



# Federal Register

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**Tuesday,  
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## **Part VI**

# **Department of Transportation**

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**Federal Motor Carrier Safety  
Administration**

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**49 CFR Part 393**

**Parts and Accessories Necessary for Safe  
Operation; Certification of Compliance  
With Federal Motor Vehicle Safety  
Standards (FMVSSs); Proposed Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Part 393**

[Docket No. FMCSA-01-10886]

RIN 2126-AA69

**Parts and Accessories Necessary for Safe Operation; Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSSs)****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** The FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) so that motor carriers ensure that each commercial motor vehicle (CMV) they operate in interstate commerce displays a label certifying that the vehicle complies with all applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect on the date of manufacture. This rulemaking ensures that all motor carriers operating CMVs in the United States use only vehicles that were certified by the manufacturer as meeting all applicable Federal safety performance requirements.

**DATES:** Comments must be received on or before May 20, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah M. Freund, Office of Bus and Truck Standards and Operations, (202) 366-4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590-0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Electronic Access**

You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. You can also submit comments electronically at <http://dms.dot.gov>. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or include a copy of the acknowledgement page that appears

after you submit comments electronically.

**Background**

Part 567 of title 49 of the Code of Federal Regulations (49 CFR part 567) requires that manufacturers of motor vehicles built for sale or use in the United States must affix a label certifying that the motor vehicle meets the applicable Federal Motor Vehicle Safety Standards (FMVSSs) in effect on the date of manufacture.<sup>1</sup> Part 567 provides detailed requirements concerning the location at which the label must be placed and the minimum information that must appear on the label. These requirements are applicable to manufacturers of motor vehicles produced for use in the United States and the label must be affixed prior to the first sale of the vehicle.

The National Traffic and Motor Vehicle Safety Act ("Vehicle Safety Act") (49 U.S.C. 30101, *et seq.*) expressly prohibits vehicles from being imported into the United States unless the vehicles—

(a) Comply with all applicable FMVSSs in effect on the date of manufacture, and

(b) Bear a label certifying compliance with the FMVSSs and applied to the vehicle either by a manufacturer at the time of manufacture or by a registered importer after the vehicle has been brought into compliance.<sup>2</sup> This statutory requirement is currently codified at 49 U.S.C. 30112. The regulations implementing the statute, including 49 CFR parts 567 and 571, are issued and enforced by the National Highway Traffic Safety Administration (NHTSA).

**Effect of the Vehicle Safety Act on U.S.-Based Motor Carrier Operations**

Generally, U.S.-based motor carriers operating CMVs (as defined in 49 CFR 390.5) in interstate commerce only have access to vehicles that were either originally manufactured domestically for use in the United States and have the required certification label, or vehicles that were imported into the United States in accordance with the applicable

<sup>1</sup> These standards are codified in 49 CFR part 571. Most, but not all, of the FMVSSs are cross-referenced in existing requirements of part 393.

<sup>2</sup> An individual or business registered with NHTSA as a registered importer may import non-complying motor vehicles into the United States if NHTSA has determined that the vehicles are capable of being readily altered to comply with all applicable standards in effect at the time the vehicle is imported. The registered importer must provide the Federal Government with a bond at least equal to the dutiable value of the vehicle before it can be imported and must bring the vehicle into full compliance before the vehicle may be sold and the bond released.

NHTSA importation regulations, including requirements for certification documentation. Vehicles imported into the United States must have the required certification label certifying compliance with the applicable FMVSSs. Therefore, from a practical standpoint, almost all vehicles operated by U.S.-based motor carriers have certification labels that meet the requirements of 49 CFR part 567.<sup>3</sup>

**Effect of the Vehicle Safety Act on Canada and Mexico-Based Motor Carriers**

Commercial motor vehicles operated in the United States by Canada and Mexico-based motor carriers must also comply with the FMVSSs and bear a certification label. NHTSA issued an interpretation letter in 1975 stating that the statutory prohibition against importing vehicles that do not meet the FMVSSs and bear a certification label (49 U.S.C. 30112) is applicable to foreign-based CMVs used in the United States. Therefore, the commercial use of CMVs to transport passengers or cargo into the United States constitutes importation of the vehicle into the United States.

