

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 591**

[Docket No. NHTSA 02-11593; Notice 1]

RIN 2127-A164

Importation of Commercial Motor Vehicles**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to add a definition of the term "import" to our regulation on the importation of motor vehicles. A 1966 statute that we administer prohibits the manufacture of new motor vehicles for sale in the United States unless, at the time of manufacture, they complied with the Federal motor vehicles safety standards (FMVSS) then in effect and bear a label certifying that compliance. The statute also prohibits the importation of new or used motor vehicles into the United States unless they were manufactured to conform with, or are brought into conformity with, those standards and are so certified. In 1975, NHTSA issued an interpretation stating that the importation prohibition applies to the bringing into the United States of foreign-domiciled commercial vehicles. We are proposing a definition of the term "import" that would codify this longstanding interpretation in the Code of Federal Regulations.

This document is one of several being issued by this agency and the Federal Motor Carrier Safety Administration (FMCSA) to ensure that the interests of safety are protected as the United States takes the steps necessary to comply with its obligations under the North American Free Trade Agreement regarding the access of Mexico-domiciled motor carriers to the United States.

DATES: *Comment closing date:* You should submit your comments early enough to ensure that Docket Management receives them not later than May 20, 2002.

ADDRESSES: For purposes of identification, please mention the docket number of this document in your comments. You may submit those comments in writing to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590. Alternatively, you may submit your comments by e-mail at <http://dms.dot.gov>.

You may call Docket Management at (202) 366-9324, or you may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday. The Docket is located at the Plaza level of this building, northeast entrance.

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Mr. George Entwistle, Chief, Equipment and Imports Division, Certification Branch, Office of Safety Assurance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-5291; telefax (202) 366-1024.

For legal issues: Mr. Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366-2992; telefax (202) 366-3820.

SUPPLEMENTARY INFORMATION:**Background**

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). Following approval by Congress, the Agreement entered into force on January 1, 1994.

Since 1982, a statutory moratorium on the issuance of operating authority to Mexico-domiciled motor carriers had, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border ("border zone"). Annex I of NAFTA called for liberalization of access for Mexico-domiciled motor carriers on a phased schedule. Pursuant to this schedule, Mexico-domiciled charter and tour bus operations were permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

However, the United States postponed implementation with respect to Mexico-domiciled truck and scheduled bus service due to concerns about safety, continuing its blanket moratorium on processing applications by these Mexico-domiciled motor carriers for authority to operate in the United States outside the border zone. On February 6, 2001, a NAFTA dispute resolution panel ruled that the blanket moratorium violated the United States' commitments under NAFTA.

The Department of Transportation is now in the process of preparing for the implementation of these NAFTA provisions. NHTSA and FMCSA are

taking the steps necessary to ensure that the provisions are implemented in a manner consistent with the interests of safety. One of NHTSA's primary concerns is to ensure that the vehicles used in the United States complied with the Federal Motor Vehicle Safety Standards (FMVSSs) in effect at the time that they were manufactured.

NHTSA issues FMVSSs under a statute originally known as the National Traffic and Motor Vehicle Safety Act. That statute has been codified at 49 U.S.C. 30101, *et seq.* (In the interest of simplicity, we will refer to that statute by as the Vehicle Safety Act.) The purpose of the Vehicle Safety Act is to reduce the number of crashes and deaths and injuries resulting from crashes.

The Vehicle Safety Act specifies that, subject to certain exemptions:¹

A person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112; emphasis added.)

Thus, the FMVSSs apply to new motor vehicles that vehicle manufacturers manufacture for sale in the United States. They also apply, subject to certain exemptions, to new or used motor vehicles that anyone presents for importation, whether for sale, resale or other purposes, into the United States. The Vehicle Safety Act requires manufacturers to certify that their vehicles comply with all applicable safety standards. The vehicles must bear a permanent label that is applied by the vehicle manufacturer and certifies that the vehicles complied with all applicable safety standards. 49 U.S.C. 30115.

1975 Interpretation

In 1975, NHTSA addressed the issue of whether Canadian-domiciled commercial vehicles being operated in the United States were subject to the FMVSSs. Mr. J.C. Carruth, President of

¹ For example, our regulations provide that exemptions may be issued for motor vehicles or items of motor vehicle equipment that are necessary for research, investigations, demonstrations, training, competitive racing events, show, or display; vehicles being temporarily imported for personal use; and vehicles being temporarily imported by individuals who are attached to the military or diplomatic services of another country or to an international organization. (49 CFR part 591, Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards.)

the Canadian Trucking Association, wrote to the Department seeking relief from the above statutory prohibition because it prevented the operation in the United States of Canada-based commercial vehicles that were not manufactured in accordance with FMVSS No. 121, Air brake systems. To provide that relief, Mr. Carruth sought to have those vehicles temporarily excluded from the Standard.

