



Public Hearing
Transcript of Hearing Proceedings and Witness Testimony,
October 8, 2008
(131 Pages)

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of: *
*
THE PUBLIC HEARING *
ON THE FATAL MOTORCOACH * Docket No. 68754
ACCIDENT NEAR VICTORIA, TEXAS *
JANUARY 2, 2008 *
(FOCUSED ON LOOPHOLES THAT *
ALLOW REGISTRATION OF NON- *
COMPLIANT FOREIGN VEHICLES) *
* * * * *

National Transportation Safety Board
Board Room and Conference Center
429 L'Enfant Plaza East, S.W.
Washington, D.C. 20694

Wednesday,
October 8, 2008

The above-entitled matter came on for hearing, pursuant
to Notice, at 9:00 a.m.

BEFORE: DEBORAH A. P. HERSMAN, Chairperson
MICHELE BECKJORD, Hearing Officer
DR. VERNON S. ELLINGSTAD
BRUCE MAGLADRY

APPEARANCES:

Technical Panel:

PETE KOTOWSKI, Investigator-in-Charge,
 Office of Highway Safety (PPT)
 GARY VAN ETTEN, Motor Carrier Group Chairman,
 Office of Highway Safety
 JIM LeBERTE, Motor Carrier Investigator,
 Office of Highway Safety
 DENNIS COLLINS, Human Performance Investigator,
 Office of Highway Safety
 RON KAMINSKI, Survival Factors Investigator,
 Office of Highway Safety
 DR. BRUCE COURY, Safety Studies Specialist,
 Office of Research and Engineering
 LARRY YOHE, Vehicle Factors Investigator,
 Office of Research and Engineering

Panel 1:

JOSEPH COMÉ, U.S. DOT, Office of Inspector General
 LARRY MINOR, Federal Motor Carrier Safety
 Administration
 MIKE ELLIS, TXDOT, Motor Carrier Division
 CAPT. DAVID PALMER, TXDPS, Highway Patrol Division
 DARRELL L. RUBEN, Federal Motor Carrier Safety
 Administration
 MICHAEL CRAIG, U.S. Customs and Border Protection
 EUGENIO GARZA, JR., U.S. Customs and Border Protection

Panel 2:

TIM ADAMS, IRP, Inc.
 BOBBY JOHNSON, State of Texas Department of
 Transportation
 DEBRA HILL, State of California Department of
 Motor Vehicles
 DONALD JOHNSON, 5 Star Specialty Programs

APPEARANCES (cont.):

Panel 3:

JAMES VASSER, Federal Motor Carrier Safety
Administration
TERRY T. SHELTON, Federal Motor Carrier Safety
Administration
COLEMAN SACHS, National Highway Traffic Safety
Administration
FRANCIS FRANCE, Commercial Vehicle Safety
Alliance
LARRY W. MINOR, Federal Motor Carrier Safety
Administration

Parties:

DAVID HUGEL, Federal Motor Carrier Safety
Administration
CLAUDE HARRIS, National Highway Traffic
Safety Administration
DENNIS BERTRAND, Volvo/Prevost Car, Inc.
MARRY PAT PARIS, IRP, Inc.
NORM LITTLER, American Bus Association
KEN PRESLEY, United Motorcoach Association
EUGENIO GARZA, JR., United States Customs and
Border Protection
JOSEPH COMÉ, United States Department of
Transportation, Office of the Inspector General

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Adjourn	

P R O C E E D I N G S

(9:00 a.m.)

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3 CHAIRMAN HERSMAN: Good morning and welcome back. I am
4 Deborah A. P. Hersman, a member of the National Transportation
5 Safety Board and Chairman of this Board of Inquiry.

6 Today is the second day of a public hearing concerning
7 the accident involving a non-FMVSS compliant bus that was involved
8 in a rollover accident in Victoria, Texas, on January 2, 2008.

9 Let me reiterate for the record, that this is an
10 investigative hearing. The purpose of the hearing is to obtain
11 additional evidence and further develop the Safety Board's
12 understanding of the facts and circumstances that have been
13 identified thus far in this investigation. This hearing will help
14 the Safety Board determine the probable cause of this accident and
15 make safety recommendations to prevent similar accidents from
16 occurring in the future. No determination of cause will be
17 rendered in this public hearing.

