

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Part 393****[Docket No. FMCSA-01-10886]****RIN 2126-AA69****Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards; Withdrawal****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) withdraws its March 19, 2002, notice of proposed rulemaking (NPRM), which proposed requiring each commercial motor vehicle (CMV) operating in interstate commerce to display a label applied by the vehicle manufacturer or a registered importer to document the vehicle's compliance with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect as of the date of manufacture. We issued the NPRM in coordination with the National Highway Traffic Safety Administration (NHTSA), which published on the same day three companion notices related to the FMVSS certification requirement. Although the NPRM would have applied to all CMVs operated in the United States, its greatest impact would have been on motor carriers domiciled in Canada and Mexico. In withdrawing the NPRM, we conclude the proposed FMVSS certification label requirement is not necessary to ensure the safe operation of CMVs on our nation's highways. Vehicles operated by Canada-domiciled motor carriers meet Canadian Motor Vehicle Safety Standards (CMVSSs), which are consistent with the FMVSSs in all significant respects. Furthermore, since the FMVSSs critical to the operational safety of CMVs are cross-referenced in the Federal Motor Carrier Safety Regulations (FMCSRs), FMCSA, in consultation with NHTSA, has determined it can most effectively achieve the compliance of CMVs with the FMVSS through enforcement measures and existing regulations ensuring compliance with the FMCSRs, making additional FMVSS certification-labeling regulation unnecessary.

DATES: The notice of proposed rulemaking published on March 19, 2002, at 67 FR 12782, is withdrawn as of August 26, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Background**

On March 19, 2002, FMCSA and NHTSA published four notices requesting public comments on regulations and policies directed at enforcement of the statutory prohibition on the importation of commercial motor vehicles that do not comply with the applicable FMVSSs. The notices were issued as follows: (1) FMCSA's notice of proposed rulemaking (NPRM) proposing to require motor carriers to ensure their vehicles display an FMVSS certification label (67 FR 12782); (2) NHTSA's proposed rule to issue a regulation incorporating a 1975 interpretation of the term "import" (67 FR 12806); (3) NHTSA's draft policy statement providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively certify a motor vehicle complied with all applicable FMVSSs in effect at the time of manufacture and affix a label attesting this (67 FR 12790); and (4) NHTSA's proposed rule concerning recordkeeping requirements for manufacturers that retroactively certify their vehicles (67 FR 12800).

In addition to the proposal concerning FMVSS certification, FMCSA published on that same day (March 19, 2002) three interim rules and a final rule related to implementation of the North American Free Trade Agreement (NAFTA). The interim final rules were "Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond United States Municipalities and Commercial Zones on the United States-Mexico Border" (67 FR 12702), "Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States" (67 FR 12758), and "Certification of Safety Auditors, Safety Investigators, and Safety Inspectors" (67 FR 12776). The final rule was "Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in United States Municipalities and Commercial Zones on the United States-Mexico Border" (67 FR 12652).

NHTSA and FMCSA have complementary responsibilities to ensure vehicle safety under their respective enabling legislation. NHTSA establishes manufacturing standards—the FMVSS—under authority of the

National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89-563) (Vehicle Safety Act). Part 567 of title 49, Code of Federal Regulations (49 CFR Part 567), requires manufacturers or registered importers of motor vehicles built for sale or use in the United States to affix a label certifying the motor vehicle meets the applicable FMVSSs in effect on the date of manufacture.

Under 49 U.S.C. 31136(a), the Secretary of Transportation (Secretary) has authority (delegated to FMCSA by 49 CFR 1.73) to prescribe minimum safety standards for commercial motor vehicles to ensure these vehicles are maintained, equipped, loaded, and operated safely. FMCSA also has been delegated authority to prescribe requirements for the safety of operation and equipment of motor carriers operating in interstate commerce. See 49 U.S.C. 31502(b). The agency's regulatory authority encompasses the safe operation of CMVs in interstate and foreign commerce, motor carriers conducting these operations, and CMV drivers. FMCSA's safety regulations, the Federal Motor Carrier Safety Regulations (FMCSRs), are codified in 49 CFR parts 325-399.

FMCSA's withdrawal of this NPRM is consistent with NHTSA's Notice of Withdrawal of Proposed Policy Statement published elsewhere in today's **Federal Register**. NHTSA has decided to withdraw a 1975 interpretation in which the agency had indicated that the Vehicle Safety Act is applicable to foreign-based motor carriers operating in the United States. Although FMCSA is withdrawing its NPRM, we will uphold the operational safety of commercial motor vehicles on the nation's highways—including that of Mexico-domiciled CMVs operating beyond the U.S.-Mexico border commercial zones—through continued vigorous enforcement of the FMCSRs, many of which cross-reference specific FMVSSs. Mexico-domiciled motor carriers are required under 49 CFR 365.503(b)(2) and 368.3(b)(2) to certify on the application form for operating authority that all CMVs they intend to operate in the United States were built in compliance with the FMVSSs in effect at the time of manufacture. Further, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. This inspection will include checking compliance with part 393 of the FMCSRs and the FMVSSs they cross-reference. These vehicles also will be subject to inspection by enforcement

personnel at U.S.-Mexico border ports of entry and at roadside in the United States to ensure their compliance with applicable FMCSRs, including those that cross-reference the FMVSSs. For vehicles lacking a certification label, it has been determined that enforcement officials could, as necessary, refer to the VIN (vehicle identification number) in various locations on the vehicle. The VIN will assist inspectors in identifying the vehicle model year and country of manufacture to determine compliance with the FMVSS or CMVSS.

As described in an FMCSA policy memorandum, "Enforcement of Mexico-Domiciled Motor Carriers' Self-Certification of Compliance with Motor Vehicle Safety Standards," if FMCSA finds, during the pre-authority audit or subsequent inspections, that a Mexico-domiciled carrier has falsely certified its vehicles as FMVSS compliant, we may use this information to deny, suspend, or revoke the carrier's operating authority or certification of registration or issue appropriate penalties for the falsification. We are issuing this policy memorandum to FMCSA field offices and our State enforcement partners under the Motor Carrier Safety Assistance Program (MCSAP). A copy of the memorandum is available in the docket.