This means that Canada and Mexico-based motor carriers are responsible for taking the necessary actions to comply with the Vehicle Safety Act before operating CMVs in the United States. The Department of Transportation advised Mexico and Canada-based motor carriers about this requirement in its November 1995 Motor Carrier Operating Requirements Handbook, which was printed in three languages and distributed to all participants at a North American Free Trade Agreement (NAFTA) conference held in San Antonio, TX on November 14-16, 1995.

In a companion notice of proposed rulemaking published in today's **Federal Register**, NHTSA proposes to codify its interpretation of the definition of import for the purpose of enforcing the requirements of 49 U.S.C. 30112 with respect to operators of CMVs transporting cargo and passengers.

<sup>3</sup> The FMVSSs and the certification label requirement are not applicable to vehicles or items of equipment manufactured for, and sold directly to, the Armed Forces of the United States in conformance with contract specifications (49 CFR 571.7). Therefore, when a motor carrier purchases surplus equipment from the Armed Forces for subsequent use in interstate commerce, the vehicle may not have a certification label. However, because the FMCSRs cross-reference most of the FMVSSs, the motor carrier would be required to ensure that the vehicle was retrofitted to meet the referenced standards as well as all applicable motor carrier regulations.

### **Safety Concerns About Vehicles Operated by Foreign Motor Carriers**

With the implementation of the motor carrier-related provisions of the North American Free Trade Agreement (NAFTA), much more attention has been focused on the safety of commercial motor vehicles operated by Canada and Mexico-based carriers. Representatives of the U.S. motor carrier industry have expressed concerns to the Department of Transportation that vehicles operated by foreign motor carriers were not manufactured to meet all the applicable U.S. safety requirements; specifically, all the FMVSSs in effect on the date of manufacture of the vehicles.

#### *Canada-Based Commercial Motor Vehicles*

The vehicles operated by Canada-based motor carriers are manufactured to comply with the Canadian Motor Vehicle Safety Standards (CMVSSs) that are, to a large extent, comparable to the U.S. safety requirements. In many instances, provisions of the CMVSSs are identical to requirements in the FMVSSs. Manufacturers of vehicles sold for use in Canada must certify compliance with the CMVSSs and the vehicles must bear a Canadian certification label.

Generally, commercial motor vehicles operated by Canada-based motor carriers in the United States would not have a certification label that meets the requirements of 49 CFR part 567. Although these vehicles do not have certification labels that meet U.S. requirements, the vehicles meet most, if not all, U.S. safety requirements because of the similarities between the two sets of safety standards.

Despite the similarity between U.S. and Canadian vehicle manufacturing standards, the operation of commercial motor vehicles into the United States by Canada-based carriers does constitute an import. Thus, a Canadian carrier that uses vehicles that do not bear a certification of compliance with the FMVSSs would be required to obtain a certification label for each vehicle under this proposed rule.

#### *Mexico-Based Commercial Motor Vehicles*

The vehicles operated by Mexico-based motor carriers are manufactured to comply with safety requirements established by the Mexican government. Currently, Mexico does not have a series of motor vehicle safety standards similar to those of the United States and Canada. Therefore, commercial motor vehicles operated by Mexico-based

motor carriers in the United States typically would not have a certification label that meets the requirements of 49 CFR part 567 unless the manufacturer built the vehicle to meet the FMVSSs and voluntarily affixed a label certifying compliance with the U.S. requirements. It is unclear how many vehicles produced for use in Mexico meet all applicable U.S. safety requirements.

Since the operation of commercial motor vehicles into the United States by Mexico-based carriers constitutes importation, a Mexican carrier using vehicles that do not bear a certification of compliance with the FMVSSs would be required to obtain a certification label for each vehicle under this proposed rule.