18 Mr. Kotowski, do you have a brief opening statement for
19 this third and final panel for the hearing?

20 MR. KOTOWSKI: Yes, Member Hersman, I do. The Federal
21 Motor Vehicle Safety Standards, also known as the FMVSS, were
22 established to identify a minimum level of motor vehicle safety in
23 the United States. The FMCSA and the National Highway Traffic
24 Safety Administration, or NHTSA, both issued notices of proposed
25 rulemakings to require vehicle compliance with the Federal Motor

1 Vehicle Safety Standards as relates to foreign-made vehicles
2 brought into the United States as well as FMVSS labeling.

3 The NPRM was withdrawn by the FMCSA and NHTSA in 2005
4 because they believed that the Federal Motor Vehicle Safety
5 Regulations, FMCSRs, and the Associated Commercial Vehicle Safety
6 Alliance, or CVSA, inspection process were sufficient to ensure
7 the operational safety of the vehicles on the roadway.

8 This panel will address the purpose of the NPRM and it's
9 withdraw, including the NHTSA label requirements in the NPRM and
10 how the CVSA inspection programs that addressed the FMVSS
11 contributed to the withdraw of the NPRM.

12 The FMCSA has developed a VIN verification program as
13 part of the cross-border trucking initiative. This program is
14 available for roadside inspections. However, it does not identify
15 a vehicle that is non-FMVSS compliant. This panel will also
16 address the FMCSA's operation of this program and its databased
17 limitations and information retrieval issues.

18 And now I'd like to move onto Mr. Yohe to begin the
19 questioning of this Panel.

20 HEARING OFFICER BECKJORD: I have to swear them in.

21 CHAIRMAN HERSMAN: Our Hearing Officer, Michele
22 Beckjord, will first swear in the witnesses, and then we'll go to
23 questioning.

24 HEARING OFFICER BECKJORD: Good morning. Will
25 Mr. James Vasser, Ms. Terry Shelton, Mr. Francis "Buzzy" France,

1 Mr. Coleman Sachs and Mr. Larry Minor, please stand and raise your
2 right hand?

3 (Witnesses sworn.)

4 HEARING OFFICER BECKJORD: Thank you. Please be seated.
5 (Whereupon,

6 JAMES VASSER

7 was called as a witness and, after having been previously duly
8 sworn, was examined and testified as follows:)

9 HEARING OFFICER BECKJORD: Mr. Vasser, would you please
10 state your full name and business address?

11 MR. VASSER: I'm James Lawrence Vasser. I work at 1200
12 New Jersey Avenue, Southeast, in Washington, D.C.

13 HEARING OFFICER BECKJORD: And with whom are you
14 presently employed?

15 MR. VASSER: I'm a U.S. Department of Transportation,
16 Federal Motor Carrier Safety Administration.

17 HEARING OFFICER BECKJORD: And what is your present
18 position?

19 MR. VASSER: I'm Team Lead for Testing and Evaluation in
20 the IT Development Division.

21 HEARING OFFICER BECKJORD: And how long have you held
22 this position?

23 MR. VASSER: Approximately one month in that position.
24 Prior to that, for the -- since January 2004, I was an IT Project
25 Manager overseeing inspection and crash safety systems.

1 HEARING OFFICER BECKJORD: Thank you. And would you
2 please describe briefly your education, training or experience,
3 that you obtained to qualify you for your current position or
4 today's hearing?

5 MR. VASSER: I've been involved in database design and
6 development over 15 years, primarily working with commercial
7 vehicle safety systems and --

8 HEARING OFFICER BECKJORD: Thank you.

9 MR. VASSER: -- safety systems.

10 HEARING OFFICER BECKJORD: Okay. Thank you.

11 (Whereupon,

12 TERRY SHELTON

13 was called as a witness and, after having been previously duly
14 sworn, was examined and testified as follows:)

15 HEARING OFFICER BECKJORD: Ms. Shelton, would you please
16 state your full name and business address?

17 MS. SHELTON: Terry T. Shelton, 1200 New Jersey Avenue,
18 Southeast.

19 HEARING OFFICER BECKJORD: And with whom are you
20 presently employed?

21 MS. SHELTON: The United States Department of
22 Transportation, Federal Motor Carrier Safety Administration.

23 HEARING OFFICER BECKJORD: And what is your present
24 position?

25 MS. SHELTON: The Associate Administrator for Research

1 and Information Technology and Chief Information Officer.

