

driving tasks, the agency does not believe it is necessary to take such action at this time. Currently, the safety benefits of such a rulemaking cannot be quantified, and there is no practicable means of estimating the potential costs in the event that such a rulemaking would necessitate equipment manufacturers to design systems now being sold. The agency will, however, certainly work with the private sector if specific safety problems are identified that they require Federal rules to effectively address the issue.

The FMCSA continues to consider § 393.88 to be applicable only to television receivers, and believes that the rule should not be construed as being applicable to any other device or technology unless such technology is capable of receiving a television broadcast signal. The agency believes that § 393.3 provides adequate guidance concerning other technology in that it prohibits equipment and accessories that decrease the safety of operation of the CMV on which it is used. The agency will continue to provide general regulatory guidance, as necessary, to clarify the applicability of § 393.3 to devices other than television receivers, while ensuring to the greatest extent practicable, that the regulatory guidance process does not become a de facto design approval or product endorsement process.

#### FMCSA Decision

In consideration of the comments and for the reasons given above, the FMCSA will retain § 393.88. The agency no longer believes that the regulation could discourage the use of certain technologies intended to improve the safety or efficiency of motor carrier operations, at least to the extent that action must be taken at this time. Furthermore, the safety benefits of retaining the rule, while admittedly undocumented, outweigh the potential safety risks that would result from motor carriers or drivers concluding that there are no regulatory obstacles to the watching of television while a CMV is being operated on public roads.

For these reasons, the NPRM of April 3, 1996 (61 FR 14733), is withdrawn.

Issued on: July 11, 2003.

**Annette M. Sandberg,**

*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 395 and 396

[Docket No. FMCSA-98-3414]

RIN 2126-AA36

#### Withdrawal of Advance Notice of Proposed Rulemaking; Out-of-Service Criteria

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Withdrawal of advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** The FMCSA withdraws the ANPRM published in the **Federal Register** of July 20, 1998, concerning the use of the North American Uniform Out-of-Service Criteria (the Criteria). FMCSA has determined that including the Criteria in the Federal Motor Carrier Safety Regulations (FMCSRs), either through codification of each criterion or through incorporation-by-reference of a specific edition of the Criteria, would not provide any discernible safety benefits to the public or resolve issues raised by parties seeking such action. Adoption of the Criteria into the FMCSRs would only have the effect of regulating FMCSA enforcement actions during roadside inspections. However, it would not necessarily preclude the States from continuing to use the uniform international tolerances. Accordingly, this rulemaking proceeding has been terminated.

**FOR FURTHER INFORMATION CONTACT:** Larry Minor, Chief of the Vehicle and Roadside Operations Division (MC-PSV), (202) 366-4009, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**ADDRESSES:** The electronic file of this document is available from the DOT public docket at <http://dms.dot.gov>, docket number FMCSA-98-3414. It is also available from FMCSA's Web site at <http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings>; or the **Federal Register** Web site at <http://www.gpoaccess.gov>. If you do not have access to the Internet, you may request a copy of this document from the Docket Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the title and docket number of the document.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 20, 1998 (63 FR 38791), the Federal Highway Administration (FHWA) published an ANPRM requesting public comment concerning the use of the Criteria. During roadside inspections, Federal, State and local enforcement officials use the Criteria as a guide in determining whether a commercial motor vehicle (CMV) or driver should be placed out of service. The Criteria provides a list of violations of the safety regulations that are so unsafe that they must be corrected before operations can resume. Correction of other less severe violations may be deferred to a later date, but generally no later than 15 days from the date the violations were discovered (49 CFR 396.9(d)(3)).

Currently, the Criteria is published by the Commercial Vehicle Safety Alliance (CVSA), an association of Federal, State and Provincial official responsible for the administration and enforcement of motor carrier safety laws and regulations in the United States, Canada, and Mexico. Each year the CVSA reviews the Criteria through a committee process involving representatives from Federal, State, and Provincial governments and the motor carrier industry representatives, and adopts changes as necessary to reflect up-to-date information concerning the potential safety impacts of specific violations of motor carrier laws and regulations.