In a May 9, 1975 letter replying to Mr. Carruth, signed by NHTSA's Administrator, the agency concluded that this statutory prohibition applies to these Canada-based commercial vehicles. The agency recited the prohibition and noted that the Vehicle Safety Act provided that non-complying motor vehicles shall be refused admission to the United States under joint regulations issued by the Secretary of the Treasury and the Secretary of Transportation. The agency also noted that the Act provided that the two Secretaries may, by joint regulations, permit the temporary importation of a noncomplying motor vehicle, after the first purchase of it in good faith for purposes other than resale, i.e., after the vehicle had been purchased by an end user and thus was no longer new. However, while joint regulations had been issued to permit the temporary importation of a noncomplying motor vehicle for personal use, none had been issued to permit importation for commercial use on the highways of the United States. NHTSA concluded that any exclusion of Canadian-domiciled vehicles operating in the United States from the requirements of FMVSS No. 121 would be "an evasion of the Vehicle Safety Act's prohibition on importation of noncomplying vehicles." Although the 1975 letter did not address the issues of commercial buses or of Mexico-domiciled commercial vehicles, its rationale applied equally to them.

In 1995, the Department of Transportation publicized this interpretation in connection with its efforts to prepare for the implementation of NAFTA. It did so by incorporating the interpretation in a NAFTA Operating Requirements Handbook, which was printed in three languages and distributed to all participants at a NAFTA conference held in San Antonio, TX on November 14-16, 1995. The handbook stated that all commercial vehicles entering the United States must have been manufactured in compliance with all applicable FMVSSs and must bear a label certifying such compliance.

Review and Reaffirmation of 1975 Interpretation

Following the decision of the NAFTA panel in February of this year, NHTSA reviewed its 1975 interpretation. After consulting with the Office of Regulations and Rulings of the United States Customs Service (USCS), NHTSA has tentatively reaffirmed that interpretation and is proposing to codify it in the Code of Federal Regulations.

We begin by noting that while Congress has codified the Vehicle Safety Act since the 1975 interpretation, and modified many of the Act's provisions relating to importation of vehicles, no changes have been made that affect the 1975 interpretation. The Vehicle Safety Act continues to specify that, subject to certain exemptions:

A person may not manufacture for sale, offer to sell, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard. * * * takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(49 U.S.C. 30112; emphasis added.)

Neither the statute nor any agency regulation exempts commercial vehicles domiciled in Canada or Mexico from the requirement that the vehicles must have been manufactured to meet the FMVSSs in order to be imported into the United States.

Several other factors also lead us to tentatively reaffirm the 1975 interpretation.

First, the interpretation is consistent with the plain meaning of the word "import," which the dictionary defines as meaning "to bring in (merchandise, commodities, workers, etc.) from a foreign country for use, sale, processing, reexport, or services" (Random House Compact Unabridged Dictionary, Special Second Edition).

Second, the interpretation is consistent with the purposes of the Vehicle Safety Act. The stated purpose of the Act is "to reduce traffic accidents and deaths and injuries resulting from traffic accidents." The fact that a commercial vehicle is domiciled in Canada or Mexico is of no consequence as to its safety when it is being operated on United States highways.

Third, while courts have sometimes interpreted the term "import" in narrower ways, the use of the term in the Vehicle Safety Act is similar to its use in statutes where the term has been construed broadly. In particular, we believe that the Vehicle Safety Act's prohibition on the importation of

noncomplying vehicles is analogous to contraband laws that prohibit the importation of dangerous items. The Vehicle Safety Act prohibits the importation of noncomplying vehicles because such vehicles pose greater safety risks than compliant vehicles.

We note that the Department of Transportation, including representatives from NHTSA and FMCSA, met with the Office of Regulations and Rulings of the United States Customs Service on March 8, 2001 to discuss enforcement of the importation prohibition against foreign-domiciled commercial motor vehicles. At that meeting, representatives of the Office of Regulations and Rulings agreed with NHTSA's 1975 interpretation that the bringing of a commercial vehicle into the United States constituted an importation of the vehicle under the Vehicle Safety Act.

We are placing in the docket a copy of our 1975 interpretation, as well as a legal memorandum that was prepared then in support of that interpretation.

To codify our 1975 interpretation in the Code of Federal Regulations, we are proposing to add a definition of the term "import" to 49 CFR Part 591, "Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards." This part does not currently include any definition for this term. Therefore, any definition we add must reflect not only the 1975 interpretation but also represent a complete definition of the term. We are proposing the following definition:

Import means bring into the United States, whether on a permanent or temporary basis. This includes, but is not limited to, bringing a vehicle into the United States for the purpose of transporting cargo or passengers into the United States.

We note that, under Part 591, a person may not import a motor vehicle into the United States unless the person files one of several specified declarations. One of the declarations that provides a basis for the vehicle to be imported, set forth at § 591.5(b), is that the vehicle complies with all applicable FMVSSs and bears a certification label to that effect permanently affixed by the original manufacturer.