2 HEARING OFFICER BECKJORD: Thank you. And how long have
3 you held this position?

4 MS. SHELTON: Since 2003.

5 HEARING OFFICER BECKJORD: And would you please briefly
6 describe your education, training and experience, you've obtained
7 to qualify you for this current position and for today's hearing?

8 MS. SHELTON: Okay. Prior to disposition, I was the
9 Director of the Office of Information Management at Motor Carriers
10 and I've been with Motor Carriers for 12 years and 10 years with
11 NHTSA prior to that in data collection and information systems. I
12 have a degree in mathematics.

13 HEARING OFFICER BECKJORD: Thank you.

14 (Whereupon,

15 LARRY MINOR

16 was called as a witness and, after having been previously duly
17 sworn, was examined and testified as follows:)

18 HEARING OFFICER BECKJORD: Mr. Minor, would you please
19 state for the record again your full name and business address?

20 MR. MINOR: Larry W. Minor, 1200 New Jersey Avenue,
21 Southeast.

22 HEARING OFFICER BECKJORD: And with whom are you
23 presently employed?

24 MR. MINOR: I'm presently employed by the U.S.
25 Department of Transportation, Federal Motor Carrier Safety

1 Administration.

2 HEARING OFFICER BECKJORD: Thank you. And the rest of
3 your information we have on the record from yesterday's testimony.
4 Thank you.

5 (Whereupon,

6 COLEMAN SACHS
7 was called as a witness and, after having been previously duly
8 sworn, was examined and testified as follows:)

9 HEARING OFFICER BECKJORD: Mr. Sachs, will you please
10 state your full name and business address?

11 MR. SACHS: I'm Coleman R. Sachs, 1200 New Jersey
12 Avenue, Northeast.

13 HEARING OFFICER BECKJORD: Thank you. With whom are you
14 presently employed?

15 MR. SACHS: The National Highway Traffic Safety
16 Administration.

17 HEARING OFFICER BECKJORD: Thank you. And your present
18 position?

19 MR. SACHS: I'm the Chief of the Import and
20 Certification Division of the Office of Vehicle Safety Compliance.

21 HEARING OFFICER BECKJORD: And how long have you held
22 this position?

23 MR. SACHS: Almost six years.

24 HEARING OFFICER BECKJORD: Thank you. And would you
25 please briefly describe your education, training or experience

1 that has qualified you for this position?

2 MR. SACHS: I've been with NHTSA for 23 years, the first
3 17 of those in the Office of Chief Counsel, as a trial attorney in
4 the Litigation Division. As part of my responsibilities in that
5 position, I was responsible for about 10 years for advising the
6 Office of Vehicle Safety Compliance on vehicle importation and
7 certification issues. Since coming to the Office itself, I've
8 been heavily involved in those issues as well.

9 HEARING OFFICER BECKJORD: Thank you.

10 (Whereupon,

11 JAMES VASSER

12 was called as a witness and, after having been previously duly
13 sworn, was examined and testified as follows:)

14 HEARING OFFICER BECKJORD: Mr. Francis France, would you
15 please state your full name, the name you like to go by, and your
16 business address?

17 MR. FRANCE: Francis Edward France, and I go by Buzzy.
18 I work at 901 Elkridge Landing Road, Suite 300, Linthicum Heights,
19 Maryland.

20 HEARING OFFICER BECKJORD: Thank you. And with whom are
21 you presently employed?

22 MR. FRANCE: I work for the Maryland State Police.

23 HEARING OFFICER BECKJORD: And in what position are you
24 here testifying today?

25 MR. FRANCE: I am the CVSA Vice President.

1 HEARING OFFICER BECKJORD: Thank you. And how long have
2 you held the Vice President position?

3 MR. FRANCE: I just became Vice President in September.
4 I was Secretary/Treasurer prior to that.

5 HEARING OFFICER BECKJORD: Thank you. And would you
6 please briefing describe your education, training and experience
7 you obtained to qualify you for that position as well as to
8 testify here today?