### **U.S. Consultations With Canada and Mexico About the Vehicle Safety Act**

NHTSA and FMCSA personnel met with representatives of the Mexican and Canadian governments and Mexican manufacturers and trucking industry associations in Mexico City on June 20, 2001. NHTSA and FMCSA staff were told by Mexican vehicle manufacturers that most Mexican commercial vehicles built since 1994 were built to meet the FMVSSs. Currently, there are approximately 400,000 trucks and buses that operate on the Federal roads in Mexico. About 130,000 of those vehicles were built since 1994 and may comply with the FMVSSs. Most of these 130,000 trucks and buses, however, do not have a FMVSS certification label because it is not required for vehicles manufactured for sale and use in Mexico.

NHTSA, FMCSA, the United States Customs Service (USCS), and the Environmental Protection Agency (EPA) conducted a follow-up seminar in Mexico on August 2-3, 2001, to advise representatives of Mexican vehicle manufacturers and the motor carrier industry about U.S. requirements. During the seminar, the Mexican vehicle manufacturers, most of which are affiliated with U.S. and European vehicle manufacturers that build vehicles for the U.S. market, indicated that, if permitted to do so, they would consider applying a certification label retroactively depending on the results of their review of vehicle test data, and their ability to make a determination that a particular vehicle or group of vehicles met all applicable FMVSSs in effect on the date of manufacture.

Although FMCSA's safety regulations require that all motor carriers operating in the United States meet the same safety requirements, without exception, the FMCSRs do not currently include a requirement that vehicles have a label certifying compliance with the FMVSSs.

The FMCSRs include numerous cross-references to specific FMVSSs that have the effect of requiring all motor carriers to ensure that their vehicles are equipped with most of the safety features/equipment required by the FMVSSs. However, FMCSA's rules do not currently require that motor carriers' CMVs carry a label to verify that the vehicle manufacturer followed the FMVSS self-certification process.

The absence of an FMCSA rule to require motor carriers to comply with 49 U.S.C. 30112 means that motor carriers could use uncertified commercial vehicles that may not meet all of the applicable FMVSSs, and not be subject to effective enforcement action by the Department of Transportation. The Department believes this is an unacceptable situation and that FMCSA should exercise its statutory authority over motor carrier operational safety to require motor carriers to comply with 49 U.S.C. 30112.

### **FMCSA's Regulatory Authority**

NHTSA and the FMCSA have complementary responsibilities to ensure vehicle safety under their respective enabling legislation. NHTSA's responsibility generally covers the design and safety compliance testing of motor vehicles, and the motor vehicle manufacturers and others responsible for those activities. FMCSA's responsibility concerns the safe operation of CMVs in interstate and foreign commerce, the motor carriers conducting the operations, and the CMV drivers.

Generally, enforcement of the FMVSSs by FMCSA and its State partners would be accomplished through roadside inspections. Under current roadside inspection enforcement procedures, if violations or deficiencies of the FMCSRs are serious enough to meet the current out-of-service criteria, the vehicle is placed out of service. The roadside inspection procedure is the same for all CMVs operated in the United States, regardless of the motor carrier's country of domicile.

If FMCSA adopts the proposed rule requiring that motor carriers ensure that their vehicles display a valid certification label, the agency and its State partners would then be able to enforce the section 30112 prohibition against the use or importation of non-compliant CMVs by citing motor carriers that fail to display the required certification label on their CMVs operated in the United States. Enforcement action would be taken in a manner consistent with the FMCSA's existing policies and programs as they relate to assuring compliance with other

vehicle-oriented regulations under 49 CFR part 393.<sup>4</sup> As it does with other FMCSR violations, the agency will compile data regarding uncertified vehicles and determine whether there are patterns of non-compliance by specific foreign motor carriers.

