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

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

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

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

Other Vehicle Laws and Regulations

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

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

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

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

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

FMCSA Decision

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

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

We again emphasize all motor carriers operating in the United States must comply with all applicable laws and regulations, including all of the FMCSRs as well as those that cross-reference particular FMVSSs. Through our cross-references to FMVSSs, we require motor carriers to ensure their CMVs are equipped with specific safety devices and systems required by NHTSA on newly manufactured vehicles, and to maintain their vehicles to ensure continued safe performance. The roadside inspection program will ensure this is the case to the greatest extent practicable.

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

Issued on: August 19, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–16967 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–EX–P

[2] 950 Pennsylvania Avenue, NW., Mail Code NYAV, Washington, DC 20530. Information is also available at *http://www.usdoj.gov/crt/drssec.htm.*

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 576 and 591

[Docket No. NHTSA–2005–22197]

RIN 2127–AI59, RIN 2127–AI60, RIN 2127–AI64

Retroactive Certification of Commercial Motor Vehicles by Motor Vehicle Manufacturers

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

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

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

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

FMCSA requires Mexican-domiciled carriers applying to operate in the United States to certify in their applications that their vehicles were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built, and will confirm that certification during the pre-authority safety audit and subsequent inspections. In addition, enforcement through the Federal Motor Carrier Safety Regulations focuses on real world, operational safety and incorporates the various FMVSS applicable through the useful life of the vehicle.

FMCSA will not require vehicles to have labels certifying their compliance with the standards in effect when they were built, and NHTSA is not proceeding with a retroactive certification approach or the related proposal for a new recordkeeping and retention rule. We have also decided against placing a definition of the term ''import'' in the Code of Federal Regulations. After considering the comments, we have concluded that creating a new regulation to define the term serves no regulatory function and is unnecessary for the promotion of motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may call Julie Abraham, Director of the NHTSA International Policy, Fuel Economy and Consumer Program, at 202–366–0846.

For legal issues, you may call Edward Glancy of the NHTSA Office of Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

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I. Background

A. U.S. Moratorium on Operating Authority for Mexican-Domiciled Motor Carriers

Since 1982, a statutory moratorium on the issuance of operating authority to Mexican-domiciled motor carriers has, with a few exceptions, limited the operations of such carriers to municipalities and commercial zones along the United States-Mexico border (''border zone''). Bus Regulatory Reform Act of 1982, Public Law No. 97–261, 96 Stat. 1102 (1982). The nearly blanket moratorium, which initially applied to both Mexican- and Canadian-domiciled motor carriers, was lifted against Canada pursuant to a memorandum from President Reagan to the United States Trade Representative published in the **Federal Register**. 47 FR 54053; December 1, 1982.

The memorandum was issued after the United States and Canada agreed, via an exchange of letters, to lift certain trade restrictions that were prohibiting the free flow of goods across the U.S.-Canadian border. Safety of the Canadian commercial motor vehicles was not identified as an area of concern in these letters.

B. NAFTA–U.S. Commitments and the Moratorium

Groundwork for lifting the moratorium as to Mexican-domiciled commercial motor vehicles was laid on December 17, 1992, when the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA or Agreement). Following approval by Congress, the Agreement entered into force on January 1, 1994. NAFTA establishes a free trade area, and its primary objectives are the promotion of free trade and investment through the elimination of trade barriers and the facilitation of cross-border movement of goods and services.

Annex I of NAFTA called for liberalization of access for Mexican-domiciled motor carriers on a phased schedule. Annex I: Reservations for Existing Measures and Liberalization Commitments, Schedule of the United States. Pursuant to this schedule, Mexican-domiciled charter and tour bus operations were to be permitted beyond the border zone on January 1, 1994. Truck operations were to have been permitted in the four United States border states in December 1995, and throughout the United States on January 1, 2000; scheduled bus operations were to have been permitted throughout the United States on January 1, 1997.

However, the United States postponed implementation with respect to Mexican-domiciled truck and scheduled bus service due to concerns about safety, continuing its blanket moratorium on processing applications by these Mexican-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. NAFTA Panel Established Pursuant to Chapter Twenty in the Matter of Cross-Border Trucking Services Final Report (Feb. 6, 2001), 40 I.L.M. 772.

C. NAFTA-Related Actions by the Department of Transportation

The Department of Transportation is now preparing for the implementation of the NAFTA provisions concerning Mexican-domiciled motor carriers. The Department is adopting and implementing appropriate and effective safety measures as the United States takes the steps necessary to comply with its obligations under NAFTA regarding the access of Mexican-domiciled motor carriers engaged in interstate commerce to the United States.

As part of that effort, NHTSA has been examining the question of what role it should play under a statute originally known as the National Traffic and Motor Vehicle Safety Act. That statute has been codified at 49 U.S.C. 30101, *et seq.* (In the interest of simplicity, we will refer to that statute as the Vehicle Safety Act.) The purpose of the Vehicle Safety Act is to reduce the number of crashes and deaths and injuries resulting from crashes.

Pursuant to the Vehicle Safety Act, NHTSA issues Federal motor vehicle safety standards (FMVSSs) that apply to new motor vehicles that are manufactured for sale in the United States. The FMVSSs also apply, subject

to certain exemptions, to new or used motor vehicles imported into the United States. The Vehicle Safety Act requires manufacturers to certify that their vehicles, at the time of manufacture, comply with all applicable safety standards. 49 U.S.C. 30112. Each manufacturer must give evidence of this certification by affixing to its vehicles a permanent label stating that the manufacturer certifies that the vehicles comply with all applicable safety standards. 49 U.S.C. 30115.

In 1975, NHTSA 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 Canadian 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.[1] Although the 1975 letter did not address the issue of Mexico-domiciled commercial motor vehicles, its rationale applied equally to those vehicles.

Following the decision of the NAFTA panel in February 2001, NHTSA reviewed its 1975 interpretation. On March 19, 2002, we proposed to define the term ''import'' in the Code of Federal Regulations in a manner consistent with the 1975 interpretation and sought comment on that interpretation of that term (67 FR 12806, Docket No. NHTSA–02–11593).

FMCSA also issued an NPRM on that date, proposing to require that all commercial motor vehicles operating in interstate commerce in the United States have labels certifying their compliance with the FMVSSs in effect when they were built (67 FR 12782, Docket No. FMCSA 01–10886). FMCSA is the agency within the Department of Transportation that is responsible for oversight of commercial motor carriers engaged in interstate commerce. Its regulations address both the commercial motor vehicles [2] (generally large trucks or passenger-carrying vehicles) operated in interstate commerce 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.

In conjunction with those two proposals, NHTSA issued a request for comments on a draft policy statement providing that a vehicle manufacturer may, if it has sufficient basis for doing so, retroactively certify that a motor vehicle complied with all applicable FMVSSs in effect at the time of manufacture and affix a label to that effect (March 19, 2002, 67 FR 12790, Docket No. NHTSA 02–11594). To facilitate compliance further, FMCSA proposed a short-term exception from its proposed requirement, allowing a two-year grace period for carriers with existing operating authority to have their vehicles retroactively certified. New operators would have had to comply with the FMCSA requirement immediately. In addition, NHTSA issued an NPRM proposing recordkeeping requirements for manufacturers that retroactively certify their vehicles (March 19, 2002, 67 FR 12800, Docket No. NHTSA 02–11592).

The comment period for all four notices ended on May 20, 2002.

After careful consideration of the comments (which are discussed below) and also consistent with the actions being taken by FMCSA, we have decided to withdraw the three documents. The Department has developed a more effective and less cumbersome approach to ensure that commercial motor vehicles operating in the United States were originally built to the FMVSSs (or, as discussed below, the very similar Canadian motor vehicle safety standards (CMVSSs)) applicable at the time of their manufacture and operate safely in the U.S.

FMCSA, among other things, requires Mexican-domiciled carriers applying to operate in the United States to certify in their application that their vehicles were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built and will confirm that certification during the pre-authority safety audit and subsequent inspections.