## Discussion of Comments

Thirty comments were received in response to the ANPRM. These came from 12 States and Provinces, associations representing State and Provincial enforcement and motor vehicle administrators, associations representing various segments of the trucking industry, safety advocates, unions representing drivers, trucking companies, and individual citizens.

Most of the commenters expressed concern about incorporating the Criteria into the FMCSRs through codification of each criterion, or including the Criteria as an appendix to the FMCSRs. Generally, the commenters believe that subjecting the Criteria to the Federal rulemaking process would undermine the efforts of the States, Provinces and industry to work together through the CVSA's committee process to review and periodically revise the enforcement tolerances. However, most of the commenters who were opposed to codification of the criteria indicated that they would support incorporation-by-reference of the Criteria provided that such action would not delay, or

otherwise interfere with, the current process administered by the CVSA.

The American Trucking Associations, Inc., (ATA) believes that the development and maintenance of the Criteria would be severely hampered if it were subject to a notice and comment rulemaking process. ATA recommends incorporation by reference of the Criteria with the publication by FMCSA of a notice of availability and request for comments in January or February of each year. The comments would then be forwarded to CVSA for appropriate handling during CVSA's spring and fall meetings, and revised accordingly. Several other commenters had similar suggestions.

The Canadian Council of Motor Transport Administrators (CCMTA) indicated that Canadian governments have expressed concern about placing the Criteria in the Federal safety regulations. They believe doing so would have an adverse impact on the international collaborative nature of developing, revising and implementing the Criteria throughout North America. CCMTA indicated that it would not object to FMCSA referencing the Criteria in such a way that the CVSA process could continue to be used to update the document.

The International Brotherhood of Teamsters supports the formal adoption of the Criteria either through codification of each criterion or through incorporation-by-reference. The Teamsters believe the Criteria represent enforcement standards and that failure to adopt the Criteria through a notice and comment process may undermine the ability of the agency to pursue enforcement actions.

The Advocates for Highway and Auto Safety (Advocates), Owner-Operator Independent Drivers Association, Inc., (OOIDA), National Tank Truck Carriers, Inc., (NTTC) and the Iowa Department of Transportation support codification of the Criteria. Advocates does not believe the Criteria are legally binding on inspectors or their agencies since the document is not included in the FMCSRs. Advocates argues that the agency must assert the formal policy needed to bind field enforcement personnel by both directing and circumscribing the exercise of enforcement discretion through application of the Criteria. NTTC believes enforcement personnel treat the Criteria as substantive rules and that there are procedural and substantive deficiencies in the way the Criteria are structured and used. OOIDA believes the agency must adopt the Criteria as part of the FMCSRs because it represents the legal standard under

which vehicles and drivers are placed out of service. Iowa DOT believes that including the Criteria in the regulations enhances the availability of the Criteria to motor carriers and drivers so that they will know which safety conditions will place them in jeopardy of not being able to complete their trip.

#### FMCSA Response to Comments

FMCSA believes the commenters have made compelling arguments against the agency taking any action that could adversely impact the current process for amending or revising the Criteria. The agency agrees with commenters that the current process for maintaining the Criteria provides an effective mechanism for Federal, State and Provincial officials and industry representatives from the U.S., Canada, and Mexico to work together to ensure uniform international enforcement tolerances. The agency believes that it is in the public interest to continue this process for ensuring highway safety, and facilitating international trade between the U.S., Canada, and Mexico.