### Discussion of Proposal

The FMCSA is proposing to amend the FMCSRs to require that motor carriers ensure that their CMVs have a certification label that meets the requirements of 49 CFR part 567, applied by the vehicle manufacturer or by a registered importer. As explained above, U.S. motor carriers typically would only have access to vehicles that meet the applicable FMVSSs and have a certification label that meets the requirements of 49 CFR part 567. Therefore, it is not expected that they would have to change the way they operate to comply with the requirements being proposed today. However, the rule would place upon them the responsibility for maintaining the label affixed by the manufacturer or registered importer.

In a companion document published in today's **Federal Register**, NHTSA is announcing its policy concerning the retroactive application of a certification label to vehicles that complied with the FMVSSs when they were built, or that subsequently had been modified to comply with the FMVSSs. This policy provides guidance to manufacturers that would make the determination whether the vehicles manufactured for use by Canada and Mexico-based motor carriers were originally built to meet the applicable FMVSSs, or whether the vehicles have been modified appropriately to meet U.S. standards.

Canada and Mexico-based motor carriers would have to contact the manufacturers of their vehicles to determine whether the vehicle meets U.S. safety standards for those cases in which the vehicle does not have a certification label. If the vehicle manufacturer has sufficient vehicle performance test data and is willing to provide a certification label, then the motor carrier would use that label to satisfy the requirements of the proposed rules.

If the vehicle manufacturer were unable or unwilling to provide certification labels, motor carriers would have the option of contacting a

<sup>4</sup> In other words, failure to display a certification label could result in a citation and fine during a roadside inspection, or a civil penalty as a result of a compliance review. Under the current out-of-service criteria, it would not constitute grounds to place a vehicle out of service in the absence of vehicle defects meeting those criteria.

registered importer in the United States. The registered importer would then determine, in accordance with NHTSA's rules, whether the vehicle is eligible for importation into the United States, and what modifications, if any, are necessary before the vehicle could be certified as meeting the FMVSSs.

### Proposed Effective Date and Compliance Date

The FMCSA is proposing that U.S. motor carriers comply with the certification label rule beginning on the effective date of the final rule. The agency is also proposing that foreign motor carriers that begin operations in the United States on or after that date, or expand their operations to go beyond the southern border zones, ensure that all CMVs used in the new or expanded operations have the necessary certification label prior to entering the United States. Among the foreign motor carriers included would be all Mexico-based motor carriers operating beyond the border zones for the first time. All other Canada and Mexico-based motor carriers operating in the United States prior to the effective date of the final rule would be allowed 24 months to bring their vehicles into compliance with the requirements, provided those vehicles were operated in the United States before the effective date.<sup>5</sup> This 24-month phase-in period would not apply to vehicles introduced into service in the United States on or after the effective date of the final rule. Those vehicles would have to display the necessary certification label if they enter the United States.

The FMCSA stresses that all motor carriers operating in the United States must comply with all applicable FMCSRs, including those that cross-reference FMVSSs. Through our cross-references to FMVSSs, we require motor carriers to ensure that their CMVs are equipped with specific safety devices and systems that NHTSA requires on newly manufactured vehicles, and that they are maintained to ensure their continued performance. The roadside inspection program, particularly the Level 1 inspection, will ensure that this

<sup>5</sup> In addition to carriers operating in the border commercial zones, this includes a relatively small number of Mexico-based carriers that currently operate CMVs beyond the border commercial zones, such as: (1) Carriers who received ICC operating authority before the 1982 moratorium on granting authority beyond the border zones; (2) Mexico-based carriers owned by U.S. citizens or companies; (3) carriers transporting shipments between Mexico and Canada through the United States; and (4) Mexico-based bus companies that received authority to operate vehicles beyond the border zones following the modification of the moratorium to allow cross-border charter or tour bus service in January 1994.

is the case, to the greatest extent practicable. For purposes of roadside enforcement, the FMVSS label would be prima facie evidence of compliance with the proposed rule. Its presence, combined with having passed a thorough inspection by trained safety enforcement officials, would ensure that CMVs comply with U.S. motor carrier safety regulations. The 24-month timetable would not relieve these motor carriers from their responsibility for complying with the FMCSRs, including the FMVSSs cross-referenced therein.

