

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 567**

[Docket No. NHTSA 02-11594; Notice 1]

RIN 2127-AI59

Retroactive Certification of Commercial Vehicles by Motor Vehicle Manufacturers**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.**ACTION:** Proposed policy statement; request for comments.

SUMMARY: NHTSA seeks comment on a draft policy statement. The policy is part of the Department of Transportation's efforts 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.

The policy statement is being issued pursuant to the National Traffic and Motor Vehicle Safety Act of 1966, codified at 49 U.S.C. Chapter 301, which provides for the issuance of Federal Motor Vehicle Safety Standards (FMVSSs), requires all vehicles imported into the United States or introduced into interstate commerce to have been manufactured in compliance with those standards, and requires that a label bearing a statement certifying that compliance be attached to each vehicle. These requirements apply to new motor vehicles that vehicle manufacturers produce for sale in the United States. New or used motor vehicles imported into the United States that were not originally manufactured in compliance with all applicable FMVSSs must also be certified after they have been brought into compliance with those standards. NHTSA has long interpreted "import" to include bringing a commercial motor vehicle into the United States for the purpose of transporting cargo or passengers.

The policy statement addresses commercial motor vehicles that were not originally manufactured for sale in the United States, and thus were not required at the time of manufacture to be certified as complying with the FMVSSs, but are subsequently sought to be imported into the United States. The statement provides that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively apply a label to a commercial motor vehicle

certifying that the vehicle complied with all applicable FMVSSs in effect at the time it was originally manufactured.

The purpose of this policy statement is to facilitate compliance by motor carriers domiciled in other countries, primarily those in Mexico and Canada, with the above statute and a companion notice of proposed rulemaking by the Federal Motor Carrier Safety Administration (FMCSA). In its document, FMCSA will be proposing to promote the effective enforcement of that statute by requiring that all commercial motor vehicles operating in the United States have labels certifying their compliance with the FMVSSs in effect when they were built. NHTSA has been advised that there are many commercial motor vehicles used by motor carriers in Mexico and Canada that were manufactured in accordance with the FMVSSs, but were not certified as complying with those standards because the vehicles were manufactured for sale in Canada or Mexico. In two separate documents, NHTSA will be proposing recordkeeping requirements for foreign manufacturers that retroactively certify vehicles, and proposing to codify its interpretation of the term "import," as used in the statute, by incorporating that interpretation into its primary regulation concerning the importation of vehicles.

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: Ms. Rebecca MacPherson, 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.

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I. Background**A. NAFTA Provisions for Cross Border Operation of Commercial Motor Vehicles**

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

Since 1982, a statutory moratorium in the United States on the issuance 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.

Because of concerns about safety, the United States postponed implementation with respect to Mexico-domiciled truck and scheduled bus service and continued 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.

B. Implementation of the NAFTA Provisions in a Manner Consistent With Safety

The Department of Transportation (DOT) is now preparing for the implementation of these NAFTA provisions. The Department's NHTSA and FMCSA are committed to taking the steps necessary to ensure that the NAFTA provisions are implemented in a manner consistent with the interests of safety.

1. NHTSA

While NHTSA does not have any enforcement authority over motor carriers, it does administer a statute that affects the operations in the United States of motor carriers domiciled in other countries. The statute requires that motor vehicles manufactured for sale in the United States or imported into the United States, i.e., vehicles that are driven on the public roads and highways of the United States, be manufactured so as to reduce the likelihood of motor vehicle crashes and of deaths and injuries when crashes do occur. That statute is the National Traffic and Motor Vehicle Safety Act of 1966 ("Vehicle Safety Act") (codified as 49 U.S.C. 30101, *et seq.*).

One of the agency's most important functions under that Act is to issue and enforce the FMVSSs. Many of these standards specify safety performance requirements for motor vehicles, while others do so for items of motor vehicle equipment. Manufacturers of motor vehicles must certify compliance with all applicable safety standards and permanently affix a label to each vehicle stating that the vehicle complies with all applicable FMVSSs.¹

The Vehicle Safety Act specifies that:

A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with the applicable motor vehicle safety standards prescribed under this chapter. A person may not issue a certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle

¹ The Vehicle Safety Act requires that motor vehicle manufacturers certify the compliance of motor vehicles with the FMVSS before introducing them into interstate commerce, offering them for sale or selling them. Vehicles are not subject to pre-introduction, pre-offer, or pre-sale approval by NHTSA.

must be shown by a label or tag permanently fixed to the vehicle.