FMCSA's enforcement program will ensure that commercial motor vehicles operating in the United States comply with all of the operating and maintenance regulations necessary for real world safety. With only a few differences, the Canadian motor vehicle safety standards are identical to the U.S. manufacturing performance standards (the FMVSS), and FMCSA's operating regulations incorporate the FMVSS critical to continued safe operation. As necessary, FMCSA's enforcement program may use VINs and other available information to check that commercial motor vehicles operating in the U.S. were originally built to the FMVSS or CMVSS applicable at the time of their manufacture.

FMCSA will not require vehicles to have labels certifying their compliance with the standards in effect when they were built, and is withdrawing its proposal on that subject. NHTSA is not proceeding with a retroactive certification approach or the related proposal for a new recordkeeping and retention rule. We have also decided against placing a definition of the term ''import'' in the Code of Federal Regulations. After considering the comments, we have concluded that creating a new regulation to define the term serves no regulatory function and is unnecessary for the promotion of motor vehicle safety.

II. Summary of Comments

A total of 79 comments, many of them duplicative, were received in the docket for the four rulemakings. Most of the comments addressed the FMCSA notice proposing that all commercial motor vehicles operating in the U.S. be certified and be labeled as certified. However, several of the commenters also addressed the implications of the proposed definition of the word ''import'' and its impact on the existing open U.S.-Canadian border and motor vehicle safety. Only a few commenters offered an opinion as to the validity of the interpretation on which the proposed definition of ''import'' was based.

Various trade organizations representing both motor carriers and truck manufacturers submitted comments generally opposed to the group of rulemakings. Representatives of the transit industry, labor organizations, vehicle insurers, and consumer groups filed comments that were generally supportive of the NPRM proposing to define ''import,'' but generally not supportive of the draft policy statement on retroactive certification or the proposed recordkeeping requirements. They were particularly concerned about the potential for fraud and abuse if retroactive certification were permitted. They were also opposed to the proposed grace period in the FMCSA rulemaking.

[1] See letter dated May 9, 1975 from NHTSA Administrator James B. Gregory to M. C. Carruth, Docket No. NHTSA–02–11593.

[2] A ''commercial vehicle'' is any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle: (1) Has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR)—or a gross vehicle weight (GVW) or gross combination weight (GCW)—of 4,536 kilograms (10,001 pounds) or more, whichever is greater; or (2) is designed or used to transport more than 8 passengers, including the driver, for compensation; or (3) is designed or used to transport more than 15 passengers, including the driver, whether or not it is used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, Subtitle B, Chapter I, Subchapter C. See 49 CFR 390.5.

Additionally, the Canadian government, as well as two of its provinces, Manitoba, and Newfoundland and Labrador, filed submissions. While the Canadian authorities noted that they understood and supported the right of the U.S. to ensure the safety of its roads, they said that inspection and crash data showed that Canadian commercial vehicles are at least as safe as U.S. commercial vehicles. They argued that, in those circumstances, extending the certification requirements to the Canadian vehicles amounts to a technical trade barrier under the WTO and NAFTA.

Canada emphasized the substantial similarity between the CMVSSs and the FMVSSs, as well as the similarity between their underlying statute and ours (both of which are over 30 years old). The CMVSSs are intentionally harmonized with the FMVSSs to the maximum extent possible. The exceptions are generally limited to labeling requirements (metric, both French and English) and those instances in which the Canadian environment is unique (mandatory daytime running lights because of long periods of twilight in many parts of the country).

Industry representatives agreed with Canada's assessment, noting that like the U.S., Canada has a long history of comprehensive and substantially similar safety standards that govern the manufacture of motor vehicles, including commercial trucks. They said that, in some instances, the Canadian standards are arguably more stringent than the U.S. standards. The Truck Manufacturers Association (TMA) stated that, from a safety perspective, the two major areas of difference between U.S. and Canadian heavy vehicles are the effective dates for anti-lock brake systems (ABS) and automatic brake adjusters. It argued, however, that this lag time is of no practical consequence in view of the requirement at 49 CFR 393.55 of the Federal Motor Carrier Safety Regulations (FMCSRs) that all commercial motor vehicles operating in the U.S. be equipped with ABS and automatic brake adjusters that meet the requirements of FMVSS No. 105, Hydraulic and Electric Brake Systems, or FMVSS No. 121, Air Brake Systems.

Canada also observed that the U.S. and Canada have engaged in mutual acceptance of safety rules related to commercial motor carriers (*e.g.*, acceptance of commercial driver's license qualifications, vehicle inspection standards) since 1982, when the moratorium on issuing operating authority to Canadian-domiciled motor carriers was lifted. This system of mutual recognition has proven effective in maximizing cross-border trade, while ensuring that each country's legitimate safety concerns are sufficiently addressed.

The American Trucking Associations (ATA) argued that NHTSA should not interpret ''import'' to include the entrance of foreign commercial motor vehicles engaged in the transport of goods in the cross-border trade. It argued that this interpretation is inconsistent with the U.S. Customs classification of such vehicles as ''instruments of international commerce,'' instead of ''imports.'' The province of Newfoundland and Labrador argued that commercial vehicles that enter the U.S. for purpose of the carriage of goods or passengers should not be considered imports unless there is a change of ownership such that the vehicle can no longer be considered foreign-domiciled.

The Transportation Trades Department of the AFL-CIO (TTD), International Brotherhood of Teamsters (IBT), American Insurance Association (AIA), Public Citizen and Advocates for Highway and Auto Safety (Advocates) all believe NHTSA's 1975 interpretation of the import prohibition should be applied today, that it is based on ''unequivocal'' statutory language, and that it is needed to ensure the safety of our roadways. However, their comments and criticisms were limited to the impact of non-certified commercial motor vehicles coming into the United States from Mexico.

AIA pointed out that the NAFTA panel decision specifically allows for U.S. safety agencies to impose measures that guarantee the safe operation of trucks in the U.S., even if those measures impose limitations or requirements on Mexican-domiciled motor carriers that are not imposed on U.S.- or Canadian-domiciled carriers. It also noted that a lack of sufficient guarantees of safety, as a general rule, makes a class of business less insurable or increases the cost of coverage. The IBT argued that the application of vehicle safety requirements to Mexican carriers is consistent with the policy expressed by Congress in the Murray-Shelby legislation (section 350 of the 2002 DOT Appropriations Act, Pub. L. 107–87) regarding the importance of preventing unsafe commercial motor vehicles from entering the U.S.

The Amalgamated Transit Union (ATU) and Greyhound, as well as AIA, argued that all commercial motor vehicles should be required to have a sticker or plate (*i.e.*, a FMVSS certification label) before they are allowed to operate in the U.S., regardless of whether they have previously been allowed to operate in this country. They argued also that the grace period contemplated in the FMCSA proposal was inappropriate.

Various commenters claimed that the vast majority of Mexican-manufactured buses did not comply with the FMVSSs when originally manufactured, and do not comply now (particularly as to brakes, fuel systems, windows, and emergency exits). They also said that it is apparent from the FMCSA/NHTSA notices, when considered together, that many thousands of Mexican carriers have been traveling into the U.S. for many years without conforming to the U.S. safety standards. They argued that non-compliant commercial motor vehicles present a special safety hazard on U.S. roads, and non-compliant motor coaches, in particular, are especially dangerous for both bus passengers and other highway users. They believe the requirement that all vehicles display a valid FMVSS certification label would rectify this problem.

Advocates and AIA tentatively supported the concept of retroactive certification, although they expressed some concerns about the program, most notably the possibility of the issuance of mistaken, unsupported, or fraudulent certifications. They argued that the large population of ineligible Mexican vehicles would inevitably encourage the issuance of false certifications and the production of fraudulent labels. They also argued that the proposed policy statement does not provide sufficient safeguards to ensure that only those vehicles that, in fact, complied when originally manufactured (or are subsequently modified to achieve compliance) would actually be certified. Finally, they claimed that since Mexican manufacturers and carriers are unfamiliar with the FMVSSs, and there is no labeling requirement in Mexico, the only way to verify compliance of each Mexican-manufactured vehicle certified as conforming to the FMVSSs is to inspect each vehicle along with the documentation at the time of the pre-authorization safety audit. Without this initial, threshold confirmation of conformity with the FMVSSs, they argued, Mexican-domiciled motor carriers might certify their vehicles without any demonstrable proof of conformity.

