

they argued that data indicating damages not directly linked to wetlines damage or release should not be included. For example, costs associated with damage to the CTMV from a motor vehicle collision should not be included in the total for purposes of the analysis.

PHMSA agrees that only those costs associated with damages to the wetline and release of material from the wetlines should be counted.

Unfortunately, under the current format of incident report information it is difficult to parse out the costs of wetlines-related damages from the total body of damages where damages occur beyond those associated with wetlines, unless some assumptions are made. For instance, in the case of an incident involving a fire, PHMSA assumed the fire was started and was propagated by the wetlines release.

Upon consideration of the comments, PHMSA conducted further review of the 172 incidents that were initially determined to be wetlines incidents in our preliminary analyses. Prior to this review, PHMSA became aware that some of the data in our original set of incidents was not accurate and likely led to the critical comments. This data had since been corrected and a revised list of incidents was placed in the docket (8/12/2011; PHMSA-2009-0303-0048). PHMSA also reviewed additional CTMV incidents that occurred from January 1, 2009 to March 31, 2011 to capture more recent data. This review resulted in a final determination of 132 wetlines incidents. A total of 59 incidents were removed after a review of the original 172 incidents, and 19 incidents were added after a review of more recent data.

## 2. Benefit and Cost Estimation

**Manual Purging System.** Most commenters took issue with PHMSA's estimation of the costs of installing a manual purging system.<sup>9</sup> In general, they believe PHMSA underestimated the total cost presented through incorrect assumptions and inclusion of cost factors that do not reflect real-world applications. Commenters indicated that PHMSA underestimated the true costs of a manual purging system by, for example, not incorporating a markup cost. Commenters provide a range of cost estimates from \$4,000 to \$10,000. Some also think the regulatory assessment should have been developed using a mix of costs of the manual system and the more expensive

automated purging system. Commenters suggest this because they believe that owners will invest in the automated system out of concern that drivers will forget to operate the manual system and because an automated system will provide the added benefit of discovery of a faulty emergency valve and would continue to purge the lines during transportation if such a faulty valve were present. Details of this pricing can be found in the regulatory assessment and other documents submitted to the docket for this rulemaking. PHMSA's post-GAO analysis took into consideration the cost of the automated system.

**Operational delays.** Many commenters argued that PHMSA has not accounted for delay costs to the shipper or carrier due to operation of a purging system at the loading rack of a terminal facility. The delay would be caused by the driver of the CTMV waiting anywhere from three to six minutes for the system to complete the purging process prior to moving the CTMV. Commenters based this on their understanding that the regulations would not allow the vehicle to move until it is essentially empty—only a residue remains in the piping. Completion of the purging process would be an indicator that it is empty.

**Weight penalty.** PHMSA estimated that a manual purging system is expected to add about 48 pounds to a CTMV. To the extent that a shipper or carrier operates at Federal or State gross weight limits, the shipper or carrier would have to ship less product because of this additional weight. Commenters disagreed with the estimate that only 25% of vehicle trips are at the maximum allowable weight and therefore affected by the additional weight of a purging system. Informal surveys of carriers by the American Trucking Association and the National Tank Truck Carriers found that as much as 80% of trips are at the maximum allowable weight. Again, PHMSA's post-GAO analysis accounted for this.

**Yonkers, NY Incident.** Commenters believe the Yonkers, NY incident that led to NTSB Safety Recommendation (H-98-27) should not be included in the regulatory assessment for several reasons, including:

(1) The belief that the fire in the incident was not caused by a wetlines release because the original NTSB accident report concluded that the fire was fed by fuel from the cargo tank compartments, implying a breach of the cargo tank;

(2) the incident predates the incident analysis period; and

(3) the uncertainty that such an event will ever occur again—no data supports the PHMSA assumption that this is a 20-year event.

## E. Findings

Although a safety hazard exists, the regulatory assessment and further analysis indicate that prohibiting the transportation of flammable liquids in wetlines is unlikely to be cost beneficial. Additionally, the GAO report has pointed out a number of uncertainties with the data collection and analysis that would have a direct impact on PHMSA's ability to fully characterize the degree of risk that wetlines containing flammable liquids pose to the safety of transportation.

## V. Conclusion

PHMSA is withdrawing this rulemaking in accordance with the FAST Act. PHMSA, however, will continue to examine this issue, particularly by monitoring flammable liquid wetlines incidents, in consideration of any future actions. Likely future actions include non-regulatory initiatives to improve the safety of transporting flammable liquid in unprotected external product piping on CTMVs.