(49 U.S.C. 30115.)

The Vehicle Safety Act further provides that, subject to specific exemptions,²

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.)

Since 1975, NHTSA has interpreted this provision of section 30112 as applying to all vehicles entering the United States. In a letter from the NHTSA Administrator to the Canadian Trucking Association, the agency stated that commercial vehicles transporting cargo into and within the United States are imports within the context of 49 U.S.C. 30112 and must be certified.³ Although the 1975 letter did not address the issue of Mexico-domiciled motor carriers, its rationale applied equally to those carriers.

In 1995, DOT publicized this interpretation in connection with its efforts to prepare for the implementation of NAFTA. DOT 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 North American Free Trade Agreement (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. A list of the FMVSSs that are applicable to commercial motor vehicles, as well as a brief synopsis of those standards, may be found in the appendix to the preamble of this document. (We have placed a copy of the relevant portions of

² 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, demonstration, 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 service 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.)

³ See letter dated May 9, 1975 from NHTSA Administrator James B. Gregory to M. C. Carruth, Docket No. NHTSA-02-11594.

the Handbook in the docket for this document.)

Following the decision of the NAFTA panel in February of this year, NHTSA reviewed its 1975 interpretation. As noted below in the section on "Companion NHTSA actions," after consulting with the Office of Regulations and Rulings of the United States Customs Service (USCS), NHTSA has reaffirmed that interpretation and is seeking public comment on codifying it in the Code of Federal Regulations.

2. FMCSA

FMCSA is the agency within the Department of Transportation that is responsible for oversight of commercial motor carriers. It regulates the operation of vehicles used to transport both cargo (primarily on heavy trucks and trailers) and passengers (primarily in heavy buses). Its regulations address both the commercial motor vehicles and drivers of those vehicles. The regulations also require commercial motor carriers, i.e., those businesses that engage in the transport of cargo or passengers, to meet specified operating requirements.

The condition of safety equipment and features on commercial motor vehicles is governed by 49 CFR Part 393, Parts and Accessories Necessary for Safe Operation. The Federal Motor Carrier Safety Regulations (FMCSRs) in Part 393 currently cross-reference most of the FMVSSs applicable to heavy trucks and buses. (Part 393 does not currently require that commercial motor vehicles have a FMVSS certification label.) The FMCSRs require that motor carriers operating in the United States, including Mexico-domiciled carriers, must maintain much of the safety equipment and features that NHTSA requires vehicle manufacturers to install.

Generally, enforcement of the FMVSSs incorporated in the FMCSRs by FMCSA and its Motor Carrier Safety Assistance Act grant partners is accomplished through roadside inspections. If the violations are discovered during a roadside inspection, a citation may be issued under Part 393 or conforming State laws and regulations. If violations are serious enough to meet the out-of-service criteria used in roadside inspections (i.e., the condition of the vehicle is likely to cause a crash or cause the vehicle to break down), the vehicle would be placed out of service until the necessary repairs are made. The roadside inspection procedure is the same for all commercial motor vehicles operated in the United States, regardless

of the country in which a motor carrier is domiciled. The FMCSA also has the option of imposing civil penalties for violations of Part 393. Any violations of the FMVSSs that also constitute violations of Part 393 could subject motor carriers to a maximum civil penalty of up to \$10,000 per violation. FMCSA has the statutory authority to prohibit the operation of commercial motor vehicles by motor carriers that fail to pay civil penalties for violations of the FMCSRs.

If the FMCSA determines that a Mexico-domiciled carrier is operating vehicles that do not comply with the applicable FMVSSs, this information could be used to take appropriate enforcement action against the carrier for making a false certification on its application under 49 CFR Part 365, Rules Governing Applications for Operating Authority, for a Certificate of Registration or operating authority. Such action could include suspension or even revocation of such registration or authority.