III. NHTSA's Analysis of the Differences Between the FMVSSs and the CMVSSs

As noted by Canada in its comments, the FMVSSs and CMVSSs are issued under virtually identical statutes that were enacted over thirty years ago. The

two statutory schemes both require manufacturers to certify that their vehicles comply with all applicable safety standards in effect at the time of manufacture and employ similar enforcement schemes. Both sets of standards are performance based, based on research and data, and generally do not dictate a particular design, although they may have the effect of prohibiting certain designs. NHTSA and Transport Canada, the Canadian regulatory agency tasked with implementing and enforcing its vehicle safety act, work closely in researching the causes and potential means of addressing deaths and injuries related to motor vehicle crashes.

In 1984, the Department of Transportation and Transport Canada signed Addendum 5, Traffic and Motor Vehicle Safety Research (Addendum 5), to the existing Memorandum of Understanding between Transport Canada and the United States Department of Transportation Concerning Research and Development Cooperation in Transportation (June 18, 1970). Addendum 5 initially addressed cooperative research activities related to traffic safety research, crash avoidance research, crashworthiness research, and road safety data collection and analysis. The results of these research activities were often used to initiate rulemaking activities. In the 1996 version of Addendum 5, NHTSA and Transport Canada agreed to extend the cooperation agreement formally to the rulemaking activities of the United States and Canada. The two agencies also agreed to meet at least once a year to review the status of their respective rulemaking actions, alert the other to rules potentially of interest, and discuss near-term rulemaking plans. In 2002, NHTSA and Transport Canada concluded a revision to Addendum 4, which renewed the cooperation agreement indefinitely in order to ensure continuation of collaborative activities between the two departments. A copy of Addendum 5, including all updated versions, has been placed in the docket.

As a result of both the similar statutory schemes and the longstanding cooperative relationship between the two regulatory agencies, as well as the similarity in their physical environments and population, the FMVSSs and CMVSSs mirror each other in almost all substantive respects, especially as they apply to heavy trucks and buses.

NHTSA has evaluated the differences between the FMVSSs and the CMVSSs that apply to heavy trucks and buses (over 4,536 kg (10,000 lb) GVWR). We shared our analysis with Transport Canada, which provided additional feedback. Tables 1 and 2 in the appendix to this document generally outline the similarities and differences between the two sets of standards. We believe the efforts of both agencies have identified all of the significant differences between the two sets of standards as they apply to these vehicles.

As an initial matter, we note that this analysis is neither a tentative nor a final determination of functional equivalence. NHTSA has a formal process that allows for functional equivalence determinations with the consequence being a change in the standard that may be utilized by any manufacturer. Rather, today's analysis recognizes the tremendous similarity between the respective standards. In most instances, no amendment would be needed. The regulatory requirements already mirror each other. In some instances, minor differences exist and a series of minor changes to the FMVSS would be required in order for us to determine that the respective standards are functionally equivalent. We have decided against such an approach. Rather, we believe that the manufacture or retrofitting of vehicles in compliance with either the FMVSS or CMVSS ensures sufficient adequate design integrity to meet the safety concerns posed by the operation of commercial motor vehicles on the nation's highways as long as the vehicles also meet all FMCSRs.

Given the similarities between the two sets of standards and the existing manufacturer compliance practices, it is neither difficult nor impermissible for a commercial motor vehicle certified to the CMVSSs to meet the substantive requirements of the FMVSSs. We have identified 14 FMVSS/CMVSS pairs of standards that have differences. Most of these have only minor differences in performance values, with Canadian requirements that are at least as stringent as, and possibly stricter than, the corollary requirements in the FMVSSs. For example, one of the Canadian standards, CMVSS No. 301.1, has no U.S. counterpart, while another, CMVSS No. 301.2, has broader applicability than the corollary FMVSS Nos. 303 and 304.

The differences between Canadian standards and other U.S. standards like FMVSS Nos. 101, 105, and 121 relate solely to information on the instrument panel. These are designed to relay specific information to the vehicle operator and may be based on the customs and practices of the respective countries. We believe these differences do not have any consequence so long as the vehicle operator is familiar with the vehicle. Indeed, NHTSA and Transport Canada are involved in a harmonization effort that would eliminate most of these differences.

The remaining differences are not likely to pose safety problems. Portions of FMVSS No. 108 (reflective tape on trailers and allowance of European head lamps) and FMVSS Nos. 223 and 224 (underride prevention) have no Canadian counterpart. However, according to the CTEA, all Canadian trailers entering the United States already meet the applicable underride requirements of FMVSS Nos. 223 and 224 because of the underride requirements in the FMCSRs. Similarly, while CMVSS No. 108 allows single-colored reflective tape on trailers, the Canadian trailers used in the cross-border trade meet the requirements of FMVSS No. 108, in part because of the requirement in the FMCSRs that they do so. Finally, the TMA polled its Canadian members and has determined that no Canadian truck manufacturers are using European headlamps, even though the standard allows them. Communications submitted by CTEA documenting these statements have been placed in the docket.

As a result of our analysis, we have determined that allowing commercial motor vehicles certified to the Canadian motor vehicle safety standards rather than the U.S. motor vehicle safety standards to operate in the United States will have no negative safety consequences. Accordingly, requiring these vehicles to be certified twice, once to the CMVSSs and then secondarily to the FMVSSs, would impact U.S./Canada trade and impose requirements on the Canadian motor carriers, both in terms of cost and access to the U.S. market that cannot be justified.

IV. Impact of a Certification Requirement on Canadian- and Mexican-Domiciled Commercial Motor Carriers

A. Federal Motor Carrier Safety Regulations

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 Vehicle Safety Act, 49 U.S.C. 30103(a), specifically requires the FMCSRs be fully consistent with the FMVSSs. The provision does not require FMCSA to adopt all applicable FMVSSs as FMCSRs. However, if the item of equipment is regulated by the FMCSRs, then they must do so in a manner consistent with the FMVSSs. Section 30103(a) states:

The Secretary of Transportation may not prescribe a safety regulation related to a motor vehicle subject to subchapter I of chapter 135 of this title [49 U.S.C. 13501 *et seq.*] that differs from a motor vehicle safety standard prescribed under this chapter [49 U.S.C. §§ 30101 *et seq.*]. However, the Secretary may prescribe, for a motor vehicle operated by a carrier subject to subchapter I of chapter 135 [49 U.S.C. 13501 *et seq.*], a safety regulation that imposes a higher standard of performance after manufacture than that required by an applicable standard in effect at the time of manufacture.

Because of the cross-reference in the Vehicle Safety Act to 49 U.S.C. 13501, *et seq.*, foreign-domiciled commercial motor vehicles engaged in interstate commerce are already subject to requirements based on most of the FMVSSs applicable to heavy trucks and buses. In most instances, the FMCSRs directly cross-reference the applicable portions of the FMVSSs that apply to the regulated vehicles. Further, the FMCSRs require that all motor carriers operating in the United States maintain much of the safety equipment and features that NHTSA requires vehicle manufacturers to install.

In the case of many manufacturing standards, for example where a compliance symbol is placed on the piece of equipment, a visual inspection is sufficient to verify compliance. With respect to other manufacturing standards, most notably the braking standards, a roadside inspection cannot tell the inspector whether the safety equipment, as originally manufactured, was effective enough to have actually complied with the applicable FMVSS. In these instances, however, the operating standard itself is designed to ensure that the motor vehicle is currently operating in a safe condition. Indeed, many of these types of standards involve aspects of motor vehicle performance that do not remain constant over the life of the vehicle. Thus, some FMCSRs address the current operational safety of components which wear over the life and use of the vehicle, while others cross-reference FMVSSs to ensure that required equipment is in place and maintained. In this way, the FMVSSs and FMCSRs comprise a consistent and mutually-supportive set of regulations, as intended by Congress in the Vehicle Safety Act.

B. Canadian-Domiciled Commercial Motor Vehicles

1. Volume of the U.S.-Canadian Cross-Border Trade

Canada and the U.S. have the largest bilateral trade relationship in the world, with the vast majority of goods exported from each country being carried via commercial motor vehicles (65% for Canada, 80% for U.S.). According to Canada, this trade generates 13 million truck trips across the U.S.-Canadian border annually, and represents more than 25% of the Canadian for-hire trucking revenues.