If the driver of a complying Canada- or Mexico-domiciled commercial vehicle were stopped at the border by USCS and asked to file a declaration, the driver would simply need to file the one set forth at § 591.5(b). (In order for the driver to be able to file that declaration, the vehicle would, of course, need to comply with all applicable FMVSSs in effect at the time of original manufacture and bear a

certification label to that effect). As a practical matter, however, drivers of such vehicles would ordinarily not be asked to file a declaration. This is because USCS interprets its regulations to provide that commercial motor vehicles engaged in international commerce are "instruments of international traffic" and, as such, are not subject to the process of formal entry.

Companion Actions by NHTSA and FMCSA

This document is one of several related actions by NHTSA and FMCSA as part of the Department of Transportation's efforts to ensure that the interests of safety are protected as the United States takes the steps to implement the provisions in NAFTA regarding access of Mexico-domiciled motor carriers to the United States.

FMCSA is issuing four final rules to ensure that the interests of safety are protected in granting authority for Mexico-domiciled motor carriers to operate within the United States. Two of the final rules revise FMCSA's regulations and forms governing applications by those carriers for such authority. The forms require additional information about each applicant's business and operating practices to help FMCSA to determine if the applicant is capable of meeting the safety requirements established for operating in interstate commerce in the United States. Among other things, a carrier must certify on its application form that the vehicles it will use in the United States were manufactured in compliance with the applicable FMVSSs. The third final rule, being issued on an interim basis, establishes a safety monitoring system and compliance initiative to further aid in determining whether Mexico-domiciled carriers applying to operate anywhere in the United States have the capability to comply with applicable safety regulations and conduct safe operations. The fourth final rule, also issued on an interim basis, establishes procedures to certify and maintain certification for auditors and investigators.

Other actions include (1) an NPRM issued by FMCSA proposing to require that all commercial motor vehicles operating in the United States have labels certifying their compliance with the FMVSSs in effect when they were built, (2) a draft policy statement issued by NHTSA providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively apply a label to a motor vehicle certifying that the vehicle complied with all applicable FMVSSs in effect at the time of

manufacture, and (3) an NPRM issued by NHTSA proposing recordkeeping requirements for foreign manufacturers that retroactively certify vehicles.

We request comments on this proposed definition.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this proposed rule under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This proposed rule was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." This action is not "significant" under the Department of Transportation's regulatory policies and procedures.

This proposed rule would not impose any new requirements or mandate the expenditure of any resources. Instead, it would improve the clarity of the agency's regulation on imports by codifying a longstanding interpretation concerning the meaning of the term "import."

B. Regulatory Flexibility Act

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

As noted above, the proposed rule would not impose any new requirements or mandate the expenditure of any resources, but would instead improve the clarity of the agency's regulation on imports by codifying a longstanding interpretation concerning the meaning of the term "import."

C. National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it would not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power

and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in \$109 million ($106.99/98.11 = 1.09$). The assessment may be included in conjunction with other assessments.

This proposed rule would not mandate any expenditures by State, local or tribal governments, or by the private sector.

Submission of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should

submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

Go to the Docket Management System (DMS) Web page of the Department of Transportation (<http://dms.dot.gov/>). On that page, click on "search."

On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket

number shown at the beginning of this document. Example: If the docket number were "NHTSA-1998-1234," you would type "1234." After typing the docket number, click on "search."

On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 591 as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 is revised to read as follows:

Authority: 49 U.S.C. 322(a), 30112, 30114; Pub. L. 100-562, 102 Stat. 2824; Pub. L. 105-178, 12 Stat. 469; delegations of authority at 49 CFR 1.50 and 501.8.

2. Section 591.2 is revised to read as follows:

§ 591.2 Purpose.

The purpose of this part is to ensure that:

(a) Motor vehicles and motor vehicle equipment permanently imported into

the United States conform with theft prevention standards issued under part 541 of this chapter and that they conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter and bumper standards issued under part 581 of this chapter;

(b) Foreign-domiciled commercial motor vehicles that are brought into the United States were manufactured to conform with, or are brought into conformity with, all applicable Federal motor vehicle safety standards issued under part 571 of this chapter and any applicable theft prevention and bumper standards; and

(c) Nonconforming vehicles and equipment items imported on a temporary basis are ultimately either exported or abandoned to the United States.

3. Section 591.4 is amended by adding a definition in alphabetical order to read as follows:

§ 591.4 Definitions.

* * * * *

Import means bring into the United States, whether on a permanent or temporary basis. This includes, but is not limited to, bringing a vehicle into the United States for the purpose of transporting cargo or passengers into the United States.

* * * * *

Issued on March 6, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02-5896 Filed 3-14-02; 8:45 am]

BILLING CODE 4910-59-P