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 the 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 its vehicles 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 FMCSA 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 being issued on an interim basis, establishes procedures to certify and maintain certification for auditors and investigators.

II. FMCSA Proposal To Require All Commercial Motor Vehicles Have a FMVSS Certification Label

FMCSA is taking steps to help enforce the prohibition against importing into this country motor vehicles that do not have labels certifying their compliance with the FMVSSs. Specifically, FMCSA

is proposing to amend Part 393 to require that all commercial motor vehicles operating within the United States, including those operated by Canada- and Mexico-domiciled carriers, bear a FMVSS certification label. As with all existing requirements in Part 393, the new requirement would apply to all commercial motor vehicles engaged in transporting passengers or cargo in the United States, regardless of where they are domiciled. If Part 393 is ultimately amended to include a requirement that each commercial motor vehicle have a FMVSS certification label, civil penalties could be assessed against a motor carrier operating a vehicle without a FMVSS certification label. However, FMCSA would not place a commercial motor vehicle out of service solely because it lacks a FMVSS certification label, since such a violation would not meet the out-of-service criteria established by that agency.

III. NHTSA Draft Policy Statement on Retroactive Certification of Commercial Motor Vehicles With the FMVSSs

NHTSA has been advised that many of the vehicles currently operated by Mexico- and Canada-domiciled motor carriers may meet all applicable FMVSSs even if they were manufactured for use in Mexico and Canada and thus were not required to, and do not, bear a FMVSS certification label. In general, these are vehicles that were built at the same assembly plants and according to the same design specifications as vehicles manufactured for sale in the United States and certified to the FMVSSs. They may bear a label certifying compliance to Canadian standards or, in the instance of vehicles manufactured for the Mexican market, may bear no certification label at all. If these vehicles were manufactured to comply with the FMVSSs, they could be as safe as vehicles manufactured for sale in the United States. Nevertheless, it would be a violation of the Vehicle Safety Act to bring these vehicles into the United States because they do not bear a FMVSS certification label.

The agency already has an informal policy in place that addresses a similar situation. Since 1999, NHTSA has allowed, in certain circumstances, Canadian vehicle manufacturers to place certification labels retroactively on previously leased passenger cars and light trucks that would have met all applicable FMVSSs after minor modifications, such as changing the odometer from mph to km/h. These leased vehicles were essentially identical to ones manufactured for sale

in the United States by the same manufacturers.

We note that only those manufacturers that have produced vehicles for sale in the United States are likely to have generated the type of data and analysis necessary to enable them to certify their vehicles to the FMVSSs, whether contemporaneously or retroactively.

NHTSA and FMCSA representatives met with representatives of the Mexican and Canadian governments, and Mexican manufacturers and trucking industry associations, in Mexico City on June 20, 2001. NHTSA and FMCSA were told then by Mexican vehicle manufacturers that many Mexican commercial vehicles built since 1994 were built in conformity with applicable FMVSSs. NHTSA was advised that of the approximately 400,000 trucks and buses that operate on the Federal roads in Mexico, about 130,000 may comply with all applicable FMVSSs. Most of these 130,000 trucks and buses, however, do not have a FMVSS certification label because it is not required for vehicles manufactured for sale in Mexico.

NHTSA, FMCSA, USCS, the Environmental Protection Agency and Transport Canada conducted a follow-up seminar in Mexico on August 2-3, 2001, to tell representatives of Mexican vehicle manufacturers and the motor carrier industry about the requirements of the United States. During the seminar, the Mexican vehicle manufacturers indicated that they would consider affixing a certification label retroactively, depending on the results of their review of vehicle test data, and on their ability to make a determination that a particular vehicle or group of vehicles met all applicable FMVSSs in effect on the date of manufacture.

NHTSA tentatively concludes that extending the agency's policy on retroactive certification to vehicles that are engaged in the transport of goods or passengers across Canadian or Mexican borders would facilitate the compliance of Mexico- and Canada-domiciled motor carriers with the requirement for operating FMVSS-certified vehicles in the United States, without any adverse effects on safety, while also helping the United States to meet its obligations under NAFTA. Absent such an extension, Mexico- and Canada-domiciled carriers could not use any of their existing vehicles lacking a FMVSS certification label in the United States, even those that complied with the FMVSSs at the time of their manufacture.