Industry representatives have proffered similar figures. According to the Canadian Trucking Association (CTA), the total merchandise trade between the U.S. and Canada is valued at almost $600 billion (2001 dollars). Typically about 70%, by value, of that trade is carried by truck, leading to more than 13 million truck trips across the U.S.-Canadian border. Trade by truck is crucial to maintaining shippers' just-in-time delivery schedules. CTA estimates that approximately 70,000 (out of 225,000) Canadian truck drivers enter the U.S. each year.

Canada contended that the proposed rules would make it impossible for many Canadian motor carriers to operate in the U.S. The small fleets and owner-operators (more than 50% of the Canadian carriers) would be the most substantially impacted.

2. Impact of the Proposed Rules on Canadian Motor Carriers

The Canadian fleets are not segregated into ''domestic'' or ''international'' equipment. Accordingly, the CTA argued that, from a practical standpoint, all Canadian vehicles would have to be retroactively certified and fitted with a FMVSS label in addition to the existing CMVSS label if the proposed labeling requirement were adopted. We agree that, if true, that would constitute a significant burden on the Canadian fleet.

TMA claimed that the vast majority of carriers that would seek retroactive certification under the proposed policy statement would be domiciled in Canada rather than Mexico. It noted that in 2000 there were approximately 700,000 heavy commercial motor vehicles (greater than 10,000 lb GVWR) registered in Canada. Since 87% of Canada's merchandise trade is with the U.S. and most of this merchandise is transported to the U.S. in commercial motor vehicles, a large portion of these 700,000 vehicles would need to be retroactively certified. According to TMA, retroactive certification for such a large number of vehicles would be both costly and time-consuming. Since these vehicles are already certified to the substantially similar CMVSSs and are already operating in the U.S. without a U.S. certification label, TMA argued that the increase in safety benefits that result from retroactive certification would be minimal at best.

TMA also noted that NHTSA, in proposing to place a definition of the term ''import'' in the CFR, did not offer any data indicating that the Canadian vehicles currently operating in the U.S. are unsafe. Accordingly, they suggested there is no safety need for the proposed regulation. Additionally, TMA and CTA argued that the most important influence on in-use vehicle safety is the level and quality of maintenance, driver performance, and the environment in which the vehicle is operated. The FMVSSs do not address the condition of a vehicle after it has been sold and put into service.

Canada also argued that complying with the certification requirements after-the-fact would be very difficult and costly, and, in many instances, impossible. Because the useful life of a commercial motor vehicle (particularly trailers) is well in excess of the Canadian 5-year record retention requirement, retroactive certification would, in many cases, be impossible. Additionally, many manufacturers have indicated to the Canadian government that they would not retroactively certify their vehicles. To the extent they were willing and able to retrofit these vehicles, they would pass the cost of certification onto the carrier. According to CTA, the cost of retroactive certification is impossible to determine. However, assuming the cost would be $1,000 per vehicle,[3] Canadian motor carriers would have to spend at least $250 million to comply with a FMVSS label requirement and would lose the valuable use of their vehicles while they are being certified.

3. Safety Record of Commercial Motor Vehicles Selected for Inspection

According to data collected by the FMCSA, concerning the out-of-service rates of commercial motor vehicles selected for roadside inspection in this country, Canadian commercial motor vehicles appear to have a lower out-of-service rate than do U.S.-domiciled commercial motor vehicles. These data are shown in the table below. It is

[3] CTA's cost estimate was premised on the following assumptions:

Each and every piece would have to be taken out of service for a period of time; returned to the manufacturer of deliverer to a registered importer; receive certification; and then returned to the vehicle fleet. Depending on the length of time required, the motor carrier may have to lease replacement equipment. Presumably manufacturers, and certainly registered importers, would charge a fee for service.

CTA further argued that ''since carriers do not segregate their fleet into 'domestic' and 'international' equipment, from a practical standpoint, all equipment in fleets with cross-boarder operations would fall under the proposed labeling requirements.''

important to note that the roadside inspection data are not statistically representative of all commercial motor vehicles, since States typically select commercial motor vehicles for inspection based upon the operating motor carrier's safety record, as well as indicators of potential safety problems noted when a vehicle enters an inspection facility. Thus, FMCSA and State inspectors focus their inspections on vehicles thought to have an above average likelihood of having safety problems. Further, the number of inspections performed on Mexico-domiciled commercial motor vehicles, particularly long-haul commercial motor vehicles, is a minute fraction of the total. Virtually all of the ''Mexico—all'' inspections were performed on short haul drayage operations during which Mexican-domiciled vehicles enter the U.S. not farther than the commercial zone along the border. Those vehicles are typically older than the Mexican-domiciled vehicles used in long haul operations.

OUT-OF-SERVICE RATES BY COUNTRY OF DOMICILE

	Total number of vehicle inspections	Vehicle inspections with a FMCSR violation	Vehicle inspections with an out-of-service violation	Percentage of total vehicle inspections with an out-of-service violation
FY 1999:				
All inspected vehicles	1,387,236	935,453	316,546	22.8
Canada	33,655	18,496	4,766	14.2
Mexico—long haul	19,695	17,362	8,165	41.5
Mexico—all	38,236	33,544	15,294	40.0
U.S.	1,315,345	883,413	296,486	22.5
FY 2000:				
All inspected vehicles	1,488,023	1,002,187	329,659	22.2
Canada	38,207	21,668	5,407	14.2
Mexico—long haul	23,275	19,900	8,948	38.4
Mexico—all	51,202	43,233	18,772	36.7
U.S.	1,398,614	937,286	305,480	21.8
FY 2001:				
All inspected vehicles	1,610,780	1,114,754	356,191	22.1
Canada	40,276	23,474	5,538	13.8
Mexico—long haul	25,175	21,569	9,046	35.9
Mexico—all	64,892	54,806	21,901	33.7
U.S.	1,505,612	1,036,474	328,752	21.8
FY 2002:				
All inspected vehicles	1,712,628	1,158,576	356,091	20.8
Canada	62,344	31,365	6,883	11.0
Mexico—long haul	27,702	23,484	8,557	30.9
Mexico—all	89,566	73,750	24,525	27.4
U.S.	1,560,718	1,053,461	324,683	20.8
FY 2003:				
All inspected vehicles	1,771,845	1,194,709	383,427	21.6
Canada	55,439	27,642	6,890	12.4
Mexico—long haul	29,052	23,952	7,375	25.4
Mexico—all	137,211	113,155	32,031	23.3
U.S.	1,579,195	1,053,912	344,506	21.8
FY 2004:				
All inspected vehicles	1,905,244	1,286,227	423,742	22.2
Canada	58,960	30,425	8,161	13.8
Mexico—long haul	12,799	9,452	3,079	24.1
Mexico—all	150,378	123,268	34,665	23.1
U.S.	1,695,906	1,132,534	380,916	22.5
FY 2005: *				
All inspected vehicles	912,693	619,794	177,988	19.5
Canada	27,092	14,313	3,243	12.0
Mexico—long haul	5,106	3,396	918	18.0
Mexico—all	88,159	71,560	15,367	17.4
U.S.	797,442	533,921	159,378	20.0

* Inspections through April 21, 2005.

C. Mexican-Domiciled Commercial Motor Vehicles

Our understanding is that the commercial motor vehicles manufactured in Mexico are produced either by subsidiaries of American companies such as Freightliner and International, or by the European-based company Scania. There are currently significant differences between the applicable manufacturing standards of the United States and the European Union. It is unlikely that a vehicle built by a European manufacturer to the European standards would have all the safety equipment needed to comply with either the FMCSRs or the FMVSSs.