However, the agency does not share commenters' belief that the mere act of adopting the Criteria into the Code of Federal Regulations would adversely impact the current process for maintaining the document. The adoption of the Criteria would amend the FMCSRs such that Federal personnel could use only those criterion included in the Federal regulations. The Federal version of the Criteria could only be amended or revised through notice-and-comment rulemaking. By contrast, each State would be responsible for taking the necessary actions to adopt compatible requirements under State laws and regulations, with the authority of State enforcement personnel being limited by those State laws and regulations, not the Federal regulations. Since States would be responsible for having a mechanism or process for adopting compatible laws and regulations, the States could adopt enforcement tolerances that differ from those used by the FMCSA if the State believes there is a safety problem that is not adequately addressed through the Federal enforcement tolerances.

Section 3114(c)(4) of Title 49 of the United States Code allows the States to adopt more stringent requirements than those specified in the FMCSRs. Under this provision, if the FMCSA determines that a State law or regulation is additional to or more stringent than a regulation prescribed under the authority of 49 U.S.C. 31136, the State law or regulation may be enforced unless the agency decides that (1) the State law or regulation has no safety

benefit; (2) the State law or regulation is incompatible with the regulation prescribed by the agency; or (3) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce. This means that Federal requirements would not automatically preempt more stringent State requirements. Therefore, irrespective of FMCSA's decision concerning the Criteria, the States could adopt more stringent enforcement tolerances than the FMCSA. This could include the States adopting criteria independently of the FMCSA's enforcement tolerances.

If the Criteria includes more stringent guidelines for determining when to place a driver or vehicle out of service than the Federal policy provides, the States would in effect, be adopting more stringent enforcement tolerances than those used by the FMCSA. Also, since State personnel conduct the overwhelming majority of the more than 2.7 million roadside inspections completed each year in the United States, FMCSA's adoption of the Criteria would not alter in any meaningful way, the enforcement tolerances that interstate motor carriers are subjected to during such inspections. Federal adoption would only increase the likelihood of creating inconsistencies between the enforcement tolerances used by Federal personnel and those used by State officials with no readily apparent benefit to motor carrier safety. Furthermore, such inconsistencies would only worsen the problems perceived by those persons who believe it is necessary to adopt the Criteria into the FMCSRs. Due to the success of the collaborative process currently used for amending or revising the Criteria, enforcement agencies throughout North America have achieved a level of uniformity that negates the need for separate enforcement tolerances for each jurisdiction.

With regard to commenters who believe that incorporation-by-reference of the Criteria would be less likely to disrupt the current process used to amend or revise the enforcement tolerances than including the text of the guidelines in the regulations, the FMCSA considers this to be a distinction without a meaningful difference. The Office of the Federal Register prescribes regulations (1 CFR part 51) concerning Federal agencies' incorporation-by-reference of publications prepared by non-Federal entities. Section 51.1 limits the incorporation to the specific edition approved by the Director of the Federal Register. Future amendments or revisions of the Criteria would not be

included. Incorporation of the Criteria would make it part of the regulations, regardless of whether the text appears in the Code of Federal Regulations. Also, material is incorporated as it exists on the date of the approval and a notice of any change in the materials must be published in the **Federal Register**. In terms of practical applications, codification of the Criteria would provide a means for the agency to request comments on only the criterion that would be amended or revised from year to year, as opposed to incorporation-by-reference which would typically be an all-or-nothing proposition—a new edition would either be accepted in its entirety or rejected in its entirety. Although the agency could incorporate-by-reference portions of the Criteria while rejecting specific items, this approach would almost certainly make understanding the reference unnecessarily difficult from both an enforcement perspective and an industry perspective. Therefore, the agency has concluded that incorporation-by-reference is not a practical alternative to codification of the Criteria text.