Under NHTSA's draft policy statement, a manufacturer wishing to certify a commercial motor vehicle retroactively and affix a FMVSS certification label to that vehicle would have to assure itself that the vehicle did, in fact, comply with all applicable FMVSSs in effect at the time of original manufacture or that it could be readily modified so that the vehicle, as modified, would have met the standards in effect at the time the vehicle was originally manufactured.

In order to certify compliance retroactively, it is likely that the manufacturer would engage in a multi-step evaluation process. In most, if not all, cases, it would need to identify a substantially similar vehicle ("paired vehicle") that it certified, at the time of manufacture, as complying with all applicable FMVSSs and then determine whether there are any design, production, or other differences between the paired vehicle and the candidate vehicle. This determination would likely include an assessment of whether the component parts of the two vehicles are substantially similar. A manufacturer would then need to determine whether any of those differences preclude the candidate vehicle from being in compliance with all applicable FMVSSs. If modifications were needed to bring the vehicle into compliance with applicable FMVSSs, the manufacturer would have to make those modifications. Likewise, if either NHTSA or the manufacturer had decided, subsequent to the certification of the paired vehicle, that that vehicle did not comply with one or more applicable FMVSSs, the manufacturer would have to correct any similar noncompliances in the candidate vehicle before certifying compliance.

Once the evaluation process is complete and the manufacturer has made any necessary repairs or modifications, it may apply the retroactive certification label to the commercial motor vehicle. The label must be applied by the manufacturer because the certification responsibility belongs to the vehicle manufacturer under the Vehicle Safety Act. The label cannot be applied by other parties such as owner, lessee, or operator of the vehicle. The label must meet the requirements of Part 567. It must state the month and year of original manufacture of the vehicle. It must also state the month and year in which it was affixed to the vehicle.

NHTSA anticipates that the need for retroactive certification of commercial vehicles will eventually disappear. The expanded policy is intended to be a short-term solution to a short-term

problem. In the long run, the simplest course of action for Mexico- and Canada-domiciled motor carriers would be to buy or lease vehicles certified at the time of manufacture as complying with all applicable FMVSSs. Likewise, the simplest course of action for Mexican and Canadian vehicle manufacturers would be to place FMVSS certification labels on any FMVSS compliant vehicles at the time of manufacture even if they are not certain whether the vehicles will be used in cross-border operations. NHTSA believes that manufacturers will quickly be able to determine whether vehicles they are currently manufacturing comply with all applicable FMVSS, and to bring them into compliance promptly if they are not. Thus, the opportunity under the expanded policy to certify commercial vehicles retroactively would be limited to vehicles manufactured before August 31, 2002. Additionally, NHTSA believes manufacturers do not need an unlimited amount of time to determine whether existing vehicles complied with all applicable safety standards in effect at the time of manufacture. Likewise, motor carriers do not need an unlimited amount of time to determine whether they need to request a manufacturer to retroactively certify a particular vehicle. Accordingly, NHTSA is proposing to terminate this policy of allowing retroactive certification for commercial vehicles on September 1, 2005.

If a motor carrier wishes to use a heavy truck or bus manufactured after August 31, 2002 in its operations within the United States, the vehicle would be required to comply with the applicable FMVSS and have a FMVSS certification label applied by the vehicle manufacturer at the time of manufacture. If the carrier does not intend to operate the vehicle in the United States, then there would, of course, be no requirement that the vehicle bear a FMVSS certification label.

Vehicle manufacturers would not be required to retroactively certify the compliance of a motor vehicle and in many instances would be unable to do so. This inability would stem from the fact that the certification of a vehicle would in most, if not all, cases be based on data that the manufacturer generated at the time the vehicle was originally built. As a practical matter, only those manufacturers that produced and certified substantially similar vehicles for sale in the United States at the same time that the non-certified vehicle was manufactured are likely to have generated this information.