Issued in Washington, DC, on December 22, 2015, under authority delegated in 49 CFR Part 1.97.

**William S. Schoonover,**

*Deputy Associate Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 393

[Docket No. FMCSA-2014-0428]

RIN 2126-AB67

#### Parts and Accessories Necessary for Safe Operation: Federal Motor Vehicle Safety Standards Certification for Commercial Motor Vehicles Operated by United States-Domiciled Motor Carriers; Withdrawal

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

**ACTION:** Notice of withdrawal.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) withdraws its June 17, 2015, notice of proposed rulemaking (NPRM), which would have required each commercial motor vehicle (CMV) operated by a

<sup>9</sup>PHMSA used a per-unit price of \$2,300 based on the advertised price of the one manufacturer of purging systems currently designing and installing such systems.

United States-domiciled (U.S.-domiciled) motor carrier engaged in interstate commerce to display a label applied by the vehicle manufacturer or a U.S. Department of Transportation (DOT) Registered Importer to document the vehicle's compliance with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect as of the date of manufacture. FMCSA withdraws the NPRM because commenters raised substantive issues which have led the Agency to conclude that it would be inappropriate to move forward with a final rule based on the proposal. Because the FMVSSs critical to the operational safety of CMVs are cross-referenced in the Federal Motor Carrier Safety Regulations (FMCSRs), FMCSA has determined that it can most effectively ensure that motor carriers maintain the safety equipment and features provided by the FMVSSs through enforcement of the FMCSRs, making an additional FMVSS certification labeling regulation unnecessary.

**DATES:** The NPRM "Parts and Accessories Necessary for Safe Operation: Federal Motor Vehicle Safety Standards Certification for Commercial Motor Vehicles Operated by United States-Domiciled Motor Carriers," published on June 17, 2015 (80 FR 34588), is withdrawn as of December 30, 2015.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this Notice of withdrawal, contact Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001, by telephone at (202) 366-9209 or via email at [Michael.Huntley@dot.gov](mailto:Michael.Huntley@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background/General Issues Raised During Comment Period**

On June 17, 2015, FMCSA published an NPRM to require motor carriers to display an FMVSS certification label (80 FR 34588).

The FMCSRs require that motor carriers operating CMVs in the U.S., including Mexico- and Canada-domiciled carriers, ensure that the vehicles are equipped with the applicable safety equipment and features specified in 49 CFR part 393, Parts and Accessories Necessary for Safe Operations, which includes cross references to safety equipment and features that must be installed at the time of production. The National Highway Traffic Safety Administration (NHTSA) requires vehicle

manufacturers to certify that the vehicles they produce for sale and use in the U.S. meet all applicable FMVSSs in effect at the time of manufacture. In addition, they must affix an FMVSS certification label to each vehicle in accordance with the requirements of 49 CFR part 567.

As proposed, the NPRM would have required U.S.-domiciled motor carriers engaged in interstate commerce to use only CMVs that display an FMVSS certification label affixed by the vehicle manufacturer indicating that the vehicle: (1) Satisfied all applicable FMVSSs in effect at the time of manufacture; or (2) has been modified to meet those standards and legally imported by a DOT-Registered-Importer. In the absence of such a label (e.g., because of vehicle damage or deliberate removal), the motor carrier would have been required to obtain, and a driver upon demand present, a letter issued by the vehicle manufacturer stating that the vehicle satisfied all applicable FMVSSs in effect on the date of manufacture.

**Discussion of Comments to the NPRM**

FMCSA received 19 comments on the NPRM. The Commercial Vehicle Safety Alliance (CVSA), which represents State and Provincial agencies throughout North America responsible for motor carrier safety enforcement, supported the proposed rule, but stated "While CVSA supports the NPRM, it should be noted that, in our opinion, the best way to prevent non-FMVSS-compliant vehicles from operating in the U.S. by U.S.-domiciled motor carriers is to identify them at the point of titling, vehicle registration, or importation. Roadside inspections should be the secondary means of verifying that CMVs were FMVSS compliant at the time of manufacture." One anonymous commenter also supported the proposed rule.