In response to commenters who offered legal arguments suggesting that the agency must adopt the Criteria, the FMCSA does not believe those arguments have merit. The Criteria represent enforcement tolerances, and should not be construed to be regulations. The FMCSRs require compliance with all applicable requirements at all times. There is nothing in the FMCSRs that makes operating a commercial motor vehicle in interstate commerce, while violating any of the requirements contained therein, an acceptable practice. The agency recognizes that violations do occur and does not expect that motor carrier operations cease completely until 100 percent compliance is achieved. However, certain violations represent such serious safety risks to the motoring public that they must be corrected immediately. The Criteria presents a list of such violations developed over a period of more than 20 years by Federal, State and Provincial safety professionals, with input from the motor carrier industry, vehicle and equipment manufacturers, researchers, and other interested parties. The use of the Criteria is a matter of policy within FMCSA, so that the decision by Federal personnel to place a vehicle out-of-service is not an arbitrary action based solely on the discretion of the inspector. Likewise, the use of the Criteria by State officials is covered through either a documented policy, or State laws and

regulations. The actions of State officials are based on the authority vested in them under their State statutes and should not be construed as arbitrary determinations by individual inspectors.

#### FMCSA Decision

In consideration of the responses to the ANPRM, and for the reasons explained above, FMCSA has decided not to adopt the Criteria, either through codification of the text or through incorporation-by-reference, into the FMCSRs. FMCSA believes it is in the public interest that these enforcement tolerances be managed through a partnership between the Federal, State, and Provincial governments from the United States, Canada, and Mexico, with participation by the industry, motor vehicle and equipment manufacturers, researchers and other interested parties. The use of uniform international enforcement tolerances is necessary to ensure highway safety and to facilitate the efficient transportation of passengers and freight between States and Provinces, and between countries in North America.

Therefore, this rulemaking proceeding is terminated.

Issued on: July 11, 2003.

**Annete M. Sandberg,**

*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA 2003-14306]

RIN 2127-AA44

#### Flammability of Interior Materials in School Buses

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

**ACTION:** Notice of termination of proposed rulemaking.

**SUMMARY:** This notice terminates a rulemaking proceeding that NHTSA began in 1988 to consider upgrading Standard No. 302's flammability resistance requirements for school bus interiors. The rulemaking was initiated in response to a severe 1988 crash in Carrollton, Kentucky, in which a former school bus being used as a church activity bus burst into flames after colliding head-on with a pickup truck.

After reviewing the available information and public comments, the agency has decided to terminate this rulemaking because: The risks presented by school bus fires pose a minimal safety problem; the agency's 1992 emergency exit requirements to allow faster evacuation from school buses has reduced further the risks posed by fire; the bus involved in the Carrollton fire was built before upgraded Federal school bus standards went into effect in 1977 and did not meet the exit and fuel system integrity requirements; upgrading Standard No. 302 would result in significant costs; and further research would be necessary before the agency could propose a test protocol, utilizing scarce agency resources.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues: Mr. Charles Hott, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366-0247. For legal issues: Mr. Christopher Calamita, Vehicle Safety Rulemaking and Harmonization Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, Telephone: (202) 366-2992.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In the late 1980s, school bus safety received substantial public and Congressional attention, especially in the aftermath of two catastrophic crashes. On May 14, 1988, in Carrollton, Kentucky, a former school bus<sup>1</sup> being used as a church activity bus burst into flames after colliding head-on with a pickup truck. This was a severe crash, with a combined impact speed exceeding 100 miles per hour. Twenty-seven of the 67 bus occupants died in the fire that ensued. On September 21, 1989, in Alton, Texas, a school bus became submerged in a water-filled pit after colliding with a tractor-semi trailer. Twenty-one of the 81 students in the bus drowned because they were unable to escape.

In its investigation of the Carrollton crash, the National Transportation Safety Board (NTSB) concluded:

<sup>1</sup> The bus was manufactured in 1977 shortly before April 1, 1977, prior to the effective date of a final rule improving Standard No. 217's emergency exit capacity requirements and Standard No. 301's fuel system integrity requirements. As a result, the Carrollton bus lacked safety features, such as fuel tank guards and improved access to emergency exits, required on most large school buses that were built after 1977.