Should a vehicle manufacturer decline to certify a motor carrier's vehicle retroactively, the carrier may be able to have the vehicle certified by a registered importer. An individual or business registered with NHTSA as a registered importer under 49 CFR Part 592, Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards, may import non-complying motor vehicles into the United States. However, a registered importer may do so only if NHTSA has determined under 49 CFR Part 593, Determinations that a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation, that the vehicles are capable of being readily altered to comply with all applicable standards in effect at the time the vehicle is imported. As of this date, NHTSA has not made any such determination regarding any vehicle that would be covered by the draft policy statement.

Furthermore, the registered importer must provide the Federal Government with a bond equal to 1.5 times the dutiable value of the vehicle before it can be imported and must bring the vehicle into full compliance before any vehicle may be sold or released for highway use and the bond released. For detailed information on NHTSA's registered importer program, please refer to <http://www.nhtsa.dot.gov/cars/rules/maninfo/>.

IV. Companion NHTSA Actions

As noted above, in two separate documents, NHTSA will be proposing recordkeeping requirements for manufacturers that retroactively certify vehicles, and to codify its interpretation of the term "import," as used in the Vehicle Safety Act. The first document will propose requiring that manufacturers that retroactively certify their vehicles maintain information sufficient to identify those vehicles. This information would include any vehicle identification number (VIN) on each vehicle, or comparable information if the vehicle does not have a VIN. The other document will discuss the basis for our 1975 interpretation of the term "import" as including bringing commercial vehicles into the United States for the purpose of transporting cargo or passengers, and propose to codify that interpretation in Part 591.

V. Request for Comments

This draft policy statement is not subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b)(A)).

Nevertheless, NHTSA is seeking public comment on the draft statement before publishing a final version.

(1) Please comment on whether a termination date of August 31, 2005 would provide sufficient time to accommodate the needs of the Mexico- and Canada-domiciled motor carriers.

(2) Please comment on whether retroactive certification should be permitted in instances in which the vehicle must be modified significantly, such as modifications that would entail additional testing by the manufacturer to assure that the vehicle, as modified, would have complied with the FMVSSs in effect when the vehicle was originally manufactured.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this draft policy statement under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This draft policy statement 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 draft policy statement would not mandate compliance with any new requirements or the expenditure of any resources. Instead, it would facilitate compliance with the requirement in the Vehicle Safety Act for imported vehicles to be certified as complying with all applicable FMVSS and with a proposal that FMCSA will issue to require that all commercial motor vehicles operating in the United States to be so certified.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this draft policy statement under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. The statement would primarily affect manufacturers of motor vehicle, and secondarily affect motor carriers. Few motor vehicle manufacturers qualify as small businesses.

The Small Business Administration's regulations define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR part 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000

employees or fewer. SIC Code 3714 "Motor Vehicle Parts and Accessories" has a small business size standard of 750 employees or fewer.

As noted above, this draft policy statement would not mandate compliance with any new requirements or the expenditure of any resources. Instead, it would facilitate compliance with the requirement in the Vehicle Safety Act for imported vehicles to be certified as complying with all applicable FMVSS and with a proposal that FMCSA will issue to require that all commercial motor vehicles operating in the United States to be so certified.

C. National Environmental Policy Act

NHTSA has analyzed this draft policy statement 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 draft policy statement 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 statement 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 draft policy statement would not mandate any expenditures by State, local or tribal governments.

VII. 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.

Appendix to Preamble—FMVSS Applicable to Commercial Motor Vehicles

The following table sets forth the FMVSSs that are applicable to heavy trucks, heavy buses (other than school buses), and trailers. A brief synopsis of each standard is presented after the table. All three vehicle classifications apply to vehicles with a gross vehicle weight rating greater than 4,536 kg. While there may be some commercial motor vehicles that are not classified as a heavy truck, heavy bus, or trailer, the vast majority of commercial motor vehicles will fit into one of these categories.