Discussion of Comments to the NPRM

The following organizations commented on the agency's NPRM to require that motor carriers ensure their vehicles display an FMVSS certification label: Advocates for Highway and Auto Safety (Advocates); the Amalgamated Transit Union (ATU); the American Insurance Association (AIA); the American Trucking Associations (ATA); the Embassy of Canada (Canada); the Canadian Transportation Equipment Association (CTEA); the Canadian Trucking Alliance (CTA); the Canadian Vehicle Manufacturers Association (CVMA); the Commercial Vehicle Safety Alliance (CVSA); the California Highway Patrol (CHP); Greyhound Lines, Inc. (Greyhound); the International Brotherhood of Teamsters (IBT); Manitoba Transportation and Government Services (Manitoba); the Missouri State Highway Patrol, Commercial Vehicle Enforcement Division (Missouri CVED); the National Truck Equipment Association (NTEA); Public Citizen; the Transportation Trades Department, AFL-CIO (TTD); and the Truck Manufacturers Association (TMA).

Many commenters submitted identical comments to the dockets for the FMCSA and NHTSA proposals published on March 19, 2002, as well as

to the four other NAFTA-related rules FMCSA published that day. The comments summarized below are discussed in the context of FMCSA's NPRM regarding the FMVSS certification label.

General Comments

Most of the commenters expressed concern that the proposal would require a complex and difficult-to-implement process involving replacement of compliance labels and re-creation of manufacturers' performance test documentation for vehicles long in use. Many commenters noted this would not address the fundamentals of what is necessary to ensure CMVs operate safely. They questioned the safety benefits of requiring a certification label, given that all CMVs operated in the United States are required both to comply with the FMCSRs and to pass roadside inspections conducted by safety officials according to standard Federal inspection procedures.

CVSA stated the consensus among its member jurisdictions was "that implementation of the NPRM would not resolve any safety issues, but instead would create a significant economic effect on cross-border trade, and domestic commercial transportation."

TMA supported the agency's efforts to ensure commercial motor vehicles manufactured in Canada and Mexico meet the same safety standards required of CMVs manufactured for the U.S. market. However, TMA believed both the FMCSA proposal and NHTSA's proposed policy statement on retroactive certification invited compliance problems and could impact U.S. motor carriers adversely. CVMA supported TMA's position, adding it believes better opportunities exist for improving CMV safety through vehicle maintenance and enforcement of safety regulations. It cited programs adopted by the Province of Ontario as examples.

CTEA, a trade association representing vehicle and equipment manufacturers and the provider of a label service to Canadian and U.S. commercial motor vehicle manufacturers registered with Transport Canada and NHTSA, was encouraged that FMCSA addressed the issue of certification compliance labels. CTEA believes, however, the most effective way to improve CMV roadworthiness is for operators to adhere to manufacturers' maintenance schedules and practices, and for recommended inspection procedures to be used.

NTEA, a U.S. trade association representing distributors of multistage-produced, work-related trucks, truck bodies, and equipment, expressed a

number of concerns about the practicality of implementing the proposed requirements. NTEA's concerns are discussed in detail under *Reciprocity with Canadian Standards* and the two sections on *Replacement Labels* below.

ATA stated it supports truck safety achieved through "reasonable and cost-effective measures," applied appropriately according to operations conducted and equipment used. ATA believes achieving safe operations does not depend on the presence of a certification label. It asserted FMCSA has provided no data indicating vehicles without certification labels operate unsafely, adding it is unaware of the existence of such data. CVSA, CTA, Missouri CVED, and Manitoba made similar comments.

Canada asserted "there is no credible case that extending [the FMVSS labeling requirements] to Canadian commercial vehicles would result in increased safety." Canada referred to studies showing Canadian CMVs operating in the United States to be as safe as, or safer than, U.S.-based CMVs, and claimed it would be difficult, costly, and in some cases impossible to comply with the proposed regulation. Canada also anticipated the proposal would have a serious negative impact on cross-border trade and tourism, as well as violate United States obligations under both NAFTA and the Marrakesh Agreement Establishing the World Trade Organization. Canada contended the rule would provide less favorable treatment to Canadian motor carriers than to U.S. carriers, and would restrict trade more than is necessary to achieve safety objectives.

CTA stated the safety of Canadian motor carriers operating in the United States would not be diminished absent the provisions of the NPRM. CTA estimates there are at least 250,000 CMVs regularly engaged in cross-border traffic, but believes the number could be much higher: "Since carriers do not segregate their fleets into 'domestic' and 'international' equipment, from a practical standpoint, all equipment in fleets with cross-border operations would fall under the proposed labeling requirements."

Seven commenters favored the proposal:

Greyhound contended Mexico-manufactured buses "did not comply with the FMVSS when they were manufactured and do not comply with the FMVSS and the Federal Motor Carrier Safety Regulations (FMCSR) now," and asserted it would be highly inappropriate for DOT to allow these vehicles to operate in the United States.

ATU stated it concurs with Greyhound's comments.

Advocates, acknowledging NAFTA requires elimination of trade barriers and unnecessary burdens on commerce, stressed that the treaty "was not intended to require the evasion or suspension of established motor vehicle regulations and safety standards." AIA supported Advocates' position.

Citing the requirements of the Vehicle Safety Act and a 1975 interpretation letter issued by NHTSA, CHP supported the proposal for the certification and labeling requirements.

Public Citizen stated the proposed NHTSA and FMCSA regulations "close an unofficial loophole" in the agencies' regulations. IBT also supported the FMCSA proposal.

FMCSA Response: Generally, U.S. motor carriers operating CMVs (as defined in 49 CFR 390.5) in interstate commerce have access only to vehicles that either were manufactured domestically for use in the United States and have the required certification label or were imported into the United States in accordance with applicable NHTSA regulations, including certification documentation requirements of 49 CFR Part 567. Furthermore, FMCSA's safety regulations incorporate and cross-reference the FMVSSs critical to continued safe operation of CMVs. Finally, with only a few minor differences, the Canadian Motor Vehicle Safety Standards (CMVSSs) mirror the FMCSRs.

Although Mexico-domiciled vehicles are less likely to display FMVSS or CMVSS certification labels, FMCSA believes continued strong enforcement of the FMCSRs in real-world operational settings, coupled with existing regulations and enhanced enforcement measures, will ensure the safe operation of Mexico-domiciled CMVs in interstate commerce. Under the MCSAP, FMCSA and its State and local partners conduct approximately 3 million roadside vehicle and driver inspections each year on vehicles (domiciled in the United States, Canada, or Mexico) operating in interstate commerce. Enforcement of the FMCSRs, and by extension the FMVSSs they cross-reference, is the bedrock of these compliance assurance activities. Therefore, after careful consideration, FMCSA has concluded it is not necessary to amend the FMCSRs to require commercial motor vehicles to display an FMVSS certification label in order to achieve effective compliance with the FMVSSs.