However, according to information provided by the TMA, U.S. manufacturers or their affiliates provide the majority of the heavy trucks domiciled in Mexico.[4] According to the

[4] The rest are either produced by Scania or are built in two or more stages, with the chassis manufactured by a U.S. manufacturer and a

Continued

TMA,[5] U.S. manufacturers have been building their Mexican-domiciled vehicles in conformity with the FMVSSs since the mid to late 1990s, and over 50,000 U.S.-certified heavy trucks have been sold in the Mexican market since 1993. KenMex, a subsidiary of Paccar Inc., began affixing U.S. certification labels to all vehicles built for the Mexican market that met all applicable U.S. safety standards in that year. International, Freightliner, and Volvo began certifying most or all of their vehicles to the FMVSSs in 1996, 1997, and 1998, respectively. TMA estimates that approximately 4,500 additional heavy trucks produced by these manufacturers were built in accordance with then applicable U.S. safety standards, although not labeled as such.[6]

The information provided by TMA members provides sufficient assurance that a substantial number of Mexican-domiciled vehicles originally built to the Federal motor vehicle safety standards will be able to engage in cross-border trade between the U.S. and Mexico.

V. FMCSA's Enforcement Policy

After carefully reviewing the comments filed in response to the FMCSA and NHTSA proposals, including the potential for fraud that was noted in the proposals, the Department has developed a more effective approach for ensuring that commercial motor vehicles were built to the FMVSS (or the very similar Canadian motor vehicle safety standards) and operate safely in the United States. Rather than relying on retroactive labelling, FMCSA is continuing and reinforcing its program focused on operational safety requirements applicable to current conditions.

First, FMCSA requires Mexican-domiciled carriers applying to operate in the United States to certify in their applications that their vehicles were manufactured or retrofitted in compliance with the FMVSSs applicable at the time they were built. False certification subjects the carrier to suspension or revocation of its license to operate in the United States. (49 CFR Part 365)

Second, enforcement through the Federal Motor Carrier Safety Regulations focuses on real world, operational safety and incorporates the various FMVSS applicable through the useful life of the vehicle.[7] FMCSA will continue to focus on assessing compliance with the FMCSRs, including those regulations that cross reference the FMVSSs (*e.g.*, lamps and reflectors, air brake systems [including antilock brake systems], rear impact guards on trailers, conspicuity treatments on truck tractors and trailers, emergency exits on buses, etc.).

Third, FMCSA may use Vehicle Identification Numbers (VINs) coupled with VIN information obtained from vehicle manufacturers, as well as other available information, when necessary to check whether vehicles were originally built to the FMVSSs.

We have concluded that the incorporation of numerous FMVSS into the FMCSRs, combined with the various certification and inspection procedures being adopted by FMCSA, will better ensure the operational safety of commercial motor vehicle on the public roads than a program of retroactive certification potentially fraught with fraud. Accordingly, we have determined that the regulatory scheme proposed in March 2002 would serve no meaningful safety function and are withdrawing the proposal for retroactive certification and record keeping.

VI. NHTSA's Interpretation of the Import Prohibition in the Vehicle Safety Act

In addition to proposing a regulatory scheme of retroactive labelling, the agency proposed including in the Code of Federal Regulations a definition of the word ''import'' based on a 1975 interpretive memo. The word ''import'' appears in 49 U.S.C. 30112, which prohibits a motor vehicle from being placed into interstate commerce or imported into the U.S. unless it is certified as complying with the FMVSS applicable at the time. NHTSA operates an extensive Registered Importer program to ensure that vehicles imported for sale and permanent use in the U.S. comply with this requirement. The question here is whether the word ''import,'' as used in this statute, necessarily applies to commercial motor vehicles that may be used temporarily in the United States and that are subject to an alternative regulatory program designed to ensure the vehicles operate safely on the U.S. roads.

After reviewing the various comments, all of which raised concerns regarding the practical application of the proposed definition of the term ''import'' as used in the Vehicle Safety Act, we decided to re-examine some of the basic assumptions made in the three documents that supported the agency's 1975 interpretation. We have delved more thoroughly into the language of the entire Vehicle Safety Act, as well as Congress' intent vis-á-vis the treatment of commercial motor vehicles under the Act. Additionally, we decided to reevaluate the existing case law relevant to the use of the term ''import'' outside of the context of tariff law to see whether and how other statutes define the term. Finally, we looked at additional factors and in additional contexts that were not considered in developing the 1975 interpretation. We believe the term ''import'' is subject to various interpretations, of which the agency's 1975 interpretation is but one. We do not believe it is the only reasonable interpretation. Accordingly, based on the comments we have received, and our research and evaluation, we have decided against adding a definition of the term in the Code of Federal Regulations, and we have decided to withdraw the agency's 1975 interpretation.

A. NHTSA's 1975 Interpretation

The proposed interpretive rule was based, in large part, on the analyses contained in the 1975 letter from NHTSA's Administrator, James Gregory, to the Canadian Trucking Association (1975 letter) and in an internal 1975 legal memorandum that preceded that letter. (The 1975 letter and memorandum were placed in the docket for the NPRM.) Both the 1975 letter and the legal memorandum concluded that entrances of Canadian-domiciled commercial motor vehicles into the United States were importations under the Vehicle Safety Act and were not subject to any exceptions under that Act. The letter was issued in response to a request by the Canadian Trucking Association that Canadian-domiciled commercial motor vehicles be excluded from the requirements of FMVSS No. 121, Air brake systems. At the time, Canada did not have a corollary standard.

Mexican final stage manufacturer completing the manufacturing process. It is doubtful that any of these vehicles would or could be certified to the FMVSSs.

[5] A letter from TMA providing a breakdown of the Mexican heavy truck market is in the docket. Docket NHTSA–2004–11593–22.

[6] We believe that the vast majority of Mexican-domiciled vehicles engaged in U.S. long haul traffic either carry the label or were originally built to then applicable U.S. standards. Those potentially not originally built to U.S. standards are generally used only in the short haul drayage operation within the commercial zone. As noted earlier, FMCSA and state inspections currently focus on these vehicles.

[7] We note that a label certifying compliance with performance standards applicable to lights, brakes and other wear items does not ensure real world safety in the absence of the FMCSRs, especially with regard to vehicles built many years ago. The American public is better protected by the FMCSRs than solely through a label indicating that a commercial motor vehicle had originally been built to certain manufacturing performance standards.

In concluding that Canadian vehicles were imports within the meaning of the Vehicle Safety Act, the agency interpreted the term ''import'' in the former section 108(a)(1) of the Act (now codified at 49 U.S.C. 30112(a)(1)) when read in conjunction with the exemptions provided in section 108(b)(4). Section 108(a)(1) stated that:

> No person shall manufacture for sale, sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or item of motor vehicle equipment manufactured on or after the date any applicable Federal motor vehicle safety standard takes effect under this title unless it is in conformity with such standard except as provided in subsection (b) of this section.

Section 108(b)(3) stated that motor vehicles or equipment offered for importation in violation of section 108(a)(1) would be refused admission into the United States under joint regulations to be issued by the Secretary of Treasury and the Secretary of Commerce. Under an exception in section 108(b)(3), those regulations could authorize imports as long as the vehicles were subsequently brought into conformity with all applicable safety standards, but otherwise the vehicles would have to be exported or abandoned to the United States. The exception did not specify that the regulations only address those vehicles imported for sale or resale, although it is unlikely that anyone would so modify a vehicle unless it were to be permanently domiciled in the United States. Section 108(b)(4) authorized the issuance of joint regulations that would permit the temporary importation of used motor vehicles.[8]

The agency noted that the exceptions for non-complying imports in section 108(b)(3) of the Act and temporary importation of personal vehicles in section 108(b)(4) of the Act would not be needed if foreign-domiciled vehicles that were not sold in the United States were not considered imports under section 108(a). The language of the exceptions is the strongest evidence that Congress intended the term ''import'' to apply to all vehicles brought into the United States.

In our NPRM proposing the formal adoption of the 1975 interpretation, we relied on what we then believed was a ''plain meaning'' of the term when considered in conjunction with the overall purpose of the Vehicle Safety Act, relying exclusively on the analysis proffered in 1975. We did not revisit the original analysis of whether the Vehicle Safety Act was in fact akin to the statutes underlying the cases relied on in issuing the original interpretation, or whether other analyses might be more applicable.