FMVSS	Title	Heavy trucks	Heavy buses	Trailers
101	Controls and displays	yes	yes	no.
102	Transmission shift lever device	yes	yes	no.
103	Windshield defrosting and defogging	yes	yes	no.
104	Windshield wiping and washing	yes	yes	no.
105	Hydraulic and electric brake systems	yes *	yes*	no.
106	Brake hoses	yes	yes	yes.
108	Lamps, reflective devices, and associated equipment	yes	yes	yes.
111	Rearview mirrors	yes	yes	no.
113	Hood latch systems	yes	yes	no.
116	Hydraulic brake fluids	yes *	yes *	yes.
119	New pneumatic tires for vehicles other than passenger cars	yes	yes	yes.
120	Tire selection and rims for vehicles other than passenger cars	yes	yes	no.
121	Air brake systems	yes**	yes**	yes. **
124	Accelerator control systems	yes	yes	no.
205	Glazing materials	yes	yes	no.
206	Door locks and retention systems	yes	no	no.
207	Seating systems	yes	yes	no.
208	Occupant crash protection	yes	yes	no.
209	Seat belt assemblies	yes	yes	no.
210	Seat belt assembly anchorages	yes	yes	no.
217	Bus emergency exits and window retention	no	yes	no.
223	Rear impact guards	no	no	yes.
224	Rear impact protection	no	no	yes.
302	Flammability of interior materials	yes	yes	no.
304	CNG tanks	yes ⁺⁺	yes ⁺⁺	no.

*If equipped with hydraulic brakes.

**If equipped with air brakes.

⁺⁺ If engine is powered by CNG.

Synopsis of FMVSSs Applicable to Heavy Trucks, Buses and Trailers

FMVSS No. 101, Controls and Displays

Effective date: September 1, 1972.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: If equipped with a control listed in the standard, shall meet the requirements for the location, identification, and illumination of the control. No requirements exist for displays, e.g., hazard warning telltale. Examples of controls: Turn signal, windshield defroster, and heating and air conditioning system.

Location: Controls must be operable by the driver wearing his/her seat belt.

Identification: Symbol, if listed in the standard; wording if stated in the standard.

Illumination: For the controls listed in the standard with some exceptions, e.g., controls that are foot operated or located on the floor, floor console, or steering column, or in the

windshield header area. Brightness must be adjustable.

FMVSS No. 102, Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect

Effective date: September 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: If equipped with an automatic transmission, must have a transmission braking effect, starter interlock, and identification of shift lever positions. If equipped with a manual transmission, must identify the shift pattern. Automatic transmission shift lever identification: The position selected, e.g., drive, and other positions, e.g., neutral, in front of and in clear view of the driver. Manual transmission shift pattern: All except 3-speed, H pattern, in driver's view.

FMVSS No. 103, Windshield Defrosting and Defogging Systems

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: A defrosting and defogging system.

FMVSS No. 104, Windshield Wiping and Washing Systems

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Power driven windshield wipers and washer system.

FMVSS No. 105, Hydraulic and Electric Brake Systems

Effective date: September 1, 1983.

Recent amendments: Brakes must have automatic adjustment, October 20, 1993.

Antilock brake system equipment requirement, effective March 1, 1999.

Requirements for new heavy trucks and buses:

Equipment: Service brakes on all wheels, automatic adjusters (drum type brakes), and an antilock brake system that directly controls the wheels of at least one front and rear axle.

FMVSS No. 106, Brake Hoses

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks, trailers, and buses:

Equipment: Aftermarket hoses must be labeled according to the standard.

FMVSS No. 108, Lamps, Reflective Devices, and Associated Equipment

Effective date: January 1, 1968.

Recent amendments: Conspicuity systems: trailers must be equipped with retroreflective sheeting and/or reflectors, December 1, 1993; truck tractors, July 1, 1997.

Requirements for new heavy trucks, trailers, and buses:

Equipment: As shown in the wall poster, the lamps, reflective devices, and associated equipment, e.g., retroreflective strips and/or reflex reflectors for the rear of trailers and truck tractors and the side of trailers, must be located as specified in the standard.

FMVSS No. 111, Rearview Mirrors

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Outside mirrors of unit magnification, each with not less than 323 sq cm of reflective surface, on both sides of the vehicle, adjustable both in the horizontal and vertical directions to view the rearward scene.

FMVSS No. 113, Hood Latch Systems

Effective date: January 1, 1969.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Each hood must have a hood latch system; a front opening hood that could obstruct the driver's view must have a second latch.