Simply requiring CMVs to bear FMVSS certification labels would not ensure their operational safety. An FMVSS label certifying compliance with

performance standards applicable to lights, brakes, and other wear items does not ensure real-world safety in the absence of compliance with the operational and maintenance standards imposed by the FMCSRs, especially in the case of vehicles built many years ago. Although the presence or absence of an FMVSS compliance label can certainly provide a useful tool in this regard, inspection of the CMV's compliance with the FMCSRs remains the benchmark by which enforcement officials identify and remove from service vehicles likely to break down or cause a crash. The American public is better protected by the FMCSRs than solely through a label indicating a CMV was originally built to certain manufacturing performance standards.

Congress intended the FMVSSs and FMCSRs as mutually supportive systems of regulations—one manufacturing, the other operational. In the Vehicle Safety Act, which mandated creation of the manufacturing standards, Congress specified that the preexisting motor carrier safety regulations promulgated by the Interstate Commerce Commission should not differ in substance or impose any lesser standard of performance than the manufacturing standards. (See also Senate Commerce Committee Report No. 1301, June 23, 1966.) After the establishment of DOT on April 1, 1967, the FMVSSs and motor carrier safety regulations (now FMCSRs) were in fact coordinated under a single agency, the Federal Highway Administration, wherein they were redesignated in December 1968 under newly established chapter III of title 49 of the Code of Federal Regulations (33 FR 19700, Dec. 25, 1968).

Since that time, care has been taken in rulemaking proceedings amending the FMVSSs or FMCSRs to effectuate the Congressional intent of consistent and mutually supportive regulations. For example, FHWA and the National Highway Safety Bureau (NHSB) (which became part of NHTSA when that agency was established in 1971) coordinated same-day publication of complementary regulatory proposals on August 15, 1970—with NHSB proposing an FMVSS on bus push-out windows to provide a complementary manufacturing standard to an existing motor carrier safety regulation, while the FHWA proposed to amend its existing regulations concerning window construction in order to be consistent with the NHSB proposal. (The FHWA and NHSB proposals were published at 35 FR 13024 and 13025, respectively, and FHWA's final rule [37 FR 11677, June 10, 1972] made the agency's bus

window requirements consistent with the new FMVSS standard [No. 217, published at 37 FR 9395 on May 10, 1972]). The most recent example is FMCSA's final rule, "Parts and Accessories Necessary for Safe Operation; General Amendments" (Docket Number FMCSA-1997-2364), which updates and expands FMCSR cross-references to FMVSSs and includes applicable engineering citations. As a result of the Congressional directive that the FMCSRs provide for performance no less than the FMVSSs and the history of consistency between the two bodies of regulations, enforcement of the FMCSRs assures compliance with the FMVSSs cross-referenced therein—and, more important, provides for safety on the highways.

Reciprocity With Canadian Standards

TMA recommended either a U.S. or Canadian certification label be accepted for commercial motor vehicles manufactured before the effective date of the NHTSA policy statement on retroactive certification. The only major differences between the U.S. and Canadian manufacturing standards are the effective dates (also called compliance dates) for the requirements for antilock brake systems (ABS) and automatic brake adjusters. Since all vehicles operating in the United States must comply with the FMCSRs, and the FMCSRs for automatic brake adjusters (§ 393.53) and ABS (§ 393.55) require CMVs to comply with FMVSS No. 105 (for hydraulic-braked vehicles) and FMVSS No. 121 (for air-braked vehicles) applicable at the time the vehicle was manufactured, the different compliance dates for U.S. and Canadian standards are moot. ATA, CTA, and NTEA also stressed the strong similarities between the U.S. and Canadian standards.

CVMA asserted the potential safety benefits of retroactive certification of CMVs built to comply with Canadian standards would be minimal and, under the proposal, retroactive certification would also include modifications made to vehicles after manufacture. It noted this would require not only consideration of the records of original and secondary manufacturers but also evaluation of repairs and modifications made by vehicle owners.

CVSA and CTA strongly encouraged DOT to consider developing a reciprocity agreement with Canada because the CMVSSs are so similar to the FMVSSs. Manitoba noted that some Canadian standards are "more stringent than the U.S. standards," citing requirements for daytime running lights and underride protection.

CTEA stated “* * * Canadian manufacturers registered with Transport Canada are entitled to affix a National Safety Mark (NSM) to their production. These same companies are registered with NHTSA for the purpose of exporting to the U.S. and they have met the label requirements for the U.S.” TMA, CTEA, NTEA, and CTA expressed similar views.

CVSA, CTEA, and Manitoba believed Canadian authorities might require U.S.-manufactured vehicles entering Canada to display a CMVSS certification label, leading to disruptions in cross-border commerce.

Canada cited a 30-year history of “close and effective collaboration” with the United States to develop and implement CMV manufacturing and operating standards. It provided extensive analysis comparing the safety records of U.S. and Canadian motor carriers, citing results of FMCSA and DOT studies.

FMCSA Response: FMCSA, in consultation with NHTSA, agrees U.S. and Canadian CMV manufacturing standards are comparable in all significant respects. As TMA noted, the differences in effective dates for the Canadian and U.S. requirements for ABS and automatic brake adjusters are moot, because the effective dates of the FMVSS requirements, as incorporated in part 393 of the FMCSRs, determine whether a CMV is compliant with these standards. For example, a Canada-domiciled vehicle bearing a CMVSS label and manufactured on or after the effective date of NHTSA’s ABS requirement (and before the effective date of Canada’s ABS requirement) would be in violation of the FMCSRs when operating in the United States unless it were equipped with ABS. This distinction would have held even if the vehicle met the certification labeling requirement proposed in the NPRM. The same principle applies to U.S.-required conspicuity treatments, brake adjusters, brake adjustment indicators, and rear impact guards. The effective dates for FMVSSs incorporated in the FMCSRs apply equally to CMVs domiciled in the United States, Canada, and Mexico.

Moreover, an FMVSS or CMVSS certification label denotes only the vehicle’s compliance with the U.S. or Canadian manufacturing standards applicable to newly *manufactured vehicles*. The certification label, while a useful guidepost, is not the most important basis for determining whether a vehicle is in current safe operating condition. CMV operational safety compliance is best addressed in terms of

these vehicles’ compliance with the FMCSRs.