9 MR. FRANCE: I'm the CVSA current Vice President. I've
10 served 16 years with the Commercial Vehicle Safety Alliance in
11 various positions starting as Training Committee Chair, Regional
12 Vice President for Region 1, President for Region 1, and then
13 Secretary/Treasurer to Vice President. I've got about 40 years
14 experience in law enforce. I'm a retired Maryland Trooper.

15 After 21 years serving on the road, I retired. I came
16 back to Maryland again in 1989 as a transportation inspector.
17 I've done transportation inspector safety audits, reviews, right
18 up through the chain to where I am right now, and I'm the Training
19 Coordinator right now for Maryland. I'm the one who certifies all
20 the current roadside inspectors. I'm an also an associate staff
21 instructor for the National Training Center.

22 Federal Motor Carrier Safety Administration, and in that
23 position I have been through all the training programs that they
24 offer. I am an instructor in all the courses except the driver
25 portion of the Motor Carrier Level I Inspection Course. I also

1 teach Level 6, and I teach the Passenger Vehicle Carrier
2 Inspection Course.

3 HEARING OFFICER BECKJORD: Thank you, sir.

4 Ms. Chairman, the witnesses have been qualified and I
5 will not turn the questioning of the witnesses back to you.

6 CHAIRMAN HERSMAN: Ms. Beckjord, did we have an
7 additional exhibit that had been added. Would you like to
8 describe that?

9 HEARING OFFICER BECKJORD: We did. The Federal Motor
10 Carrier Safety Administration requested that we add several
11 PowerPoint slides that show the VIN Verification Program as it
12 appears on your computer screen. So we have received an
13 electronic copy of that, and they are asking that we add it to the
14 docket.

15 CHAIRMAN HERSMAN: And we have determined that we will
16 add that to the docket. It will be available during the
17 discussions and questions today for use during the Panel
18 questioning. And so those will be available also to all of the
19 parties and the witnesses as well.

20 Mr. Yohe, are you going to be leading the questioning
21 this morning?

22 MR. YOHE: I am.

23 CHAIRMAN HERSMAN: Okay. Please proceed.

24 MR. YOHE: The first set of questions is for Mr. Sachs
25 from the Federal -- from National Highway Traffic Safety

1 Administration.

2 Mr. Sachs, the first question is, could you just tell us
3 briefly what are the Federal Motor Vehicle Safety Standards?

4 MR. SACHS: The Federal Motor Vehicle Safety Standards
5 establish minimum performance requirements for the safety systems
6 and components on motor vehicles and for certain items in motor
7 vehicle equipment. They're intended as minimal standards. Our
8 statute requires that they be reasonable, practicable and that
9 they meet the needs for motor vehicle safety. Presently there are
10 60 Motor Vehicle Safety Standards.

11 Approximately 45 of those are vehicle standards, and
12 that I mean the manufacturer of the vehicle certifies the
13 vehicle's compliance with the standard. Approximately 15 of them
14 are equipment standards governing such things as tires, rims,
15 brake hoses, brake fluids, seatbelt assemblies, glazing, lighting
16 equipment, motorcycle helmets, child seats, compressed natural gas
17 containers, platform lift systems for mobility impaired and under-
18 ride guards for trailers. Those are all equipment standards and
19 the manufacturer of those equipment items certifies the equipment
20 items' compliance with the standard.

21 MR. YOHE: Okay. I think you've answered at least part
22 of the second question, which is, who is required to certify a
23 vehicle is FMVSS compliant, and how do they do it?

24 MR. SACHS: The manufacturer of the vehicle is required
25 to certify the vehicle's compliance with all applicable Federal

1 Motor Vehicle Safety Standards. Each of the standards or many of
2 the standards that have test requirements also have test
3 procedures that we publish.

4 The test procedures are the notice to the world of what
5 NHTSA will do to establish a vehicle's compliance with an
6 applicable Federal Motor Vehicle Safety Standard. The
7 manufacturer has a statutory obligation to exercise due care in
8 certifying a motor vehicle to all applicable standards. We have
9 more of a reactive program, a self-certification process in place.