Each of the remaining commenters opposed the proposal, including six trade associations representing the trucking industry, equipment manufacturers, and dealers (One trade association submitted two comments each covering a different issue). These associations are the American Trucking Associations (ATA), the National Automobile Dealers Association (NADA), the National Propane Gas Association (NPGA), the Truckload Carriers Association (TCA), the Owner-Operator Independent Drivers Association (OOIDA), and the Truck and Engine Manufacturers Association (EMA). Three motor carriers submitted comments: Double D Distribution (Mark Droubay), United Parcel Service (UPS)

and YRC Freight (YRC). Nine individuals submitted comments, including Congressman Richard L. Hanna from New York.

**Comments in Opposition to the NPRM**

Commenters opposed the proposed rule for the following reasons:

- The rule would provide no safety benefits.
- FMVSS markings, particularly on trailers, are subject to damage, over-painting, and loss over the life of the vehicle. No certification marking is permanent.
- Many of the manufacturers have gone out of business, been purchased, or are overseas; obtaining a replacement certification or letter may not be possible.
- The proposal does not recognize the issues raised by interlining and other operational patterns.
- The rule would impose significant costs on carriers, which FMCSA has failed to estimate.
- The National Transportation Safety Board (NTSB) recommendation on which the proposal was based resulted from a bus crash that was unrelated to the standards to which the coach was manufactured.

*No Safety Benefits*

Several of the industry associations, the three motor carriers, and seven individuals who opposed the proposed rule in general stated that it would not enhance safety and that FMCSA had provided no safety rationale for the rule. OOIDA stated that most small carriers and owner/operators purchase used equipment. OOIDA also stated that it failed to see how maintaining proof of a CMV's compliance at the time of manufacture would improve safety years later. ATA and TCA stated that original certification has little if anything to do with the condition and safe operation of a CMV after it is purchased. ATA stated that FMCSA had provided no evidence of any crashes where lack of certification was responsible for the crash. UPS stated that the proposal appeared to be for the convenience of inspectors, not to improve safety.

*Issues Related to Markings*

ATA and others stated that no external markings on a CMV are permanent. YRC stated that it was primarily concerned with markings on trailers, converter dollies, and container chassis, which are affixed to the outside of the vehicle and subject to wear and tear from road conditions and may be painted over or removed during refurbishment. ATA submitted

information from a survey of motor carriers. Of the responding motor carriers, 42 percent reported having missing or unreadable certification labels. No motor carrier surveyed indicated that the equipment did not have a label because it had not been designed to be compliant with the FMVSSs.

#### *Issues Related to Replacement Certifications*

The industry associations stated that FMCSA had not understood the difficulty of obtaining a replacement certification. ATA, Congressman Richard L. Hanna and others stated that many of the vehicle manufacturers have gone out of business or have been sold. Those that are out of business could not produce a replacement; the new owners of the manufacturers that have been sold might not have the records or may be unwilling to be liable for vehicles produced by the original manufacturer. ATA provided a list of 21 manufacturers that are out of business or have been sold. It also noted that current manufacturers may be reluctant out of fear of liability to provide certificates for equipment that may not have been maintained or may have been altered. For intermodal chassis, many of which were manufactured overseas, ATA stated that it will not be possible to identify or find the manufacturer.

EMA raised a related issue: Multiple companies are involved in the manufacture and certification of most Class 3 through 7 vehicles and about half of the Class 8 vehicles. Under the proposal, EMA stated that a carrier would have to contact the final-stage manufacturer for a replacement, but the identity of that manufacturer may not be obvious as it is frequently not the nameplate company. EMA stated that its members charge a fee for replacement certificates.

YRC and UPS stated that the alternative of a letter, kept with the equipment, is problematic. YRC stated that trailers and converter dollies are routinely used by non-owners during interlining, intermodal agreements, and equipment leases. UPS stated that the requirement to keep the letter with the trailer would require a secure compartment, which trailers do not currently have. ATA stated that containers and trailers may be sealed and asked if FMCSA was expecting inspectors to break seals to review a letter that spoke to compliance years in the past. ATA also stated that the proposed rule would result in penalizing drivers and carriers for missing labels on equipment they did not own which was in safe operating

condition. ATA stated that for intermodal chassis, a database exists that would provide a better source of the information for inspectors.