In response to Manitoba’s comment regarding rear underdrive protection and daytime running lamps, FMCSA’s rules concerning rear impact guards were revised on September 1, 1999, to require motor carriers to ensure their trailers manufactured on or after January 26, 1998, are equipped with rear impact guards meeting the requirements of FMVSS Nos. 223 and 224 (49 CFR 571.223 and 571.224). FMVSS No. 108 (49 CFR 571.108) concerning lamps and reflective devices was amended on January 11, 1993, to ensure daytime running lights installed voluntarily on newly manufactured vehicles meet certain performance requirements. Section 393.11 of the FMCSRs cross-references FMVSS No. 108 and requires motor carriers to ensure their CMVs are maintained to comply with this requirement.

Canada’s requirements for conspicuity treatment of trailers and semitrailers provide several options for the colors and placement of retroreflective material; one of these options meets the requirements of FMVSS No. 108. FMCSA has advised Canadian manufacturers, industry groups, and motor carriers that 49 CFR 393.11 requires all Canada-based trailers operated in the United States to comply with the FMVSS No. 108 requirements for conspicuity treatments on trailers manufactured on or after December 1, 1993. Section 393.11 cross-references FMVSS No. 108 and requires motor carriers to ensure CMVs manufactured after March 7, 1989, meet all applicable requirements of FMVSS No. 108 in effect on the date of manufacture. In addition, § 393.13 provides flexibility for retrofitting conspicuity treatments for trailers and semitrailers manufactured before December 1, 1993, by allowing the use of other colors or color combinations along the sides or lower rear of semitrailers and trailers until June 1, 2009.

Safety of Vehicles Manufactured for the Mexican Market

Greyhound expressed concern about the enforceability of the NPRM provisions: “We state unequivocally that the vast majority of Mexican-manufactured buses did not comply with the FMVSS when they were manufactured and do not comply with the FMVSS and the Federal Motor Carrier Safety Regulations (FMCSR) now. Many of these buses do not comply with the FMVSS/FMCSR standards for fundamental safety items such as brakes, fuel systems, windows, and emergency exits.” Greyhound

believed the proposed requirement for the FMVSS certification label “should ultimately ensure compliance with the FMVSS,” but recommended FMCSA take additional action in the near term. Specifically, FMCSA should automatically deny provisional operating authority to motor carriers discovered during onsite safety audits to be noncompliant with the FMCSRs.

ATA, while acknowledging Mexican federal safety standards are less similar to the U.S. requirements than are the Canadian standards and do not include a requirement for certification labels, nevertheless contended the Mexican standards help ensure new vehicles incorporate needed safety features. It asserted vehicle manufacturers the world over are interested in building equipment that will be safe “if driven correctly and maintained properly.” ATA noted the requirements of the FMCSRs adequately address the safe operation of CMVs, whereas a label describes the vehicle’s safety compliance only as of the date of manufacture.

CVSA stated “Mexican safety standards do not require certification labels and do not mirror those of the U.S. as closely as Canadian standards, but their efforts to match U.S. standards, and in some cases surpass them (as with more restrictive drug and alcohol testing) ensures that important safety standards are being met.” CVSA maintained there is no evidence to suggest Mexico-based vehicles “provide less than desirable safety performance.” In addition, CVSA stated the certification label “does not provide evidence that the vehicle is safe, and it is impractical to place a vehicle Out of Service just because it is lacking a certification label.”

FMCSA Response: Regardless whether a CMV bears a certification label from a manufacturer or a registered importer, it must comply with all applicable FMCSRs, including those that cross-reference FMVSS requirements in effect on the date of manufacture. As noted earlier in this document, the certification label does not, in and of itself, fulfill motor carriers’ obligations to comply with applicable FMCSRs—whereas compliance with FMCSRs does provide effective confirmation of compliance with the cross-referenced FMVSSs.

With regard to Greyhound’s comments about denying provisional operating authority to Mexico-domiciled motor carriers whose CMVs are found during on-site audits to be noncompliant with the FMCSRs, Mexico-domiciled carriers are required under 49 CFR 365.503(b)(2) and

368.3(b)(2) to certify on the application form for operating authority that all CMVs they intend to operate in the United States were built in compliance with the FMVSSs in effect at the time of manufacture. If the motor carrier were unable to make the necessary certification on its application, the agency would deny its request to operate in the United States.

Moreover, as noted in the *Background* section of this document, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. The pre-authority safety audit evaluation criteria are in Appendix A to Subpart E of 49 CFR Part 365. If a pre-authority safety audit discloses an applicant has falsely certified its vehicles as FMVSS compliant, FMCSA may use this information to deny the application for provisional authority. In addition, as prescribed in the FMCSA policy memorandum discussed previously, if a motor carrier is discovered to be operating noncompliant vehicles in the

United States after receiving provisional operating authority, the agency could suspend or revoke that authority based on the carrier's false certification.

The major potential obstacle to FMVSS conformance for truck tractors manufactured for the Mexican market appears to be the requirement for installation of ABS, applicable to vehicles manufactured on or after March 1, 1997. Because Mexico's vehicle safety regulations have not to date required ABS, many Mexico-based vehicles manufactured on or after March 1, 1997, did not include this feature and therefore do not bear an FMVSS certification label. However, information provided by the Truck Manufacturers Association in a September 16, 2002, letter to NHTSA Administrator Jeffrey W. Runge, M.D., and former FMCSA Administrator Joseph M. Clapp (available in the docket) offers a more complete picture.

According to TMA, U.S. manufacturers have manufactured and sold nearly 60,000 Class 8 trucks and tractors for the Mexican market since 1993. Roughly 80 percent of those vehicles were built in compliance with

the FMVSSs and were so certified. KenMex, a subsidiary of Paccar, Inc., manufactures Kenworth trucks for sale in Mexico. KenMex began applying FMVSS certification labels in 1993 to all vehicles built for the Mexican market that met U.S. safety standards. Approximately 95 percent of those vehicles were equipped with ABS. International Truck and Engine Corporation trucks sold in Mexico complied with the FMVSSs, except that ABS could be deleted at the customer's option. However, the majority of International's tractors built and sold in Mexico from July 1999 until September 2001 had ABS, as did some vehicles manufactured between 1996 and 1999. Freightliner sold a limited number of vehicles to customers in Mexico before 1997, and all vehicles in three model lines sold in Mexico were certified to meet the FMVSSs. Volvo began selling U.S.-manufactured trucks in Mexico in 1998, virtually all of them FMVSS-certified and bearing the requisite certification labels. We have summarized this information in the table below.

