spot near the bus.

DATES: *Comment Date:* Comments must be received by August 10, 1994.

Effective Date: If adopted, the proposed amendments would become effective 30 days following publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–0247.

SUPPLEMENTARY INFORMATION:

I. Previous Agency Rulemakings

On December 2, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 111, *Rear-View Mirrors*, to ensure that a school bus provides an adequate field-of-view around a stopped school bus, thus reducing the risk of school buses striking students as the students are approaching the buses in order to board them or as they are leaving the buses. (57 FR 57015) The final rule requires each school bus to be equipped with two mirror systems on each side of the bus: (1) "System A," which consists of a flat driving mirror of unit magnification and typically a convex driving mirror; and (2) "System B," which consists of convex cross view mirrors for spotting students during the loading and unloading of students. The System A mirror system must provide, among other things, a view of the area of the ground extending rearward from the area below the mirror surface. The System B convex cross view mirrors must provide, among other things, a view of the ground that overlaps with the view of the ground provided by System A. System A and System B mirrors in combination are required to provide the driver with a view of the ground in front of and along both sides of the bus and extending at least 200 feet rearward from the driving mirror. This final rule took effect on December 2, 1993.

NHTSA again evaluated the field-of-view requirements for System A mirrors

in response to a petition for reconsideration of the final rule submitted by Ford Motor Company (Ford). (58 FR 60399, November 16, 1993) Ford stated that requiring System A mirrors to provide a view of the ground immediately beneath them fails to meet the need for safety and may make impracticable the use of currently designed flat unit magnification mirrors. Ford requested that NHTSA amend the requirement in Standard No. 111 that System A mirrors provide an extended rearward view of the ground starting from the area beneath the mirror (S9.2(b)(1), (2)).

NHTSA decided not to adopt Ford's requested revision, because the agency was concerned that Ford's suggested System A mirrors might have had blind spots in the area of the ground directly below the driver's mirrors and forward of the rear edge of the side windows. The agency explained that it is permissible to use a combination of convex and flat mirrors to meet the System A requirements, and that the convex portion of the mirror system can be used for the view beneath the System A mirror. 57 FR at 57005.

II. Blue Bird Petition

Blue Bird Body Company (Blue Bird) petitioned the agency to amend Standard No. 111 with respect to the field-of-view requirements for System A mirrors. Blue Bird stated that to comply with the final rule's requirements, either a small radius of curvature convex mirror or a second convex mirror would have to be attached to the System A mirror. Blue Bird argued that either approach would be impracticable and inconsistent with motor vehicle safety. According to the petitioner, a small radius of curvature mirror would provide unreasonably small and distorted images that would be unsafe for driving, while a second convex mirror would create a larger blind spot for the driver. Blue Bird also stated that any convex mirror added to a system A mirror should have a radius of curvature of at least 35 inches, since convex mirrors with low radii of curvature would provide unreasonably small and distorted images thus causing problems for the school bus driver, while the vehicle is in motion.

Blue Bird stated that the requirement, as adopted, is inconsistent with previous agency statements about problems associated with using highly convex mirrors for driving. Blue Bird further stated that none of the discussions in the NPRM explaining the requirements for System A mirrors implies the need for driving mirrors to see the area directly below them. Blue Bird requested the agency immediately amend the wording of S9.2(b)(1) and S9.2(b)(2) to require that System A mirrors provide views of the area of the ground that extend rearward from the test cylinders near the rear axles to not less than 200 feet measured from the rear surface of the mirrors. As the result of such an amendment, the System A mirrors would no longer be required to provide a view of the ground between those cylinders and the ground beneath the mirror.

On January 13, 1994, agency personnel met with representatives of Blue Bird and Mirror Lite Company, a mirror manufacturer, to evaluate the field-of-view provided by various mirror configurations on school buses. At that meeting, Blue Bird stated that the installation and use of a driving mirror with a small radius of curvature may result in unsafe driving practices since it distorts images, thus making it difficult for a driver to judge the distance between his or her bus and following vehicles when the driver is attempting to change lanes. Similarly, Blue Bird alleged that, with a small radius of curvature mirror, other vehicles appear to approach suddenly (*i.e.*, images of oncoming vehicles at the rear of the bus that are very small and difficult to recognize suddenly appear greatly distorted as the vehicles get closer to the mirror).

Thomas Built Bus, another manufacturer of school buses, has contacted the agency to express its opposition to Blue Bird's petition. After spending significant amounts of time and money reconfiguring and retesting its buses and mirrors to comply with the final rule, Thomas Built believes that it would be inappropriate for the agency now to amend the standard to accommodate a specific school bus or mirror design of another manufacturer. Memoranda memorializing these contacts have been placed in the docket.

