



BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2023-0005; Notice 1]

Forest River Bus, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Forest River Bus, LLC (Forest River) has determined that certain model year (MY) 2009-2022 Starcraft school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 222, *School Bus Passenger Seating And Crash Protection*. Forest River filed a noncompliance report dated December 21, 2022, and subsequently petitioned NHTSA (the “Agency”) on January 17, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Forest River’s petition.

DATES: Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.
- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal Holidays.

- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to https://www.regulations.gov, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the *Federal Register* pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at https://www.regulations.gov by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

FOR FURTHER INFORMATION CONTACT: Daniel Lind, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-7235.

SUPPLEMENTARY INFORMATION:

I. Overview: Forest River determined that certain MY 2009-2022 Starcraft school buses do not fully comply with paragraph S5.2.3 of FMVSS No. 222, *School Bus Passenger Seating and Crash Protection* (49 CFR 571.222).

Forest River filed a noncompliance report dated December 21, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Forest River petitioned NHTSA on January 17, 2023, 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, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Forest River's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 3,192 of the following Starcraft school buses manufactured between April 3, 2009, and May 20, 2020, are potentially involved:

1. MY 2013-2016 Starcraft Allstar MVP
2. MY 2016 Starcraft Allstar XL
3. MY 2019 Starcraft Allstar XL
4. MY 2016-2018 Starcraft Allstar XL MVP
5. MY 2009-2010 Starcraft MFSAB/Prodigy
6. MY 2012-2018 Starcraft MFSAB/Prodigy
7. MY 2013 Starcraft MPV/Prodigy
8. MY 2015-2018 Starcraft MPV/Prodigy
9. MY 2009-2010 Starcraft Prodigy

10. MY 2009-2022 Starcraft Quest
11. MY 2011 Starcraft Quest XL
12. MY 2014-2016 Starcraft Quest XL

III. Noncompliance: Forest River explains that the noncompliance is that the subject school buses are equipped with a restraining barrier that does not meet the barrier forward performance requirement provided by S5.2.3 of FMVSS No. 222.

IV. Rule Requirements: Paragraph S5.2.3 of FMVSS No. 222 includes the requirements relevant to this petition. When force is applied to the restraining barrier in the same manner as specified in S5.1.3.1 through S5.1.3.4 for seating performance tests, the restraining barrier must meet the following requirements:

- (a) The restraining barrier force/deflection curve shall fall within the zone specified in Figure 1;
- (b) Restraining barrier deflection shall not exceed 356 mm; (for computation of (a) and (b) the force/deflection curve describes only the force applied through the upper loading bar, and only the forward travel of the pivot attachment point of the loading bar, measured from the point at which the initial application of 44 N of force is attained.)
- (c) Restraining barrier deflection shall not interfere with normal door operation;
- (d) The restraining barrier shall not separate from the vehicle at any attachment point; and
- (e) Restraining barrier components shall not separate at any attachment point.

V. Summary of Forest River's Petition: The following views and arguments presented in this section, "V. Summary of Forest River's Petition," are the views and arguments provided by Forest River. They have not been evaluated by the Agency and do not reflect the views of the Agency. Forest River describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Forest River begins by stating that since the subject frontal barrier was first certified in 2008, the same design has been used and has been produced by the same supplier. Forest River

states since the frontal barrier was certified to comply with the FMVSS No. 222 performance requirements, it “has not changed in any material respect.” Furthermore, Forest River contends that NHTSA has previously conducted compliance testing on the subject frontal barriers and found them to be compliant with the S5.2.3 requirements.

In September of 2020, a third-party contractor for NHTSA, Applus IDIADA KARCO Engineer, LLC (KARCO) conducted compliance testing for the performance of MY 2019 Starcraft Quest school bus in accordance with the requirements of S5.2.3 of FMVSS No. 222. The testing conducted by Karco shows that the force/deflection curve of the passenger side restraining barrier did not comply with S5.2.3(a) resulting in a formal inquiry by NHTSA. In June 2021, Forest River responded to NHTSA’s inquiry and contended that KARCO did not conduct the September 2020 compliance testing in accordance with the test procedure required by FMVSS No. 222. Specifically, Forest River believes that KARCO’s setup of the test apparatus “caused it not to be sufficiently rigid and this caused the apparatus to inappropriately contort and change direction during testing.” Forest River contends that in the video of KARCO’s testing provided by NHTSA, the “movement of the test apparatus can clearly be seen.” Forest River notes that NHTSA has provided videos of KARCO’s testing, and requested a copy of KARCO’s test report but NHTSA has not provided one. Therefore, Forest River states, it is not able to evaluate how KARCO documented its findings

In November 2021, Forest River retained an external testing facility to reevaluate the subject frontal barriers. Forest River states that this testing indicated that the subject frontal barriers complied with the S5.2.3 requirements and Forest River provided the test report and videos to NHTSA. NHTSA requested additional information from Forrest River in March 2022 and Forest River provided a partial response in April 2022 and provided the remainder in May 2022. Forest River maintained its position that the KARCO testing was not conducted in accordance with the FMVSS No. 222 test procedures “due to insufficient rigidity of the testing apparatus that allowed for inappropriate movement of the upper loading bar.” Forest River says

that this movement can be seen in the video provided by KARCO. Thus, according to Forest River, KARCO's testing is not an accurate indicator of compliance.