MANUFACTURERS' HISTORY OF TRUCKS AND TRUCK TRACTORS MANUFACTURED AND/OR SOLD IN MEXICO

Manufacturer	Manufactured in Mexico	Sold in Mexico	Notes
Ford	Yes: medium-duty ..	No	Sold limited number of vehicles in Mexico before 1997. All have full U.S. certification.
Freightliner LLC	Century Class	Yes	
	Columbia	Yes	
	Argosy	Yes	
	FLD	Yes	
	Sterling	Yes	50% have full U.S. certification. 50% have label issues (tire labels, labels in Spanish). Approximately 20% of FLD vehicles do not have ABS.
General Motors	No	Yes	10% have full U.S. certification. 90% have label issues, but have ABS.
International Truck & Engine	Yes	Yes	Sells only incomplete vehicles in Mexican market. 9200, 9400: ABS was a "delete" option 3/97-9/01. 11/96-11/99: 1996 9000s do not bear FMVSS labels, but vehicles with ABS could be certified. Escobedo plant: 7/99-9/01: ABS "delete" option for 9000s, but majority had ABS. Starting 9/01, ABS no longer a "delete" option. 4000, 7000 series: tractors with ABS would have label.
Isuzu Motors	No	No	Was in market for 1 year, sold 13 tractors, 12 chassis. Of the 13 tractors, 2 labeled & 6 retrofittable.
Mack Trucks	No	No	
PACCAR Inc.	Yes—KenMex	Yes	At least 95% of the 40,000 T600, T800, T2000 and W900 vehicles have ABS. 1993 onward: FMVSS-compliant vehicles bear labels.
Volvo Trucks NA	No	Yes	3776 VN tractors labeled, 45 not labeled (no ABS). 2 VHD tractors labeled. 479 miscellaneous incomplete vehicles with chassis cab labels.

Based on the information presented in the table, we believe most model year 1996 and later CMVs manufactured in Mexico may meet the FMVSSs. (Since NHTSA's ABS requirement applies only to vehicles built on or after March 1,

1997, Mexico-domiciled vehicles manufactured before that date are required to comply with the FMVSSs applicable when they were built, but not with the ABS requirement.) Mexico-based vehicles manufactured on or after

March 1, 1997, and not equipped with ABS would, in theory, need to be retrofitted with ABS to achieve compliance with the FMCSRs.

From a practical standpoint, however, this is not a viable option. Information

presented in the preamble to the Federal Highway Administration's final rule on ABS (63 FR 24454, May 4, 1998) explains the difficulty NHTSA researchers experienced in retrofitting commercial motor vehicles with ABS for the purpose of conducting a NHTSA fleet study. In that study, a relatively high number of truck tractors—116 out of 200, or 58 percent—experienced installation/pre-production design-related problems. Although the researchers attributed this to the “newness” of the systems in North American applications, we believe the percentage of malfunctions would be much greater if motor carriers were required to attempt retrofitting innumerable configurations of air-braked vehicles.

The NHTSA fleet study was a “best-case scenario” for retrofitting ABS, in that the vehicle and brake manufacturers (as well as wheel and hub manufacturers) worked together to complete the ABS installations. Even with this collaborative effort of experienced engineers, numerous problems related to the retrofitting process surfaced during the study. FMCSA believes the NHTSA research is strongly indicative of the types of technical problems that could be expected if motor carriers were required to retrofit vehicles with ABS. As ABS retrofitting is not practicable, vehicles manufactured on or after March 1, 1997—the effective date of NHTSA's ABS requirement (FMVSS number 121)—will satisfy U.S. safety requirements only if originally equipped with ABS. For a Mexico-domiciled CMV manufactured after March 1, 1997, FMCSA and State enforcement officials will rely closely on inspection of the vehicle to determine its compliance with the ABS requirement at § 393.55.

Consumer Responsibility: Certification Label

ATA asserted the statutory language of Section 108 of the Vehicle Safety Act “precludes the need for the consumer to either apply or retain the certification label.” ATA further contended Section 114 of the Vehicle Safety Act is a requirement placed upon vehicle manufacturers and distributors, and the label serves as a notification to the dealer (or to another distributor) that the manufacturer(s) of the vehicle met the FMVSSs as of a given date. ATA provided photographs of additional labels affixed by some manufacturers, reading “Warning: Data shown on vehicle identification plate is correct on date of manufacture. Alterations made may affect data shown.”

CVSA also contended the proposals would expand what, in its view, has been the historical use of certification labels “to provide buyer protection at the point of sale—in an attempt to regulate vehicles in interstate commerce.

FMCSA Response: Motor carriers are responsible for ensuring vehicles introduced into their fleets are maintained to the safety standards of the FMCSRs, including those cross-referencing the FMVSSs. However, FMCSA acknowledges the significant operational concerns raised by commenters. Prohibiting the operation of CMVs that are compliant with the FMVSSs and the FMCSRs, yet lack a certification label, would place an economic burden on motor carriers and vehicle manufacturers without enhancing commercial motor vehicle safety.

When it is necessary to determine whether the vehicle was certified by the manufacturer as complying with the FMVSSs, or was capable of certification, alternative identification methods are available. For example, Federal and State enforcement officials conducting roadside inspections could rely on a VIN and registration in a U.S. or Canadian jurisdiction as evidence of FMVSS compliance. The requirements for the VIN are described in 49 CFR Part 565. Section 565.4(e) requires the VIN of each vehicle to appear clearly and indelibly either upon a part of the vehicle (other than the glazing) that is not designed to be removed except for repair, or upon a separate plate or label permanently affixed to such a part. The VIN must have 17 characters and be formatted so basic information about the vehicle (such as country of manufacture, model year, identity of the manufacturer) can be quickly determined. Canada's requirements concerning the VIN are similar.

In addition to being marked on each vehicle, the VIN commonly is used to identify a vehicle on registration documents. Most State laws require these documents to be carried in the vehicle at all times. These registration documents provide a secondary method for safety officials to verify a CMV's model year and VIN and, by extension, the FMVSSs applicable to the particular CMV.

Generally, CMVs may not be registered in the United States or Canada unless the vehicle was manufactured for sale or use in either of those countries. Both countries have laws and regulations concerning the importation of vehicles for sale or use that effectively preclude U.S.- and Canada-based motor carriers from

purchasing or leasing vehicles for use in their respective countries unless the vehicles were originally manufactured for, or subsequently modified for, such use. Under 49 U.S.C. 30112 and 30115 and 49 CFR parts 567 and 571, a U.S. motor carrier cannot purchase or use an imported vehicle manufactured for use in a foreign country unless (1) the original manufacturer certified, at the time of manufacture, that the vehicle complied with the applicable FMVSSs, or (2) a registered importer certified the vehicle was modified to comply with applicable U.S. safety standards.