III. Agency Proposal

After reviewing the petition, NHTSA has decided to propose amending Standard No. 111 so that System A mirrors would no longer be required to provide a field-of-view of the ground forward of cylinders by the bus's rear wheels to areas directly beneath the mirror surface. The agency tentatively believes that the current requirement makes it necessary for school bus manufacturers to install either a small radius of curvature convex mirror or a second convex mirror. NHTSA is concerned that the current requirement may compromise safety either by making it more difficult for the driver to use the driving mirror when the bus is in motion as the result of having a more distorted image from a more convex mirror or by reducing the driver's direct line of sight as the result of creating a larger blind spot near the bus, based on Blue Bird's demonstration and other available information. The agency has tentatively concluded that the driveability problems resulting from requiring System A mirrors to have a view of the ground directly beneath them outweigh the safety benefits obtained by having a redundant view of this area. Specifically, the agency believes that the proposed amendment would not adversely affect pedestrian safety because System B mirrors would still be required to have a view of the ground directly below the System A mirrors, as well as the areas alongside the bus to the rear axles.

NHTSA did not anticipate that there would be a driveability problem associated with the System A mirror requirements when it issued the final rule. The requirement that the driving mirrors provide a view of the ground from beneath the mirror surface to 200 feet rearward was considered necessary because several pedestrian fatalities have occurred near the front entrance doors and the rear tires. In issuing the final rule, NHTSA was aware that the System B convex crossview mirror already provides a view of these areas. The agency's intention was to reduce the number of pedestrian fatalities by providing the school bus driver with the largest field-of-view possible. Redundant views of these areas seemed logical and the view of the test grid was comprehensive. However, the school buses with complying System A mirrors were not actually driven as part of the agency evaluation of the new mirror system requirements in connection with the final rule.

NHTSA requests comments about the potential safety problems discussed in this notice. To what extent does adding a second convex mirror to a System A mirror increase the blind spot? How significant a safety problem is caused by the increase in the blind spot? How significant a safety problem is caused by the driver's inability to use the entire mirror system, particularly with mirrors with a radius of curvature less than 35 inches, while operating a moving bus? If a manufacturer added a second convex mirror to a System A mirror system, couldn't the driver use the preexisting high radius of curvature driving mirror?

As to Blue Bird's request for the agency to "immediately issue" its requested change to the Standard, NHTSA has determined that it cannot legally accommodate Blue Bird's

request. The Administrative Procedure Act generally requires an agency to issue a notice for public comment before issuing a final rule such as a rescission of a requirement. (5 U.S.C 553) There is one narrow exception to this requirement which provides that an agency may forego notice-and-comment procedures upon a finding that such procedures are "impracticable, unnecessary, or contrary to the public interest." (5 U.S.C. 553(b)(B)) However, the courts have construed this exception very narrowly, emphasizing that:

> circumstances justifying reliance on this exception are "indeed rare" and will be accepted only after the court has "examine[d]" closely proffered rationales justifying the elimination of public procedures. *Council of Southern Mountains, Inc.* v. *Donovan*, 653 F.2d 573 (DC Cir. 1981) citing *American Federation of Government Employees* v. *Block*, 655 F.2d 1153 (DC Cir 1981).

This case law and previous agency experience indicate that foregoing notice-and-comment is a disfavored approach to be used only in emergency situations involving great urgency. The agency has determined that the circumstances surrounding Blue Bird's petition do not rise to this level of urgency.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice was not reviewed under E.Q. 12866, "Regulatory Planning and Review." NHTSA has considered the impact of this rulemaking action under the Department of Transportation's regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule would have only minimal economic impacts. The proposal, if adopted, would not result in any cost savings or cost increases since to comply, the small radius of curvature mirrors would be replaced by larger radius of curvature mirrors.

B. Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, any impact on small entities from this action would be minimal since it would make a minimal change that would not impose additional costs. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), NHTSA notes that there are no requirements for information collection associated with this proposed rule.

D. National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

E. Executive Order 12612 (Federalism)

NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposed rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

F. Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicle.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 would be amended, as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 15 U.S.C 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S9.2, S9.2(a), S9.2(b), S9.2(b)(1), and S9.2(b)(2) would be revised to read as follows:

§ 571.111 Standard No. 111; rearview mirrors.