This 24-month timetable would be compatible with FMCSA's NAFTA-related rulemakings published in today's **Federal Register**. Current Mexico-based holders of Certificates of Registration will be required to file new registration applications within 18 months in order to continue to operate in the border zones. These motor carriers will operate under provisional authority and be subjected to a new safety oversight program for an 18-month period after the new registration application is granted. If FMCSA determines a motor carrier has adequate safety-management controls, its provisional authority will become permanent at the end of the 18-month period. See the FMCSA's final rule concerning authority to operate in the border zones, and the agency's Interim Final Rule concerning the safety oversight program for Mexico-domiciled carriers, published in today's **Federal Register**.

The proposed implementation strategy would allow motor carriers currently operating CMVs in the United States that do not currently carry FMVSS certification labels sufficient time to rearrange or supplement their existing fleets to meet the requirement that all vehicles on the U.S. roadways have a FMVSS certification label. During this grace period, foreign-based CMVs would still be subject to all other FMCSA requirements, including those based on the FMVSSs cross-referenced in the FMCSRs. FMCSA requests public comments on the implementation strategy in general, and the 24-month grace period for Canada and Mexico-based motor carriers that are currently operating in the United States.

### Rulemaking Analyses And Notices

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FMCSA has determined that this proposed regulatory action is significant within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the DOT because of

the level of public interest in rulemakings related to the motor carrier-related provisions of NAFTA.

This proposed rule would require that all CMVs bear a label certifying that the vehicle meets all applicable FMVSSs in effect on the date of manufacture. Based on the information presented here, FMCSA anticipates that this rulemaking will have minimal economic impact on the interstate motor carrier industry. It is extremely unlikely that any U.S.-based motor carriers would be operating CMVs that do not already carry the FMVSS certification label. Most foreign-based motor carriers are probably aware of the requirement that the vehicles they operate in the United States must comply with the applicable safety regulations. Under FMCSA's NAFTA-related rulemakings mentioned above, all Mexico-based motor carriers operating CMVs in the United States would need to certify on the form OP-1 (MX) or OP-2 that the CMVs they operate comply with the FMVSSs. This proposed rule would simply add the requirement that the FMVSS certification label attesting to the compliance of each vehicle be affixed to the vehicle. Since many of the CMVs manufactured in the past several years comply with the most complex elements of the FMVSSs, the FMCSA believes that relatively little effort may be required to bring the vehicles into full compliance, and that motor carriers will be interested in doing so. The monetary penalties associated with non-compliance with the requirements of this rule are likely to be significantly more than the potential cost of complying.<sup>6</sup> Thus, the FMCSA believes that the entities involved would take steps to achieve compliance with the lower cost alternative.

The Vehicle Safety Act requires that vehicles be certified to meet all applicable FMVSSs. However, because of the lack of enforcement of this certification requirement against motor carriers, it is likely that some motor carriers have been importing uncertified vehicles into the United States. Some of these carriers may now be compelled to either reduce the number of vehicles operated or else lease or purchase certified equipment. Others may find that, although their vehicles comply with the FMVSSs, they do not carry a certification label attesting to that fact. The costs of retrofitting such vehicles with certification labels would presumably be relatively small. This uncertainty complicates the task of

separately determining the impact of this rule. The agency is interested in any information that will help to determine the economic impact of this proposed rule on motor carrier transportation and any additional impacts on industry customers.

Based upon its analyses, the FMCSA believes that the vast majority of motor carriers affected by this proposal would be able to comply with its terms. This proposed rule would only affect the operations of the small number of motor carriers that might elect not to bring their CMVs into compliance with the FMVSSs and ensure that they are labeled accordingly.