The situation for Mexico-based CMVs is somewhat different. The government of Mexico has not, to date, established a set of vehicle manufacturing standards comparable in scope to the FMVSSs or CMVSSs, nor does it have requirements for certification or compliance with such standards. Hence, there is less assurance that vehicles imported into Mexico, or manufactured for the domestic market in Mexico, meet safety requirements comparable to those of the United States or Canada.

Therefore, we must rely on a strong verification program to confirm certifications (on the application form for FMCSA operating authority) by Mexico-domiciled carriers that they will operate only FMVSS-compliant CMVs in the United States beyond the border commercial zones. As noted in the *Background* section of this document, under FMCSA's enforcement policy memorandum these vehicles will be subject to inspection by enforcement personnel during the pre-authority safety audit and while operating in interstate commerce to ensure their compliance with applicable FMCSRs, including those that cross-reference the FMVSSs. If FMCSA finds a Mexico-domiciled carrier has falsely certified its vehicles as compliant, we may use this information to deny, suspend, or revoke the carrier's operating authority or certification of registration or issue appropriate penalties for the falsification.

Replacement Labels: General

TMA, ATA, and CVSA believed, contrary to FMCSA's assertion, the proposal would affect U.S. carriers more than their foreign counterparts. According to these and other commenters, safety certification labels, particularly those on trailers and converter dollies, often do not remain affixed or legible for the life of the vehicle.

ATA, CTA, NTEA, CTEA, and Canada raised numerous questions concerning the implementation of a requirement to obtain replacement labels. Among their

concerns: Replacement doors and cabs do not bear certification labels, 49 CFR § 567.4(b) prohibits labels from being transferred, and labels are designed to be self-defacing if removal is attempted. ATA, CTA, and Canada noted it would be impossible to obtain replacement certification labels from bankrupt or defunct manufacturers. NTEA recommended allowing motor carriers to replace certification labels, while TMA suggested a single, NAFTA-wide safety certification label acceptable to all three NAFTA nations.

ATA estimated the loss of direct annual revenue just from trailers prohibited from operating without certification labels would exceed \$200 million.

FMCSA Response: FMCSA acknowledges the commenters' concerns. The withdrawal of the NPRM renders this issue moot.

Replacement Labels: Special and Rebuilt Vehicles

ATA, CTA, NTEA, and CVSA questioned how FMCSA would address the labeling of CMVs manufactured in two or more stages, noting that 49 CFR Part 568 requires labeling for these vehicles. ATA asserted consumer-performed repairs, such as replacing original tires with low-profile tires, "invalidate portions of the certification label."

TMA, ATA, and NTEA contended the proposed rule could eliminate the use of glider kits and service cabs (repair parts sold by truck manufacturers to repair a relatively new vehicle that suffered extensive body damage but has a salvageable engine, transmission, drive axles, or other major components). They reasoned a glider kit manufacturer cannot provide a certification label for a repaired vehicle based on the construction of the original vehicle, since it has no knowledge of the extent or quality of the repair.

Missouri CVED questioned how FMCSA would treat the labeling of homemade trailers or other equipment made by persons who are not manufacturers or equipment fabricators, noting the State of Missouri requires these vehicles to have a VIN affixed by the manufacturer. If a vehicle does not have a VIN, the Missouri Department of Revenue issues it a "DRX" plate and number.

FMCSA Response: As stated previously, by virtue of withdrawing the NPRM, we are retracting the proposed requirement for certification labels.

In response to the concern regarding the use of glider kits and service cabs, this matter is addressed in 49 CFR 571.7(e), Combining new and used

components. If a glider kit or a service cab were used to replace an original cab that had been damaged beyond repair, and the cab were fitted with at least two of the three components (engine, transmission, drive axles) from another vehicle, the resulting vehicle would not be considered newly manufactured and its VIN would be the same as that of the vehicle used to provide at least two of the three components.

In response to Missouri CVED's comment concerning homemade trailers, the FMVSSs apply to every newly manufactured motor vehicle without exception.

With regard to State-assigned VINs, such as the "DRX" plate mentioned by Missouri CVED, the Vehicle Equipment Safety Commission (VESC) issued Regulation VESC-18 in August 1979, "Standardized Replacement Vehicle Identification Number System." (The VESC no longer exists, but its materials are currently available through the American Association of Motor Vehicle Administrators of Arlington, Virginia.) Regulation VESC-18 serves as a model procedure for States to assure that all vehicles subject to title and/or registration are readily identifiable through verification of a manufacturer's VIN or State-issued VIN. A copy of Regulation VESC-18 is in the docket.

Roadside Inspections

CVSA requested FMCSA to report on the differences among U.S., Mexican, and Canadian vehicle equipment manufacturing standards for the benefit of manufacturers, registered importers, and roadside inspectors.

Advocates contended FMCSA would be unable to ensure motor carriers' compliance with the FMCSRs, and with those FMVSSs cross-referenced in the FMCSRs, in the absence of certification labels or documentation.

ATA questioned how enforcement officials at roadside could readily verify FMVSS compliance of a CMV manufactured in multiple stages. ATA also inquired how trailers entering the United States by rail or ship would be inspected, who would perform the inspections, and how nonconforming trailers would be handled.

Canada expressed concerns about potential enforcement activities by the U.S. Customs Service (now part of the Department of Homeland Security, under the Directorate of Border and Transportation Security) of vehicles-as-imports at the border, arguing these activities could paralyze cross-border operations and trade. Additionally, Canada feared the potentially chilling effect of heavy fines assessed for vehicles not properly labeled, pointing

out this could prevent Canadian motor carriers from sending their CMVs into the United States.

FMCSA Response: NHTSA has evaluated the differences between the FMVSSs and CMVSSs applicable to heavy trucks and buses, and includes this analysis in its Notice of withdrawal of its policy statement on retroactive certification of CMVs by vehicle manufacturers, published elsewhere in today's **Federal Register**.