Forest River states that it met with NHTSA on December 2, 2022, at the Agency's request. At the meeting, NHTSA informed Forest River that the frontal barrier tested by the external facility retained by Forest River was not the same size as the frontal barrier that was tested by KARCO. Forest River states that its external testing facility unintentionally evaluated the incorrect size frontal barrier. The external testing facility evaluated a 34-inch frontal barrier when it intended to evaluate a 30-inch frontal barrier. Forest River says, "NHTSA indicated that a recall of vehicles equipped with the 30-inch frontal barrier would be necessary." At the time Forest River did not have test data to show that the 30-inch frontal barrier was compliant. As a result, Forest River says it "acquiesced to NHTSA's demand" and filed a noncompliance report on December 21, 2022.

Meanwhile, Forest River says that it made arrangements to evaluate a 30-inch frontal barrier, and testing took place in early January 2023. Forest River states that the test results show that the 30-inch frontal barrier complied with the FMVSS No. 222 performance requirements and absorbed nearly 125 percent of the energy absorption requirements. Forest River provided a copy of the test report with its petition which can be found on the docket. Forest River states that video of the testing is available to NHTSA to view.

Forest River notes that no production changes are necessary because it ceased manufacturing the subject school buses in June 2020.

According to Forest River, the purpose of S5.2.3 of FMVSS No. 222, "is to mitigate against the effects of injury if an occupant is thrown against the restraining barrier in a crash."

Forest River states that its testing conducted in January 2023 demonstrates that the subject frontal barrier complies with the relevant performance requirements because it indicates that the 30-inch frontal barrier "substantially exceeds" the S5.2.3 performance requirement.

Forest River contends that its January 2023 testing was conducted in accordance with S5.2.3,

“thus any noncompliance in this product (to the extent one actually exists) is inconsequential to motor vehicle safety.” Forest River says that the testing apparatus used to conduct the testing “was sufficiently robust so that it remained stable during operation.” Forest River says that because the testing apparatus was sufficiently rigid, “the path of each of the loading bars remained laterally centered and maintained a straight path to the barrier and with minimal deflection, as the test procedure requires.”

Forest River notes that NHTSA has previously stated that one of its considerations when evaluating inconsequentiality petitions is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.¹ According to Forest River, the subject noncompliance does not cause an enhanced risk to an occupant of an affected school bus because “the data clearly and unambiguously demonstrates that the frontal barriers meet the performance requirements of S5.2.3.” Forest River contends that its petition is unlike other inconsequential noncompliance petitions that involve a noncompliance with a performance requirement because there is no performance-related concern for the subject noncompliance, as shown by Forest River’s test results.

Forest River adds that no complaints, reports, or claims of any type have been received concerning the performance of the subject frontal barriers. Forest River acknowledges that NHTSA does not consider the absence of injuries or complaints when determining the inconsequentiality of a noncompliance, however, Forest River believes that “this dearth of data in this case, when coupled with all of the other relevant data and information is instructive given the long field history of the subject barriers.”

To conduct the January 2023 testing, Forest River states that the test facility obtained four frontal barriers with the correct specifications directly from the supplier and selected one of those frontal barriers to evaluate.

¹ See *Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance*; 78 FR 35355 (June 12, 2013).

Forest River claims that NHTSA “has not accounted for the deviations in the test procedure utilized by its own testing contractor.” Forest River states that S5.2.3 of FMVSS No. 222 requires the barrier performance forward testing to be conducted in accordance with the conditions stated in S5.1.3.1 – S5.1.3.4 of FMVSS No. 222. Forest River contends that KARCO did not set up the test apparatus in accordance with FMVSS No. 222 when evaluating the subject frontal barrier on behalf of NHTSA. Forest River says that KARCO’s setup caused the test apparatus “to not be sufficiently rigid or stable and thus allowed it to inappropriately contort during testing.” According to Forest River, the test setup allowed the upper loading bar “to change course dramatically by veering to the left and pushing the force of the loading bar on the left side of the barrier.” Therefore, Forest River says, “It did not remain laterally centered against the barrier as required by S5.1.3.1 and S5.1.3.3 and deflected more than the 25 mm allowable by S6.5.1.” which “prevented the upper loading bar’s longitudinal axis from maintaining a transverse plane as required S5.1.3.1 and S5.1.3.3.”

Forest River concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petitions to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject buses that Forest River no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate

commerce of the noncompliant buses under their control after Forest River notified them that the subject noncompliance existed.

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

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

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