This rulemaking imposes no requirements that would generate new costs for motor carriers. Those entities would see no change to their operations, provided they ensure that their vehicles comply with the FMVSSs and have the appropriate certification label attached. Based upon the small number of motor carriers projected to be affected, and the minimal cost of attaching a certification label once the vehicle has been certified by the manufacturer or registered importer to meet the FMVSSs requirements, the agency believes that the overall adverse economic effects of this rulemaking would be minimal. This rulemaking, if adopted, would simply require that a CMV be labeled, providing readily-identifiable documentation of a CMV's compliance with the FMVSSs, a cornerstone of vehicle safety.

This rulemaking would not result in inconsistency or interference with another agency's actions or plans. The FMCSA believes that the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action.

#### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612) the FMCSA has evaluated the effects of this proposed rulemaking on small entities. As indicated above, U.S.-based motor carriers would not be subject to any new requirements under this proposal. Generally, they would only have access to vehicles that comply with the FMVSSs and bear a certification label.

The motor carriers that would be economically impacted by this rulemaking would be Canada and Mexico-based motor carriers that do not elect to operate CMVs that comply with the FMVSSs and thus would not carry a certification label, and those carriers whose CMVs comply but have not ensured that their CMVs are labeled to document their compliance.

Foreign-based motor carriers can avoid the consequences of this proposed rule simply by operating FMVSS-compliant CMVs that carry the certification label required under 49 CFR 567. In companion documents in today's **Federal Register**, NHTSA has published: (1) A notice announcing its policy concerning retroactive certification of vehicles; (2) a notice of proposed rulemaking establishing record retention requirements in connection with such certifications; and (3) a notice of proposed rulemaking codifying its interpretation of the term "import" as used in the Vehicle Safety Act. FMCSA's rulemaking is intended to ensure that motor carriers comply with the Act, as interpreted by the Department of Transportation. Motor carriers would work with vehicle manufacturers to comply with the proposed retroactive certification policy. Alternatively, a motor carrier could have its vehicles certified by a registered importer under existing NHTSA requirements.

Therefore, the FMCSA hereby certifies that this regulatory action would not have a significant economic impact on a substantial number of domestic small entities. The FMCSA invites public comment on this determination.

#### *Unfunded Mandates Reform Act of 1995*

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C 1531 *et seq.*).

#### *Executive Order 12988 (Civil Justice Reform)*

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *Executive Order 13045 (Protection of Children)*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its

<sup>6</sup>Non-recordkeeping violations of part 393 are subject to civil penalties of up to \$10,000 per violation.

environmental health or safety effects on children.

The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of \$100 million or more in any one year. Second, the agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children. Mexico-domiciled motor carriers who intend to operate commercial motor vehicles anywhere in the United States must comply with current U.S. Environmental Protection Agency regulations and other United States environmental laws under this rule and others being published elsewhere in today's **Federal Register**. Further, the agency has conducted a programmatic environmental assessment (PEA) as discussed later in this preamble. While the PEA did not specifically address environmental impacts on children, it did address whether the rule would have environmental impacts in general. Based on the PEA, the agency has determined that the proposed rule would have no significant environmental impacts.

#### *Executive Order 12630 (Taking of Private Property)*

This proposed rule would implement a regulation applicable to CMVs used in interstate commerce that would complement NHTSA's regulation, applicable to all vehicles used on U.S. highways, which requires that the vehicles comply with all applicable FMVSSs in effect on the date of manufacture, and that they bear a certification label to document their compliance.

Motor carriers can avoid all of the implications of this mandate by operating CMVs that are in compliance with the FMVSSs and that bear a label documenting that fact. FMCSA believes that a large number of CMVs manufactured in Canada and Mexico already comply with the FMVSSs. However, many of these vehicles do not have certification labels that meet the requirements of 49 CFR part 567. No new action is required on the part of those motor carriers that currently operate or plan to operate on U.S. highways FMVSS-compliant vehicles that currently bear the certification label.