We recognize the concerns expressed by CVSA. However, Mexico has not established a comprehensive set of federal CMV manufacturing standards comparable to U.S. and Canadian standards, or based upon a statutory or regulatory scheme similar to those used in the United States and Canada. Therefore, any meaningful transnational comparison of manufacturing standards would be limited to the FMVSS and CMVSS. NHTSA and Transport Canada, as the regulatory agencies responsible for implementing and enforcing their respective nations' vehicle manufacturing safety laws, work together to research the causes and potential means of addressing deaths and injuries associated with motor vehicle crashes. As a result of the similar statutory schemes and the long-standing cooperative relationship between the two regulatory agencies, the FMVSS and CMVSS are similar in almost all substantive respects.

In response to ATA's comment concerning determination of FMVSS compliance of a vehicle manufactured in multiple stages, § 567.4 of NHTSA's regulations describes the manufacturer's responsibility for compliance labeling of the vehicle. Section 567.5 addresses the requirements for manufacturers of vehicles manufactured in two or more stages. These regulations were unaffected by NHTSA's and FMCSA's proposals.

In response to ATA's question on procedures for inspecting trailers entering the United States by rail (such as in trailer-on-flatcar service) or by ship (such as in intermodal containers), these trailers are subject to inspection by FMCSA or its State partners when operated on the highways. Trailers operating in the United States must meet applicable FMCSA regulations. Trailer inspections are performed by Federal and State enforcement officials using the North American Standard Inspection procedures required for all roadside CMV and driver inspections. Nonconforming trailers would be handled in the same way as other vehicle safety violations.

Canada's concerns about performance of inspections at border crossing areas

are moot, in light of withdrawal of the NPRM. Inspections at the U.S.-Canada border will be conducted, as at present, under the North American Standard Inspection procedure.

In response to Advocates' comment, all CMVs, as defined in 49 CFR 390.5 and operated in interstate commerce, are subject to the FMCSRs. The coding of the VIN, which must appear clearly and indelibly on all vehicles, includes a character indicating the model year. Table VI of 49 CFR Part 565 provides those codes for the years 1980 through 2013 (49 U.S.C. 30112 does not apply to vehicles over 25 years old). Given the full VIN code, the enforcement official can determine more precise manufacturing data, including the specific configurations of components and accessories used on a particular vehicle.

Phase-In Period

Greyhound strongly opposed the proposed 2-year phased-in compliance period for certain Mexico-domiciled carriers, contending bus manufacturers in Mexico were advised some years ago that vehicles operating in the United States must comply with the FMVSSs. ATU and TTD supported Greyhound's position. Advocates and Public Citizen also expressed strong opposition to the phased-in compliance period, believing it conflicted with the requirements of the Vehicle Safety Act. Public Citizen pointed to a list of FMVSSs with which CMVs must comply, including antilock brakes, rear impact guards, and brake slack adjusters. Advocates contended phased-in compliance "would create a two-tiered safety regime for motor carriers * * * [and] provides a strong incentive for foreign motor carriers to operate equipment for up to two years without conforming to the FMVSS."

AIA asserted the proposal for a phase-in period is not dictated or envisioned under international law. CHP also opposed the phased-in compliance period.

IBT asserted the border must remain closed until the FMCSA and NHTSA rulemakings are completed, and recommended the phase-in period for carriers already operating in the United States (U.S. and Canadian motor carriers as well as Mexican carriers currently operating beyond the border zones) be reduced to 12 months. IBT also recommended FMCSA clarify the rule text to prohibit carriers currently operating within the border commercial zones from taking advantage of the phase-in period if they applied to operate beyond the border zones.

FMCSA Response: Today's withdrawal of the NPRM renders moot the concept of a phase-in period.

Mexico-based motor carriers with current authority to operate in the United States have long been required¹ to comply with all applicable FMCSRs. Moreover, these vehicles are subject to, and many have undergone, roadside inspections while operating in the United States. The agency's NAFTA-related rules concerning applications for operating authority and safety monitoring require all Mexico-domiciled vehicles operating beyond the border commercial zones to display at all times a current and valid inspection decal for a period of 18 months after a carrier receives provisional operating authority and an additional 3 years after the carrier receives permanent authority. See 49 CFR 365.511 and 385.103. The inspection decal demonstrates the vehicle's compliance with FMVSSs cross-referenced in the FMCSRs, including all of the FMVSSs to which Public Citizen refers. Furthermore, the FMCSRs require motor carriers to maintain this safety equipment on their vehicles.

The roadside inspection procedure is the same for all CMVs operated in the United States, regardless of the motor carrier's country of domicile. In addition, as described above under *Safety of Vehicles Manufactured for the Mexican Market* (and in the FMCSA policy memorandum discussed there and in the *Background* section), if FMCSA or State inspectors determine that any Mexico-domiciled CMVs lack the proper certification, we may use this information to suspend or revoke the carrier's operating authority or certificate of registration for making a false certification or issue appropriate penalties for the falsification.

¹ Section 9102 of the Truck and Bus Safety and Regulatory Reform Act of 1988 (title IX, subtitle B of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181, 4528) required the Secretary to exempt certain foreign motor carriers from part 393 of the FMCSRs, for a period of one year beginning on November 18, 1988. The Federal Highway Administration (FHWA), then the DOT agency responsible for motor carrier safety, addressed the requirements of the Act by publishing a final rule and request for comments on March 24, 1989 (54 FR 12200). In a report to Congress required under this legislation, FHWA recommended the part 393 exemption created by the Act be allowed to lapse, with the exception of a requirement for front-wheel brakes, and that Mexico-domiciled motor carriers operating in the border commercial zones be given until January 1, 1991, to comply with that standard. FHWA published a final rule on May 17, 1994 (59 FR 25572) requiring Mexico-domiciled CMVs operated in the United States to be equipped with brakes acting on all wheels.

As also described above in our discussion of the safety of Mexico-domiciled vehicles, 49 CFR 365.507(c) requires Mexico-domiciled motor carriers to pass an FMCSA pre-authority safety audit before they are granted provisional authority to operate in the United States beyond the border commercial zones. The pre-authority audit will include inspection of available vehicles that have not received the necessary inspection decal. This inspection will include checking compliance with part 393 of the FMCSRs and the FMVSSs they cross-reference. For vehicles lacking a certification label, it has been determined that enforcement officials could, as necessary, refer to the VIN in various locations on the vehicle. The VIN will assist inspectors in identifying the vehicle model year and country of manufacture to determine compliance with the FMVSS or CMVSS. If FMCSA determines the carrier, after having certified all its vehicles as compliant, plans to operate vehicles not complying with those motor vehicle safety standards in effect on the date of manufacture, we may use this information to deny operating authority to the carrier.