B. Possible Alternative Interpretations of the Import Prohibition

The term ''import'' in a statute may be interpreted differently based upon the intent of Congress in using the term. When Congress does not specifically define a particular term, its meaning should be construed in such a way as to further the goals that Congress was seeking to achieve when enacting the law. See *Barnhart* v. *Walton*, 122 S. Ct. 1265,1270 (2002); *United States* v. *Haggar Apparel Co.*, 526 U.S. 380,392, 119 S. Ct. 1392, 1398 (1999), citing *Nations Bank of N.C.N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. 251, 257, 115 S. Ct. 810, 813–814 (1995). Congress' stated goal in enacting the Vehicle Safety Act was ''to reduce traffic accidents and deaths and injuries resulting from traffic accidents. 49 U.S.C. 30101.

The statute should not be viewed in isolation, but rather in conjunction with other, relevant statutes. See *Kokoszka* v. *Belford*, 417 U.S. 642, 650, 94 S.Ct. 2431, 2436 (1974), citing *Brown* v. *Duchesne*, 60 U.S. 183, 194 (1856). Commercial motor vehicles are subject to regulation under both the Vehicle Safety Act (codified as 49 U.S.C. Chapter 301, Motor Vehicle Safety) and 49 U.S.C. Chapter 311, Commercial Motor Vehicle Safety. One of the Congressionally stated purposes for Chapter 311, Subchapter III, Safety Regulation, is ''to promote the safe operation of commercial motor vehicles.'' 49 U.S.C. 31131(a). The Federal Motor Carrier Safety Administration implements this statute in large part through enforcement of the Federal Motor Carrier Safety Regulations.

In the NPRM, the agency referred to a dictionary definition of the word ''import,'' meaning ''to bring in (merchandise, commodities, workers, etc.) from a foreign country for use, sale, processing, reexport or services'' (Random House Compact Unabridged Dictionary, Special Second Edition). The dictionary also defines the term as ''the act of importing or bringing in; importation, as of goods from abroad.'' Black's Law Dictionary also provides slightly differing definitions: ''a product brought into a country from a foreign country where it originated'' versus ''the process of bringing foreign goods into a country'' (Black's Law Dictionary, Seventh Edition, 1999).

1. Import—Illegal Goods Definition

Courts have broadly defined the term ''import'' in cases involving prohibited products that the government has seized. An example is *Cunard* v. *Mellon*, 262 U.S. 100 (1929), the case primarily relied upon by NHTSA in its 1975 analysis as supporting its ''plain language'' approach. The case addressed an interpretation of the National Prohibition Act, which prohibited the manufacture, sale and transportation, importation, and exportation of alcohol in or from any U.S. territory other than direct transport through the Panama Canal Zone. The statute was enacted in response to passage of the Eighteenth Amendment. The Court determined that the National Prohibition Act's criminal prohibition on bringing alcohol into the United States (including its territorial waters) required a broad definition of the term ''import'' as used in the statute, since such a reading ''better comports with the object to be attained,'' *i.e.*, the total ban on alcoholic beverages in the United States other than those liquors ''obtained before the act went into effect and kept in the owner's dwelling for use therein by him, his family, and his *bona fide* guests.''

Similar analysis can be found in more recent cases interpreting the criminal prohibition on ''importation'' of controlled substances (*e.g.*, heroin, morphine, and cocaine), where ''import'' is expressly and broadly defined by statute as ''any bringing in or introduction of such article into any area (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).'' [9] (21 U.S.C. 951 *et seq.*) (See generally, *U.S.* v. *Catano*, 553 F.2d 497 (5th Cir. 1975); *U.S.* v. *Lewis*, 676 F.2d 508 (11th Cir. 1982); and *U.S.* v. *Perez*, 776 F. 2d 759 (9th Cir. 1985).)

2. Import—Definition Used in Determining Whether an Item Brought Into the U.S. Is Subject to Tariff

Since 1926, courts have consistently held that in tariff cases, unless it clearly appears that Congress intended

[8] As explained in the House Report on the Act, the purpose of section 108(b)(4) was to ''accommodate foreign tourists who may bring their vehicles with them on visits to this country and also to permit import of certain vehicles for diplomatic use. H. Rep. 1776, 89th Cong., 2d Sess., p.24.

[9] See also, 16 U.S.C. 1151, *et seq.*, generally prohibiting importation, sale, or possession of North Pacific fur seal skins; 16 U.S.C. 1531, *et seq.*, generally prohibiting importation, sale, or possession of endangered fish and wildlife; and 16 U.S.C. 2401, *et seq.*, generally prohibiting importation, sale, or possession of birds, mammals, or plants native to Antarctica, where ''import'' is defined by statute as bringing into the jurisdiction of the United States, regardless of whether such act constitutes an importation within the meaning of customs law.

otherwise, the term ''importation'' means the bringing of goods within the jurisdictional limits of the U.S. with the intent to unlade. However, the courts have held that this definition is not literally applicable to a seagoing vessel or yacht entering the United States under its own power. Instead, they have given deference to a Treasury Department ruling cited in *Estate of Lev H. Prichard* v. *United States*, 43 CCPA 85, 87–88, CAD 612 (1956), which stated that ''if coming into this country temporarily as carriers of passengers or merchandise, they [vessels] are not subject to customs entry or the payment of duty, but if brought into the United States permanently they are to be considered and treated as imported merchandise.'' The court said that the question as to whether a vessel is brought into the United States ''permanently'' must be determined on the basis of intent. (See generally, *American Customs Brokerage Co., Inc.* v. *United States*, 375 F.Supp. 1360, 1366 (C.C.P.A., 1974).)

3. Import—Use of Tariff Definition in Non-Tariff Context

A third alternative is that contained in the Harmonized Tariff Schedule of the United States (HTSUS), even though the underlying statutory concern is not tariff-related. In 1999, the Environmental Protection Agency (EPA) took this approach in a final rule establishing an emission control program for certain new marine diesel engines pursuant to the Clean Air Act (64 FR 73300, December 29, 1999). The final rule is codified at 40 CFR Part 94. One of the issues addressed by the final rule was how the application to ''new marine engines'' would affect the engines on foreign vessels that were engaged in international trade. The EPA specified that, with respect to imported engines, ''new marine engine'' means an engine that is not covered by a certificate of conformity at the time of importation, and that was manufactured after the starting date of the emission standards which are applicable to such engine (or which would be applicable to such engine had it been manufactured for importation into the United States). It then specified prohibitions against certain acts by all persons with respect to the engines covered by the regulation.[10]

For the purposes of determining what constitutes an importation within the ''new marine engine'' definition, and consequently an importation under the prohibition, the EPA decided to adopt the approach contained in the HTSUS. Under the HTSUS, vessels used in international trade or commerce and personal pleasure craft brought into the territorial United States by non-residents are admitted without formal customs consumption entry or the payment of a duty. EPA said that its approach was consistent with the Treasury Department ruling cited in Prichard discussed above. (See discussion at 64 FR 73300, 73302.)[11]

C. Factors Not Considered in the 1975 Interpretation or NPRM

1. U.S. Customs Regulations in Effect in 1966

Neither the documents NHTSA relied upon when proposing an interpretive rule nor the preamble of that notice addressed the U.S. Customs regulations in effect when the Vehicle Safety Act was enacted. The 1963 Tariff Schedule specifically excluded commercial motor vehicles from entry requirements so long as the vehicles did not engage in local traffic in the United States.[12] This exclusion was adopted as part of the implementation of the Tariff Act of 1930, which provided that ''vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be granted the customary exceptions from the application of customs laws to such extent and subject to terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury.'' (19 U.S.C. 1322(a)). Because the foreign-domiciled commercial motor vehicles were not subject to entry under the existing Tariff Schedule when the Vehicle Safety Act was passed, any prohibition on allowing non-compliant commercial motor vehicles into the United States could not be enforced at the border without significantly amending those regulations in a manner inconsistent with the Tariff Act of 1930.[13]

2. Treatment of Canadian-Domiciled Commercial Motor Vehicles

None of the three previous NHTSA documents addressed the fact that throughout all the different legislative activities addressing vehicles brought into the United States, Canadian-domiciled commercial motor vehicles were allowed to operate in the cross-border trade without being subject to formal entry. In 1966, when the Vehicle Safety Act was enacted, both the Mexican and Canadian borders were open. In 1988, when Congress passed the Imported Vehicle Safety Compliance Act of 1988, the Canadian border was open. In 2001, when the Murray-Shelby provisions of the 2002 DOT Appropriations Act were enacted, the Canadian border was open.[14] None of the legislative histories of any of these statutes indicate intent on the part of Congress to change the operating status of the Canadian motor carriers, even though there was no basis to believe the foreign-domiciled commercial motor vehicles were fully compliant with the requirements of all applicable FMVSSs.