* * * * *

S9.2 System A shall be located with stable supports so that the portion of the

system on the bus's left side, and the portion on its right side, each:

(a) Includes at least one mirror of unit magnification with not less than 322.60 square centimeters (50 square inches) of reflective surface; and

(b) Includes one or more mirrors which together provide, at the driver's eye location, a view of:

(1) For the mirror system on the right side of the bus, the entire top surface of cylinder N in Figure 2, and that area of the ground which extends rearward from cylinder N to a point not less than 60.93 meters (200 feet) from the mirror surface.

(2) For the mirror system on the left side of the bus, the entire top surface of cylinder M in Figure 2, and that area of the ground which extends rearward from cylinder M to a point not less than 60.93 meters (200 feet) from the mirror surface.

* * * * *

Issued on July 5, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–16614 Filed 7–8–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day and 12-Month Findings on a Petition to Reclassify Spikedace (Meda Fulgida) and Loach Minnow (Tiaroga Cobitis) From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day and 12-month findings for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The Service finds that the petitioners have presented substantial information indicating reclassification of spikedace and loach minnow from threatened to endangered may be warranted. The Service has previously found that reclassification of spikedace and loach minnow is warranted, but is precluded by work on other pending listing actions of higher priority on which expeditious progress is being made.

DATES: The findings announced in this document were made on June 30, 1994. Comments and materials may be submitted until further notice.

ADDRESSES: Information, comments, or questions concerning the petitioned actions may be submitted to the State Supervisor, Arizona Ecological Services State Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85109. The petitions, findings, supporting information, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud at the above address (Telephone 602/379–4720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the Service to make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and notice of the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species involved. Section 4(b)(3)(B) requires that the Service make a further finding as to whether or not a petition presenting substantial information in support of listing, delisting, or reclassification of a species is (i) warranted, (ii) not warranted, or (iii) warranted but precluded by work on other pending listing actions of higher priority on which expeditious progress is being made. This finding is to be made within 12 months of receipt of the petition. Depending upon the conclusion of the finding, the Service must promptly publish in the **Federal Register** either a notice of the finding or a proposal on the petitioned action.

On September 22, 1993, the Department of the Interior received a petition, dated September 17, 1993, from David Hogan, Silver City, New Mexico; Peter Galvin, Silver City, New Mexico; the Greater Gila Biodiversity Project, Silver City, New Mexico; the Southwest Center for Biological Diversity, Phoenix, Arizona; and the Biodiversity Legal Foundation, Boulder, Colorado. The petitioners requested the Service to reclassify the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*), from threatened to endangered. On November 10, 1993, the Service informed the petitioners that their correspondence had been accepted as a valid petition.

These 90-day and 12-month findings are based on published and unpublished biological and commercial information, inter- and intra-agency communications, and communications with experts. All information used in these findings is on file in the Service's Arizona Ecological Services State Office in Phoenix.

Spikedace and loach minnow are two small minnows which inhabit isolated stretches of stream in the upper reaches of the Gila River basin in Arizona and New Mexico (Minckley 1973, Propst *et al.* 1986, Propst *et al.* 1988, Propst and Bestgen 1991, Rinne 1991). Their historic range included most of the Gila River basin; however, both species have undergone dramatic declines since the late 1800's. These declines were due to water developments such as impoundment, diversion, channelization, and groundwater pumping; to watershed degradation and erosion caused by activities such as livestock grazing, timber harvest, road building, and recreation; and to effects of the introduction and spread of nonnative fish species. Both species live in relatively fast flowing water in perennial stream stretches.

Spikedace are presently known only from isolated stretches of the Gila River, Grant and Catron Counties, New Mexico; Aravaipa Creek, Graham and Pinal Counties, Arizona; Eagle Creek, Greenlee County, Arizona; and the Verde River, Yavapai County, Arizona. Loach minnow are presently known only from isolated stretches of the Gila River, Grant and Catron Counties, New Mexico; Aravaipa Creek, Graham and Pinal Counties, Arizona; the East Fork and mainstem White Rivers, Navajo and Gila Counties, Arizona; the San Francisco and Tularosa Rivers and Dry Blue Creek, Catron County, New Mexico; and the Blue and San Francisco Rivers and Campbell Blue Creek, Greenlee County, Arizona.

The spikedace was listed as a threatened species on July 1, 1986, and the loach minnow was listed as a threatened species on October 28, 1986. Critical habitat was designated for both species on March 8, 1994. A threatened species is defined by the Act as a species "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." An endangered species is defined by the Act as one "which is in danger of extinction throughout all or a significant portion of its range."

In 1991, the status of spikedace and loach minnow were reviewed as part of the 5-year review of the status of listed species as required by section 4(c)(2) of

the Act. That review showed that the status of the two species had become more precarious over the previous five years due to substantial increases in threats. As a result, the Service found that both species met the requirements for endangered status. The Desert Fishes Recovery Team and the Arizona Game and Fish Department have recommended reclassification to endangered for both species.