Because Mexico-domiciled motor carriers seeking new operating authority are required to certify on the application form that they operate only vehicles manufactured or retrofitted to be in compliance with the FMVSSs, these carriers should refrain from submitting applications for operating authority until they are able to ensure all vehicles to be operated in the United States are in compliance with the FMVSSs in effect on or after their date of manufacture. This requirement will be vigorously enforced, consistent with the agency's policy memorandum discussed previously.

FMCSA's withdrawal of its NPRM concerning certification labels does not relieve motor carriers of the responsibility to comply with all applicable FMCSRs, including those that cross-reference the FMVSSs. The FMCSRs apply equally to all motor carriers operating CMVs in interstate commerce in the United States. Canada- and Mexico-domiciled motor carriers must comply with the same safety regulations as U.S. carriers.

Out-of-Service Violations

TMA questioned whether FMCSA would place a vehicle out of service solely because it lacks an FMVSS certification label, since FMCSA did not explicitly include such a statement in its NPRM. Manitoba likewise was concerned CMVs could be impounded,

seized, or placed out of service for the absence of a certification label.

Advocates expressed a different view, contending without a certification label, "there can be no presumption of affirmative compliance with the certification requirement * * * [This is] evidence that the vehicle was not properly certified and inspectors should place the vehicle out of service."

In supplementary comments, CVSA stated a label does not, by itself, provide evidence of the vehicle's safety. CVSA considered it impractical to place a vehicle out of service solely because it lacks a certification label.

FMCSA Response: Since we are withdrawing the proposed certification label requirement, this issue is now moot. However, we addressed this subject in the preamble to the NPRM (67 FR 12782, at 12784, footnote 4), stating failure to have a certification label would not result in a vehicle's being placed out of service in the absence of vehicle defects meeting existing out-of-service criteria. The preamble to the NHTSA proposed policy statement (67 FR 12790, at 12792) also addressed this issue.

Other Vehicle Laws and Regulations

Greyhound urged FMCSA to coordinate with the Federal Transit Administration (FTA) and the Office of the Secretary of Transportation to ensure fixed-route service operations comply with the requirements of the Americans with Disabilities Act (ADA). (According to 49 CFR Part 37, Subpart H, all buses acquired for fixed-route service must be equipped with a wheelchair lift. Until 100 percent of the fleet is equipped, operators must provide wheelchair lift service on 48 hours' notice.)

Public Citizen recommended FMCSA issue embossed or bolted-on CMV certification markings to aid Federal and State enforcement officials in determining the legal status of each vehicle, and that border-commercial-zone-only trucks be "visually distinguishable" from those allowed to operate beyond the border zones.

FMCSA Response: In response to Greyhound's comment, DOT has a long-standing interpretation that Canada- or Mexico-based motor carriers are subject to ADA requirements if they pick up passengers in the United States. If a Mexico-based charter or tour operator boarded passengers in Mexico, drove them to a point in the United States, and then returned the passengers to Mexico without picking up anyone in the United States, the ADA requirements would not apply. However, the ADA requirements would apply if the

Mexico-based tour operator boarded passengers in the United States, transported them to Mexico, and returned them to the United States. Likewise, if a Mexico-based fixed-route operation between points in Mexico and the United States picked up passengers at any point in the United States, ADA rules would apply.

If a passenger has a concern about the manner in which a provider of interstate highway passenger transportation complies with the ADA, he or she should contact the U.S. Department of Justice (Justice), Civil Rights Division, Disability Rights Section.² FMCSA will coordinate with Justice to ensure the concern is addressed. FTA's jurisdiction concerning ADA compliance extends only to its public-agency grantees.

With regard to Public Citizen's comment, CMVs operated by Mexico-domiciled motor carriers are issued a USDOT number with a suffix indicating whether they are authorized to operate within or beyond the border commercial zones. By regulation, these unique USDOT numbers are prominently displayed on both sides of the CMV.

FMCSA Decision

After review and analysis of the public comments discussed in the preceding section, and in consultation with NHTSA, FMCSA determined it can effectively ensure motor carriers' compliance with applicable FMVSSs through continued vigorous enforcement of the FMCSRs, coupled with measures detailed in our enforcement policy memorandum regarding Mexico-domiciled carriers and vehicles. These new enforcement measures will begin immediately. We will compile data regarding Mexico-domiciled vehicles falsely certified as FMVSS compliant on the motor carrier's application for operating authority and, when appropriate, take necessary action as described in the policy memorandum.

This approach will help ensure the safety of Mexico-domiciled CMVs in real-world, operational settings while eliminating the potential drawbacks associated with requiring commercial motor vehicles to display an FMVSS certification label, as identified by many of the commenters to the NPRM.

We again emphasize all motor carriers operating in the United States must comply with all applicable laws and regulations, including all of the FMCSRs as well as those that cross-reference particular FMVSSs. Through our cross-

references to FMVSSs, we require motor carriers to ensure their CMVs are equipped with specific safety devices and systems required by NHTSA on newly manufactured vehicles, and to maintain their vehicles to ensure continued safe performance. The roadside inspection program will ensure this is the case to the greatest extent practicable.

In view of the foregoing, the NPRM concerning certification of compliance with the Federal Motor Vehicle Safety Standards is withdrawn.

Issued on: August 19, 2005.

Annette M. Sandberg,
Administrator.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 576 and 591

[Docket No. NHTSA-2005-22197]

RIN 2127-AI59, RIN 2127-AI60, RIN 2127-AI64

Retroactive Certification of Commercial Motor Vehicles by Motor Vehicle Manufacturers

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

ACTION: Notice of withdrawal of proposed rulemakings and policy statement.

SUMMARY: This document completes NHTSA's consideration of its responsibilities to help implement the obligations of the United States under the North American Free Trade Agreement. The agency had proposed regulations to permit retroactive certification of foreign domiciled vehicles that, while built in compliance with U.S. standards applicable at the time of manufacture, had not been labelled as such. At the same time, the Federal Motor Carrier Safety Administration had proposed to require all commercial motor vehicles operating in the U.S. to have labels certifying compliance with the Federal motor vehicle safety standards (FMVSS).

After reviewing the comments on the NHTSA and FMCSA proposals, the Department has decided on a more effective and less cumbersome approach to ensuring that commercial motor vehicles were built to the FMVSS (or the very similar Canadian motor vehicle safety standards) and operate safely in the United States.

² 950 Pennsylvania Avenue, NW., Mail Code NYAV, Washington, DC 20530. Information is also available at <http://www.usdoj.gov/crt/dsrec.htm>.