We have been unable to determine how many Mexican- and Canadian-domiciled motor carriers were operating in the trans-border trade when the Vehicle Safety Act was initially enacted, although the specific reference to these vehicles in the 1963 Tariff Schedule (28 FR 14663, December 31, 1963) indicates that at least some foreign-domiciled commercial motor vehicles were being used to transport cargo and passengers to and from the United States.

According to the statistics gathered by Transport Canada[15] regarding international carrier activities in 1984, a total of 941 Canadian motor carriers

[10] 40 CFR Part 94, Subpart I allows for some temporary importations with specified bond requirements (see 40 CFR 94.804).

[11] The Environmental Protection Agency (EPA) recently considered whether it should amend its interpretation of ''new marine engines'' to include engines in foreign-flag vessels, regardless of whether the presence of those vessels in U.S. ports would be treated as an import under HTSUS. Proposed rule; 67 FR 37548; May 29, 2002. It expressed concerns that the emissions of foreign-flagged commercial vessels may contribute significantly to problems in the U.S. since U.S.-flag vessels only account for 6.7% of all vessels entering U.S. ports. In the final rule, EPA did not decide whether it had the discretion to interpret new to include foreign vessels. It indicated that deferring this decision may help facilitate the adoption of more stringent consensus international standards, and noted that a new set of internationally negotiated marine diesel engine standards would apply to engines on all vessels, regardless of where they are flagged. Final rule; 68 FR 9746, 9759; February 28, 2003. In any event, the circumstances addressed by EPA, *i.e.*, the application or non-application of a solitary Federal regulatory program, are not closely analogous to those before this agency.

[12] The prohibition against engaging in local traffic was the result of cabotage laws in effect at the time. These laws were designed to prevent foreign carriers from engaging in the purely domestic transport of goods or passengers. Corollary laws applied to foreign-owned railroads, airlines and merchant vessels.

[13] U.S. Customs regulations currently provide that trucks, buses and other vehicles in international traffic shall be subject to the treatment specified in part 123 (19 CFR 10.41(a)), and that they may be admitted without formal entry or the payment of duty (19 CFR 123.14(a)).

[14] In 1988 and 2001, the Mexican border was open to Mexican-domiciled carriers operating only in the border zones and to such carriers that had obtained authority to operate beyond the border zones before the imposition of the 1982 moratorium.

[15] Statistics Canada, *Trucking in Canada, 1984*, Minister of Supply and Services Canada, 1986, table 2.7.

were engaged in the U.S.-Canada cross-border trade at that time. These carriers owned or operated, in the aggregate, 72,441 commercial motor vehicles. Thus, when Congress amended the Vehicle Safety Act in 1988 to address specifically concerns it had with the importation of non-compliant motor vehicles, the United States and Canada enjoyed an active trade relationship in which shipping via commercial motor vehicles clearly played a major role. Yet the legislative history associated with the 1988 amendments never raises the prospect that Congress was concerned about whether the Canadian commercial motor vehicles posed a safety risk while operating in the United States. Certainly Congress would have been aware that at least some percentage of goods imported to the United States from Canada were transported via truck, since President Reagan had lifted the Congressional moratorium on grants of new operating authority for Canadian carriers as recently as December 1982.

3. FY 2002 DOT Appropriations Act

Finally, as noted by the comments on this rulemaking, by 2001, when the provisions of the 2002 DOT Appropriations Act governing Mexican motor carriers were enacted, the United States and Canada enjoyed the largest trading relationship in the world, with most of the cargo coming into the United States via commercial motor vehicles that were not certified as compliant with the FMVSSs. Indeed, the concern over compliance with all applicable FMVSSs was not raised during the debates and hearings on the safety of Mexican commercial motor vehicles. Rather, Congress' stated concern was with the level of maintenance of the Mexican vehicles.

Based on consideration of both the factors addressed by the previous documents interpreting the term ''import,'' as well as the other factors articulated above, we have determined that the agency's previous interpretation of the importation restriction on non-certified foreign-domiciled commercial motor vehicles may be overly encompassing and place unreasonable restrictions on foreign-based motor carriers. Unlike statutes related to the regulation and control of narcotics, the Vehicle Safety Act does not require, or even allow, NHTSA to eliminate entirely the possibility of motor vehicle crashes in this country. While the agency was directed to establish motor vehicle safety standards, those standards must be practicable (both technically and financially) and must meet the need for motor vehicle safety (49 U.S.C. 30111). Additionally, the Vehicle Safety Act does not directly regulate used vehicles. The authority rests with the states, subject to the Vehicle-in-Use Inspection Standards (49 CFR Part 570). Likewise, while the Vehicle Safety Act prohibits motor vehicle repair businesses from making required safety equipment inoperative (49 U.S.C. 30122), it does not prohibit individuals from modifying their own vehicles in whatever manner they choose.

Additionally, unlike the narcotics laws, possession of non-compliant motor vehicles has never been illegal. Indeed, section 108(b), as originally enacted, provides for several circumstances under which the sale, delivery, introduction, or importation of non-compliant vehicles are not prohibited. As noted above, there is no prohibition against the sale, offer for sale, or introduction or delivery of non-compliant used motor vehicles. The prohibition does not apply to vehicles that are imported into the U.S. pursuant to joint regulations issued by Customs and NHTSA. Finally, it does not apply to vehicles labeled for export. The 1988 amendments further expanded the number of exceptions to the general prohibition by adding an exemption for vehicles that are at least 25 years old.

The NPRM was proposed to provide context to the proposals for retroactive certification and record keeping. These proposals did not consider whether, as we have learned through the benefit of notice and comment rulemaking, alternative approaches can better serve the nation's safety needs. The FMCSA's program of enforcing its on-the-road operational standards, combined with the processes it is establishing to check that vehicles were originally built to then applicable U.S. standards, satisfies the stated Congressional concern over the maintenance of Mexican trucks better than any program of retroactive labelling.

The NPRM proposing to add to the Code of Federal Regulations a definition of ''import'' relied heavily on the 1975 memo and added little analysis. We did not consider whether the overall regulatory scheme applicable to commercial motor vehicles would alter our conclusory statement about the purposes of the Vehicle Safety Act, nor whether it should affect our proclamation that such vehicles are equivalent to criminally illegal illicit drugs and contraband. The public comments we received have led us to review and consider more fully the underlying basis for the 1975 memo, and therefore the NPRM. Our more thorough and careful review leads us to conclude that the proposed definitional regulation does not adequately reflect the current regulatory environment and, in light of FMCSA's program to ensure operational safety, would provide no additional safety benefit. Accordingly, we have decided to withdraw the proposed definitional regulation.

We also believe it is important to note that while NHTSA issued its interpretation of the word ''import'' in 1975 in the context of addressing whether Canadian-domiciled commercial motor vehicles operating in the United States must meet the requirements of NHTSA's safety standard on air brake systems, as a practical matter NHTSA has never required vehicles with CMVSS labels to also carry FMVSS labels. Indeed, the comments indicate that the primary burdens associated with retroactive certification would fall on Canadian-domiciled commercial motor carriers, which have long been operating safely in the U.S. using commercial vehicles that were certified to the CMVSS and also met the FMCSRs.

In practice, NHTSA has generally sought to ensure that non-U.S.-domiciled commercial motor vehicles meet the same safety standards as U.S. vehicles (or very similar standards) by other means, especially working with FMCSA. We note, for example, that in responding to requests for interpretation in the late 1990's as to whether Canadian carriers can operate in the U.S. without the antilock brake systems required by NHTSA's safety standard, NHTSA's responses referred to the Federal motor carrier safety regulations rather than to our 1975 interpretation.[16] Also, NHTSA and Transport Canada have a close working relationship.