#### *Cost Impacts*

The industry associations and motor carriers stated that FMCSA had failed to consider or estimate the significant costs associated with the proposed rule. They listed the following potential costs:

- The time required to survey equipment to determine whether certificate information still existed on equipment.
- The time required to identify the manufacturer and obtain a replacement certificate or letter.
- The time required for a driver/cARRIER picking up equipment owned by another carrier to check for the label, certificate, or letter.
- The operational disruption if CMVs had to be removed from service until replacements could be obtained or replaced altogether if the manufacturer no longer exists.
- The fees charged for replacement certificates.

UPS estimated that of its 77,000 trailers, 10,000 no longer have the decals. It would need to identify the manufacturer, if it still exists, to request a replacement. YRC stated that the initial audit of its equipment would require hundreds of hours of time by drivers, mechanics, and others, followed by the process of obtaining a replacement label if possible. If the manufacturer no longer exists, the rule would require that the equipment be removed from service. One carrier (32 tractors with 70 trailers) estimated that it would cost \$18,000 to add/replace labels currently missing and \$4,000–\$6,000 annually to audit the equipment to ensure that tags are still there. ATA cited a comment from a member that it was charged \$150 for a replacement decal for a trailer. ATA provided data from 20 carriers on the number of pieces of equipment missing decals—8,411 out of 47,000 CMVs.

ATA also cited another member, a propane distributor, which had 29 trailers without certificates, most manufactured by companies that no longer exist. The proposal would require replacement of all of these trailers. NPGA stated that even when replacements could be obtained, taking the equipment out of service until the certificate or letter arrived would disrupt services and impose significant costs to lease replacements. NPGA and others noted that, even if the manufacturer is still in business, the carrier has no way to compel it to process a request quickly. EMA noted

that completing a letter would take an hour or more of a manufacturer's expert's time. NADA's American Truck Dealers Division stated that any requirement that dealers not sell CMVs that lack certificates would be unacceptable and could cost dealers \$3 million annually (assuming 1 hour/week to examine vehicles and obtain replacements), it also noted that small dealerships spend considerably more per employee on compliance than larger firms do.

OOIDA stated that FMCSA must do a cost-benefit analysis and then publish a supplemental notice.

#### *Other Comments*

NPGA stated that it could support the requirement if it applied only to CMVs manufactured after the effective date of the rule. In the alternative, FMCSA should set the compliance period at 24 months to give carriers enough time to implement the provision without disrupting operations. UPS and YRC stated that they would support a prospective requirement provided the label was a permanent plate. UPS stated that it understood that the data connecting serial number and status at manufacture are available in State databases. Although these data may not be accessible at roadside inspection, they are available electronically. OOIDA stated that the burden should be on the seller of used vehicles, not the purchaser.

Many of the industry commenters stated that the NTSB report did not provide a justification for the proposal.

#### **FMCSA Decision To Withdraw the NPRM**

After review and analysis of the public comments discussed in the preceding section, FMCSA has decided to withdraw the June 2015 NPRM. We will continue to uphold the operational safety of CMVs on the Nation's highways through continued enforcement of the FMCSRs, many of which cross-reference specific FMVSSs.

Generally, U.S.-domiciled motor carriers operating CMVs (as defined in 49 CFR 390.5) in interstate commerce have access only to vehicles that either were manufactured domestically for use in the United States with the required certification label or were properly imported into the United States in accordance with applicable NHTSA regulations, including certification documentation requirements of 49 CFR part 567. Furthermore, FMCSA's safety regulations incorporate and cross-reference the FMVSSs critical to continued safe operation of CMVs.

FMCSA believes continued strong enforcement of the FMCSRs in real-world operational settings, coupled with existing regulations and enforcement measures, will ensure the safe operation of CMVs in interstate commerce. Under the Motor Carrier Safety Assistance Program, FMCSA and its State and local partners conduct more than 2.3 million roadside vehicle inspections each year of CMVs (domiciled in the United States, Canada, or Mexico) operating in interstate commerce. Enforcement of the FMCSRs, and by extension the FMVSSs they cross-reference, is the bedrock of these compliance assurance activities.

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

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

was originally built to certain manufacturing performance standards.

Therefore, after careful consideration, FMCSA has concluded it is not necessary to amend the FMCSRs to require CMVs to display an FMVSS certification label in order to achieve effective compliance with the FMVCRSs.

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

Issued under the authority of delegation in 49 CFR 1.87 on December 23, 2015.

**T.F. Scott Darling, III,**

*Acting Administrator.*

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