10 The manufacturer certifies that if we should get wind of
11 a potential noncompliance, we will ask the manufacturer to
12 demonstrate how it exercised due care in certifying the vehicle to
13 the standard. If the manufacturer is unable to convince us that
14 it's done so, it's liable for civil penalties of up to \$6,000 per
15 vehicle, up to a maximum of \$15,625,000 for a related series of
16 violations.

17 The test procedures that we have, as I said, are our
18 notice to the world of what we'll do to establish that a vehicle
19 complies with one of our standards. The manufacturer's not
20 obligated to follow the test procedure. The manufacturer can use
21 engineering analysis, computer modeling or some other technique so
22 long as it exercises due care in certifying the vehicle to the
23 particular standard.

24 MR. YOHE: Okay. So one question I think would fit in
25 here, I was going to let it go to the end but, okay. So it's fair

1 to say -- is it fair to say that there's a degree of complexity to
2 determining whether what these standards are and whether a vehicle
3 is actually compliant?

4 MR. SACHS: Yes, there is. There are, as I mentioned,
5 approximately 45 standards that would apply to vehicles, 15 to
6 equipment items. Some, you know, do require testing. In fact,
7 you can only, or as I indicated, it's possible for engineering
8 analysis and such testing or analysis, you know, would be needed
9 to establish compliance.

10 There are others that are rather straightforward, of
11 course. I did mention the 15 equipment items or the 14 equipment
12 items. In that instance, the manufacturer has to ensure DOT
13 compliant glazing or DOT compliant tires or rims are installed on
14 the vehicle. But there are obviously other standards that are
15 more complex that do require some level of sophistication to
16 establish compliance.

17 MR. YOHE: Okay. So yesterday we heard testimony from
18 the various agencies, from the Customs and Border folks, from
19 FMCSA, from state entities, and what they might do if they found a
20 vehicle that was non-compliant.

21 So I guess my question to you is, is it reasonable to
22 believe that a Customs/Border officer, a MCSAP officer, a state
23 inspector, somebody working for DMV, is it reasonable for that
24 type of person to be able to do an inspection in a half an hour or
25 an hour and to say whether or not the vehicle is fully FMVSS

1 compliant?

2 MR. SACHS: Well, there are certain standards that you
3 can establish compliance with through an inspection, through a
4 visual inspection. As I indicated, some of the equipment items
5 have to comply with applicable standards, and each of the
6 standards that pertain to those equipment items require the
7 equipment item to be marked in some fashion. Usually the initials
8 DOT, to signify the manufacturer's certification the equipment
9 item complies.

10 Certainly, if someone's doing a spot inspection, they
11 can take a look at the glazing, perhaps the brake hoses, and other
12 components that are subject to equipment standards to see if the
13 required markings are on those items. There are other aspects.

14 I would suppose you're speaking specifically of buses.
15 One of the standards for buses requires emergency exits of a
16 certain dimension. So certainly an inspector who is doing a
17 visual inspection can do a check of that. They obviously can't do
18 a brake inspection or anything that requires dynamic tests but
19 there's enough items there that an inspector could look at,
20 perhaps to have some degree of comfort that at least the
21 manufacturer has met a number of the standards.

22 MR. YOHE: But again, just one final question along that
23 line then. Would it be possible then for an inspector from the
24 Border or a MCSAP inspector or any type of just state inspector,
25 to be able to do a brief, I'm talking about a half an hour or an

1 hour inspection and to say that the vehicle is fully FMVSS
2 compliant? Would that be possible in your opinion?

3 MR. SACHS: Well, no one can say that it's fully FMVSS
4 compliant other than the only way to really tell whether a vehicle
5 is fully FMVSS complaint, is to look for the certification label
6 that manufacturers are required to affix to the vehicle, if the
7 manufacturer has manufactured the vehicle for sale in the United
8 States.

9 Certainly if an inspector were to look for the
10 certification label and the label itself identifies the
11 manufacturer, the vehicle's date of manufacture and states the
12 vehicle complies with all applicable Federal Motor Vehicle Safety
13 Standards in effect on that date.

14 If the inspector would look for a certification label
15 and find it, he would have a 100 percent chance of success in
16 establishing the vehicle was originally manufactured to meet all
17 applicable standards. Absent the certification label, or absent
18 let's say, a letter from the manufacturer, stating the vehicle was
19 originally manufactured to comply, it would certainly very hard to
20 establish compliance in a half hour or even a much longer period
21 than that, without test equipment and the like that's needed.