Thus, the approach discussed elsewhere in this document that the Department will be following for ensuring that commercial vehicles were built to the FMVSS (or the very similar CMVSS) and operate safely in the United States is consistent with our longstanding practices.

[16] See interpretation to Mr. Ted Reiniger, June 2, 1998; to Mr. Barrie Montague, June 1, 1998.

Appendix

TABLE 1.—COMPARISON OF CMVSS AND FMVSS REQUIREMENTS FOR TRUCKS AND BUSES OVER 4,536 KG (10,000 LB) GVWR

Title	CMVSS	FMVSS	Most stringent
CMVSS No. 101, Controls and displays. FMVSS No. 101, Controls and displays.	—Requires the ISO brake failure symbol if a common brake malfunction indicator is used.	—Requires the word ''brake'' with minimum height if a common brake malfunction indicator is used.	Safety difference is inconsequential.
CMVSS No. 102, Transmission control functions. FMVSS No. 102, Transmission shift lever sequence, starter interlock, and transmission braking effect.	No significant differences		Safety difference is inconsequential.
CMVSS No. 103, Windshield defrosting and defogging. FMVSS No. 103, Windshield defrosting and defogging systems.	No significant differences		Safety difference is inconsequential.
CMVSS No. 104, Windshield wiping and washing system. FMVSS No. 104, Windshield wiping and washing system.	No significant differences		Safety difference is inconsequential.
CMVSS No. 105, Hydraulic and electric brake systems. FMVSS No. 105, Hydraulic and electric brake systems.	—Requires statement to the same effect as U.S. for brake fluid reservoir labeling. —Requires the ISO ABS symbol for indicating ABS malfunction	—Requires specific working for brake fluid reservoir labeling. —Requires the word ''ABS'', ''Anti-lock'' or ''Antilock'' with minimum height for indicating ABS malfunction.	Safety differnce is inconsequential.
CMVSS No. 106, Brake hoses ..... FMVSS No. 106, Brake hoses.	No significant differences		Safety difference is inconsequential.
CMVSS No. 108, Lighting system and retro-reflective devices. FMVSS No. 108, Lamps, reflective devices, and associated equipment.	—Requires Daytime running lights —Allows European headlamps.	Allows, but does not require daytime running lights.	—CMVSS on daytime running lights. —Allowance of European headlamps is a significant difference.
CMVSS No. 111, Mirrors ..... FMVSS No. 111, Rearview mirrors.	No significant differences		Safety difference is inconsequential.
CMVSS No. 113, Hood latch system. FMVSS No. 113, Hood latch system.	No significant differences		Safety difference is inconsequential.
CMVSS No. 116, Hydraulic brake fluids. FMVSS No. 116, Motor vehicle brake fluids.	No significant differences		Safety difference is inconsequential.
CMVSS No. 119, Tires for vehicles other than passenger cars. FMVSS No. 119, New pneumatic tires for vehicles other than passenger cars.	Requires maple leaf certification marking.	Requires DOT marking	Saftey difference is inconsequential.
CMVSS No. 120, Tire selection and rims for vehicles other than passenger cars. FMVSS No. 120, Tire selection and rims for motor vehicles other than passenger cars.	No significant differences		Safety difference is inconsequential.

TABLE 1.—COMPARISON OF CMVSS AND FMVSS REQUIREMENTS FOR TRUCKS AND BUSES OVER 4,536 KG (10,000 LB) GVWR—Continued

Title	CMVSS	FMVSS	Most stringent
CMVSS No. 121, Air brake systems. FMVSS No. 121, Air brake systems.	Requires the ISO ABS symbol for indicating ABS malfunction.	Requires the letters ''ABS'' or ''Antilock'' with minimum height for indicating ABS malfunction.	Safety difference is inconsequential.
CMVSS No. 124, Accelerator control systems. FMVSS No. 124, Accelerator control systems.	No significant differences		Safety difference is inconsequential.
CMVSS No. 131, School bus pedestrian safety devices. FMVSS No. 131, School bus pedestrian safety devices.	No significant differences		Safety difference is inconsequential.
CMVSS No. 203, Driver impact protection. FMVSS No. 203, Impact protection for the driver from the steering control system.	Requirement that clothing and jewelry cannot catch on steering wheel.	Requirement that clothing and jewelry cannot catch on steering wheel does not apply to vehicles of this class.	CMVSS.
CMVSS No. 205, Glazing materials. FMVSS no. 205, Glazing materials.	References more recent version of ANSI Z26 test requirement, but allows older versions to be followed.	Only references older versions of ANSI Z26.	Safety difference is inconsequential.
CMVSS No. 207, Anchorage of seats. FMVSS No. 207, Seating systems.	All seats must be tested as an assembly of seat and seat base when installed in vehicle.	Allows separate testing of seating and seat base tested in a test fixture.	CMVSS.
CMVSS No. 208, Occupant protection in frontal impact. FMVSS No. 208, Occupant crash protection.	All vehicles must have seat belt ...	Allows for crash testing in lieu of seat belts in vehicles over 4,536 kg.	Safety difference is inconsequential.
CMVSS No. 209, Seat belt assemblies. FMVSS No. 209, Seat belt assemblies.	—Includes a colorfastness test .... —Requires label stating seat belt assembly must be installed in vehicle with an air bag if load limiters are used.	.....	Safety difference is inconsequential.
CMVSS No. 210, Seat belt assembly anchorages. FMVSS No. 210, Seat belt assembly anchorages.	Different requirements for seat belt anchorage location for adjustable seats with seat travel greater than 70 mm than for seats with seat travel equal to or less than 70 mm.	Provides an exemption from seat belt anchorage installation, strength, and location requirements if certified to unbelted barrier test in FMVSS No. 208.	Safety difference is inconsequential.
CMVSS No. 217, Bus window retention, release and emergency exits. FMVSS No. 217, Bus emergency exits and window retention and release.	Requires push-out windows on all buses other than school buses.	Requires either push-out windows or sliding windows.	Safety difference is inconsequential.
CMVSS No. 301.1—LPG Fuel system integrity.	.....	No FMVSS corollary	CMVSS.
CMVSS No. 301.2—CNG fuel system integrity. FMVSS No. 303, Fuel system integrity of compressed natural gas vehicles/FMVSS No. 304, compressed natural gas fuel container integrity.	—Applies to all vehicles ..... —Fuel container must remain attached to vehicle at minimum of one attachment point. —Adopts environmental testing requirements of CSA B51 or ANSI/AGA–NGV 2.	—Only regulated vehicles over 4,536 kg are school buses. —No environmental testing requirements.	CMVSS.
CMVSS No. 302, Flammability ..... FMVSS No. 302, Flammability of interior materials.	No significant differences		Safety difference is inconsequential.

TABLE 2.—COMPARISON OF CMVSS AND FMVSS REQUIREMENTS FOR TRUCKS TRAILER OVER 4,536 KG (10,000 LB) GVWR

Title	CMVSS	FMVSS	Most stringent
CMVSS No. 108, Lighting system and retro-reflective devices. FMVSS No. 108, Lamps, reflective devices, and associated equipment.	—Requires pole trailers to have reflective markings. —Allows colors of reflective tape other than red and white markings (*e.g.*, all white or all orange).	Requires red and white reflective tape.	—CMVSS on pole trailers. —FMVSS on reflective tape.
CMVSS No. 119, Tire for vehicles other than passenger cars. FMVSS No. 119, Tire for vehicles other than passenger cars.	Requires maple leaf certification marking.	Requires DOT marking	Safety difference is inconsequential.
CMVSS No. 120, Tire selection and rims for vehicles other than passenger cars. FMVSS No. 120, Tire selection and rims for motor vehicles other than passenger cars.	No significant differences.		Safety difference is inconsequential.
CMVSS No. 121, Air brake systems. FMVSS No. 121, Air brake systems.	No significant differences.		Safety difference is inconsequential.
FMVSS No. 223, Rear impact guards/FMVSS No. 224, Rear impact protection.	No CMVSS corollary.	Trailers must be equipped with rear impact guard having strength requirement of 100kN and 5.65 kJ of energy absorption on one side.	FMVSS

Issued on: August 22, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–16968 Filed 8–25–05; 8:45 am]

BILLING CODE 4910–59–P