FMVSS No. 116, Hydraulic Brake Fluid

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks, buses, and trailers, if equipped with hydraulic brakes:

Equipment: Fluid used in these vehicles must have been manufactured and packaged according to the requirements in the standard.

FMVSS No. 119, New Pneumatic Tires for Vehicles Other Than Passenger Cars.

Effective date: March 1, 1975.

Recent amendments: None.

Requirements for new heavy trucks, trailers, and buses:

Equipment: Tires on these vehicles must have required markings, e.g., the symbol DOT certifying that the tire complies with applicable FMVSS, tire identification

number, tire size designation, maximum load rating and corresponding inflation pressure, any speed restriction, the number of plies and ply composition, the words "tubeless" or "tube type," "regroovable," and "radial," as applicable, and the letter designating load range.

FMVSS No. 120, Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

Effective date: August 1, 1976.

Recent amendments: None.

Requirements for heavy trucks, trailers, and buses:

Equipment: Sum of tire load ratings of tires on an axle must be equal to or greater than the axle's GAWR; rims must be permanently marked including size, e.g., 20 x 5.5 (inches) and DOT; a label on the vehicle must display, for each axle, a tire size and inflation pressure appropriate for the GAWR.

FMVSS No. 121, Air Brake Systems

Effective date: January 1, 1975; **Note:** stopping distance requirements rescinded effective August 9, 1979, but reinstated as shown below.

Recent amendments:

Equipment: Brakes must have automatic adjustment, October 20, 1994. Antilock brake system including malfunction indicator required for truck tractors, March 1, 1997, and for trucks and buses, March 1, 1998. Vehicles that tow another air-braked vehicle shall have an electrical circuit for the other vehicle's ABS. Towing vehicles shall have an electrical circuit for indicating a malfunction in the other vehicle's ABS, March 1, 2001. ABS on trailers and malfunction signal, March 1, 1998, and external malfunction indicator lamp, from March 1, 1998 through end of February 2009.

Requirements for new heavy trucks and buses:

Equipment: Compressor, reservoirs, towing vehicle protection, pressure gauge, warning signal, ABS with malfunction indicator, brakes on all wheels, automatic brake adjustment with indicator.

Requirements for new trailers with air brakes:

Equipment: Reservoirs, ABS with malfunction signal and external lamp, brakes on all wheels, automatic brake adjustment with indicator.

FMVSS No. 124, Accelerator Control Systems

Effective date: September 1, 1993.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: At least two sources of energy returning throttle to idle.

FMVSS No. 205, Glazing Materials

Effective date: January 1, 1968.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Must be labeled as to type, e.g., windshields must be marked "AS-1."

FMVSS No. 206, Door Locks and Door Retention Components

Effective date: January 1, 1972.

Recent amendments: None.

Requirements for new heavy trucks:

Equipment: Side doors must have a fully latched and a secondary latched position.

FMVSS No. 207, Seating Systems

Effective date: January 1, 1972.

Recent amendments: None.

Requirements for new heavy trucks (all seating positions) and buses (driver's seat only):

Equipment: Vehicle must have a driver's seat; a hinged or folding seat must have a self-locking device.

FMVSS No. 208, Occupant Crash Protection

Effective date: January 1, 1972.

Recent amendments: None.

Requirements for heavy trucks (all seats) and buses (driver's seat only):

Equipment: Each seat shall be equipped with a Type 1 (lap) or Type 2 (lap and shoulder) seat belt assembly that conforms to FMVSS 209. Seat belt assembly includes either an emergency locking retractor or automatic locking retractor. If an automatic locking retractor is used on a suspension seat, it must be attached to the seat structure.

FMVSS No. 209, Seat Belt Assemblies

Effective date: March 1, 1967.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Each seat belt assembly shall be for use by one person and must be adjustable to fit a range of occupant sizes from 5th percentile females to 95th percentile males; labeled as to date of manufacture, model No., and trademark of manufacturer, distributor, or importer.

FMVSS No. 210, Seat Belt Assembly Anchorages

Effective date: July 1, 1971.

Recent amendments: None.