Motor carriers planning to operate FMVSS-compliant CMVs on U.S.

highways, but whose vehicles do not currently bear the certification label, will be required to obtain certification labels in order to comply with the requirements of the NHTSA and the proposed rule. Again, once the CMVs bear the label to document their compliance, no further action is required in order to comply with this proposed FMCSA rule. However, if a motor carrier is operating or plans to operate on U.S. highways CMVs that do not comply with the FMVSSs, the motor carrier must take action to ensure that its vehicles are brought into compliance and are labeled to document that compliance. The action required would depend on the specific parts of the FMVSSs that the CMV does not comply with. For example, a CMV might comply with all of the FMVSSs with the exception of the portion of 49 CFR 571.119, New Pneumatic Tires for Vehicles Other Than Passenger Cars. The cost and complexity of bringing the CMV into compliance would be relatively low. On the other hand, if a CMV were not in compliance with 49 CFR 571.121, Air Brake Systems, because it was manufactured after the effective date of that regulation but was not equipped with antilock brakes, it may not be possible to bring it into compliance. The FMCSA stresses that the cost of bringing a CMV into compliance, or the cost to the user of not being able to operate a non-FMVSS-compliant CMV on U.S. highways, is a cost that would need to be borne in order to comply with existing Federal law. Once the vehicle is brought into compliance, and so labeled, the FMCSA requires no additional action on the motor carrier's part.

The FMCSA therefore certifies that this rule has no takings implications under the Fifth Amendment or Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. The FMCSA has determined this proposed rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor would it limit the policymaking discretion of the States.

These proposed changes to the FMCSRs would not directly preempt any State law or regulation. They would not impose additional costs or burdens on the States. Although the States are required to adopt part 393 as a

condition for receiving Motor Carrier Safety Assistance Program grants, the additional training and orientation that would be required for roadside enforcement officials would be minimal, and it would be covered under the existing grant program. Also, this action would not have a significant effect on the States' ability to execute traditional State governmental functions.

#### *Executive Order 12372 (Intergovernmental Review)*

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### *Paperwork Reduction Act*

This proposed action would not involve an information collection that is subject to the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

#### *National Environmental Policy Act*

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. FMCSA has analyzed this proposal under the NEPA and DOT Order 5610.1C, and has issued a Finding of No Significant Impact (FONSI). The FONSI and the environmental assessment are in the docket to this proposal.

#### **List of Subjects in 49 CFR Part 393**

Highway and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

In consideration of the foregoing, the FMCSA proposes to amend title 49, Code of Federal Regulations, subchapter B, Chapter III, part 393 as follows:

#### **PART 393—[AMENDED]**

1. The authority citation for part 393 continues to read as follows:

**Authority:** Sec. 1041(b) of Public Law 102-240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

2. Add § 393.8 to read as follows:

**§ 393.8 Vehicle Manufacturer's Certification Label**

(a) On or after [the effective date of the final rule], each commercial motor vehicle must have a label:

(1) Affixed by the vehicle manufacturer certifying that the vehicle was built to meet all applicable Federal Motor Vehicle Safety Standards (FMVSSs) (codified in 49 CFR part 571) in effect on the date of manufacture; or

(2) Affixed by a registered importer, as defined in 49 CFR part 592, certifying that the vehicle has been modified in order to conform with all applicable

FMVSSs in effect on the date of manufacture.

(b) The certification labels required by this section must comply with the requirements of 49 CFR part 567.

(c) *Exception for Vehicles Operated by Canada and Mexico-based Motor Carriers Conducting Operations in the United States Before [effective date of the final rule]*. Commercial motor vehicles added to a Canada or Mexico-based motor carrier's fleet on or after [effective date of the final rule], or introduced into service in the United States on or after that date, must comply with paragraphs (a) and (b) of this

section. Commercial motor vehicles that are part of these carriers' existing fleets of vehicles operated in the United States before [effective date of the final rule] may be operated without a certification label that meets the requirements of 49 CFR part 567, until [date 24 months after the effective date of the final rule]. Such vehicles must still comply with all other requirements of part 393.

Issued on: March 7, 2002.

**Joseph M. Clapp,**

*Administrator.*

[FR Doc. 02-5893 Filed 3-14-02; 8:45 am]

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