At the same time that threats to the species are increasing, new genetic information suggests a need to preserve each of the fragmented populations of spikedace and loach minnow in order to maintain as much genetic diversity in the species as possible (Tibbets 1992). Four of the five remaining loach minnow populations have been subjected to genetic analyses and each appears to be distinctive. Genetic analyses on the four remaining spikedace populations indicate that each of the four populations is quite different, with the Verde River population being most distinct.

Petition Findings

After reviewing the petition and all other pertinent information, the Service finds that the petition presents substantial information to indicate that reclassification to endangered may be warranted for spikedace and loach minnow. A positive 90-day finding generally requires that a status review be conducted on the petitioned species. However, as previously mentioned, a status review was conducted in 1991, resulting in a finding that endangered status is appropriate, but that higher-priority listing actions precluded the rulemaking process to reclassify the species.

Benefits to the spikedace and loach minnow from reclassification to endangered status would include recognition of the more precarious status of the species and increased penalties for conducting activities prohibited under section 9 of the Act. However, these benefits would be incremental to the protection under the Act already applied to these threatened species. This incremental protective increase is of lesser priority than providing protection to species with no current legal protection under the Act.

After reviewing all available scientific and commercial information on the spikedace and loach minnow and their status and after consideration of other listing actions and their priorities, the Service finds that the reclassification of spikedace and loach minnow to endangered is warranted, but is precluded by work on pending listing actions of higher priority on which expeditious progress is being made.

References Cited

Minckley, W.L. 1973. Fishes of Arizona. Arizona Game and Fish Department. Phoenix, AZ. 293 pp.

Propst, D.L. and K.R. Bestgen. 1991. Habitat and biology of the loach minnow. Copeia 1991(1):29–38.

Propst, D.L., K.R. Bestgen, and C.W. Painter. 1986. Distribution, status, biology, and conservation of the spikedace (*Meda fulgida*) in New Mexico. U.S. Fish and Wildlife Service Endangered Species Report No. 15. 93 pp.

Propst, D.L., K.R. Bestgen, and C.W. Painter. 1988. Distribution, status, biology, and conservation of the loach minnow, *Tiaroga cobitis* Girard, in New Mexico. U.S. Fish and Wildlife Service Endangered Species Report No. 17. 75 pp.

Rinne, J.N. 1991. Habitat use by spikedace, *Meda fulgida* (Pisces: Cyprinidae) in southwestern streams with reference to probable habitat competition by red shiner, *Notropis lutrensis* (Pisces:Cyprinidae). Southwestern Naturalist 37(2):117–125.

Tibbets, C.A. 1992. Allozyme variation in populations of the spikedace (*Meda fulgida*) and the loach minnow (*Tiaroga cobitis*). Proceedings of the Desert Fishes Council 24:37.

Author

The primary author of this document is Sally Stefferud of the Arizona Ecological Services State Office, Phoenix (see ADDRESSES section).

Authority: The authority for this action is 16 U.S.C. 1531–1544.

Dated: June 30, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of a Status Review for a Petition To List the Plant Lathyrus Grimesii (Grimes Vetchling)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the plant *Lathyrus grimesii* (Grimes vetchling) under the Endangered Species Act of 1973, as amended (Act). The petition was found to present substantial information indicating the requested action may be warranted. The Service requests information regarding the status of this species.

DATES: The finding announced in this notice was made on June 27, 1994. Comments and information concerning this finding must be submitted by August 10, 1994 to be considered in the 12-month finding for this petition.

ADDRESSES: Data, information, comments, or questions concerning this finding should be sent to the Field Supervisor, Nevada Field Office, U.S. Fish and Wildlife Service, 4600 Kietzke Lane, Building C, Room 125, Reno, Nevada 89502. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Janet J. Bair, Botanist, at the above Nevada Field Office address (702/784–5227).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. This finding is based on information contained in the petition and otherwise available to the Service at the time the finding is made. If the finding is that substantial information was presented, the Service also is required to promptly commence a review of the status of the species involved, if one has not already been initiated under the Service's internal candidate assessment process.

On May 19, 1993, the Service received a petition dated May 10, 1993, from Ms. Mary Pat Matheson, Director of the University of Utah's Red Butte Garden and Arboretum, to list *Lathyrus grimesii* as an endangered species using the emergency provisions of the Act. The Red Butte Arboretum is a Participating Institution of the Missouri Botanic Garden's Center for Plant Conservation, a network of 20 botanical gardens and arboreta dedicated to the conservation of rare and endangered plants in the United States.