Requirements for new heavy trucks (all seating positions) and buses (driver's seat only):

Equipment: Anchorages located in the vehicle must be within the dimensions and angles stated in the standard, referenced from the seating reference point; anchorages for each seat belt assembly shall be at least 165 mm apart.

FMVSS No. 217, Bus Emergency Exits and Window Retention and Release

Effective date: September 1, 1973.

Recent amendments: None.

Requirements for new heavy buses other than school buses:

Equipment: Total emergency exit area (unobstructed openings for emergency exits) in sq cm must be at least 432 times the number of designated seating positions on the bus; at least 40 percent of the total area shall be on each side of the bus; no single exit is credited with more than 3,458 sq cm; each bus shall have a rear exit unless the bus configuration precludes one, then the bus shall have a roof exit in the rear half of the bus; emergency exits can have one or two release mechanisms, and at least one must be operated in a different direction from the motion to open the exit by 90–180 degrees; each exit shall be labeled emergency exit or emergency door and provide operating instructions.

FMVSS No. 223, Rear Impact Guards

Effective date: January 26, 1998.

Recent amendments: None.

Requirements for new trailers:

Equipment: Guard shall be permanently labeled, e.g., manufacturer's name and address, month and year of manufacture, and must be certified by the symbol DOT, and located as specified in the standard; installation instructions shall be provided specifying the vehicles on which it can be installed and the method to properly install it.

FMVSS No. 224, Rear Impact Protection

Effective date: January 26, 1998.

Recent amendments: None.

Requirements for new trailers:

Equipment: Rear impact guard meeting FMVSS 223 shall be installed. Location and dimensional requirements are specified. Some trailers are excluded.

FMVSS No. 302, Flammability of Interior Materials

Effective date: September 1, 1972.

Recent amendments: None.

Requirements for new heavy trucks and buses:

Equipment: Any single or composite material located within 13 mm of the occupant compartment air space shall meet performance requirements.

FMVSS No. 304, Compressed Natural Gas Fuel Container Integrity

Effective date: March 27, 1995.

Recent amendments: None.

Requirements for new heavy trucks and buses if operated using CNG:

Equipment: Each CNG fuel container shall be labeled with the manufacturer's name, address, and telephone number, month and year of manufacture, service pressure, and other informational statements. It must also be certified with the symbol DOT.

List of Subjects in 49 CFR Part 567

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 567 as follows:

PART 567—CERTIFICATION

1. The authority citation for Part 567 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, and 33109; delegation of authority at 49 CFR 1.50.

2. Add Appendix A to 49 CFR Part 567 to read as follows:

Appendix A to Part 567—Statement of Policy: Retroactive Certification of Commercial Motor Vehicles

I. *Agency policy on retroactive certification.* It is the policy of the National Highway Traffic Safety Administration to allow a vehicle manufacturer to retroactively apply a label to a used commercial motor vehicle that it originally manufactured, certifying the compliance of that motor vehicle with all applicable Federal motor vehicle safety standards that were in effect when the vehicle was originally manufactured.

II. *Application.* This policy applies to commercial motor vehicles that were manufactured for sale in Mexico or Canada before August 31, 2002 and were not certified at the time that they were originally manufactured as complying with all applicable Federal motor vehicle safety standards. Any commercial motor vehicle certified pursuant to this policy statement must be certified on or before August 31, 2005.

III. *Conditions.* A vehicle manufacturer may retroactively certify the compliance of a commercial motor vehicle with the Federal motor vehicle safety standards if the manufacturer meets the following conditions:

A. Determines that the vehicle complied with all applicable Federal motor vehicle safety standards in effect at the time the vehicle was originally manufactured, or has been modified such that it complies with those standards.

B. Affixes a certification label meeting the requirements of 49 U.S.C. § 30115 and 49 CFR Part 567. Such label shall state the month and year of original manufacture and the month and year of the retroactive certification.

C. Maintains any records required by NHTSA in 49 CFR Part 576, Subpart B.

D. Provides, upon request, any records required by 49 CFR Part 576, Subpart B.

Issued on: March 6, 2002.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 02–5897 Filed 3–14–02; 8:45 am]

BILLING CODE 4910–59–P