22 MR. YOHE: Okay. All right. The next question. When
23 must a vehicle operating in the U.S. be required to meet Federal
24 Motor Vehicle Safety Standards?

25 MR. SACHS: Well, the Federal Motor Vehicle Safety

1 Standards are new vehicle standards. They apply to vehicles, you
2 know, as originally manufactured, and we have a provision in our
3 law at 49 U.S.C. 30112(b) that states once a vehicle is sold for
4 purposes other than resale, it does not -- there are certain
5 prohibitions that no longer apply to the vehicle.

6 Vehicles that are imported into the United States,
7 however, have to be either FMVSS compliant and covered by a
8 manufacturer's certificate of compliance or brought in through our
9 RI Program, our Registered Importer Program.

10 We really don't have a -- there's really no program that
11 we have to inspect vehicles that are in service. So, you know, in
12 answer to your question, how can you tell whether a vehicle in
13 service meets the standards? You have to look for the
14 certification label.

15 MR. YOHE: Okay. So if a vehicle did not have a
16 certification label, then it would be an extremely -- is it true
17 that it would be a complex task to determine if it's fully
18 compliant if it didn't have a label or some sort of letter or
19 certification?

20 MR. SACHS: The manufacturer is the entity that knows
21 whether the vehicle was originally manufactured to U.S. safety
22 standards. You know, the standards as we indicated, many of them
23 are complex, and the manufacturer is in control of that
24 information.

25 MR. YOHE: Okay. What is NHTSA's definition of an

1 imported vehicle?

2 MR. SACHS: Well, there is no definition of import.
3 Import is a term that's used in our statutes. It's used in our
4 regulations, but there is no definition of the term in any of our
5 statutes or the regulations. As you know, back in 2002, as part
6 of the implementation of the NAFTA accords, we issued a notice of
7 proposed rulemaking that would have defined the term as any
8 bringing into the United States either for temporary or permanent
9 purposes including, but not limited to, bringing a motor vehicle
10 into the United States for the purpose of transporting cargo or
11 passengers. But that notice of proposed rulemaking was withdrawn
12 in 2005. So there is no definition.

13 If you look at the document, the 2005 document, Federal
14 Register document, where we withdrew the notice, it discusses
15 various issues under the tariff laws of the United States and one
16 thing it mentions is that under those laws, an instrument of
17 international trade, such as a vessel or a vehicle that brings
18 something into the United States is not itself imported into the
19 United States. However, if that vehicle were to be permanently
20 entered into the United States, it would be deemed to be imported.

21 So the best I can say is that that comports with our
22 understanding of the term.

23 MR. YOHE: Okay. Thank you. The next question, and
24 again your answers have been in depth enough that you've answered
25 part of I believe. What rules, policies and procedures govern the

1 importation of a vehicle?

2 MR. SACHS: Well, the principal rule that governs the
3 importation of vehicles is a statute at 49 U.S.C. 30112(a) which
4 states that no person may, among other things, import a motor
5 vehicle manufactured after the date that an applicable standard
6 takes effect, unless the vehicle complies with the standard and is
7 covered by a manufacturer's certification issued under 49 U.S.C.
8 30115.

9 Now Section 30115 in turn requires the certification of
10 a vehicle to be manifest by a tag or label permanently affixed to
11 the vehicle at the time of its delivery to the dealer or
12 distributor.

13 So that's the principal rule. In order to import a
14 vehicle, you know, without a problem, the vehicle should be
15 originally manufactured to comply with all applicable standards
16 and because covered by a manufacturer's certification.

17 We do have provisions in our law that are found at 49
18 U.S.C. 30141 through 30146, that would permit vehicles that are
19 not originally manufactured to comply with all applicable Federal
20 Motor Vehicle Safety Standards, to be imported provided two things
21 are done. First, NHTSA has to decide that the vehicle is eligible
22 for importation based on its capability to be modified to comply
23 with all applicable Federal Motor Vehicle Safety Standards. NHTSA
24 makes those decisions either on its own initiative or on the basis
25 of petitions that are filed with the agency by import or specially

1 registered with the agency referred to as registered importers.
2 The petition either has to establish that the vehicle was
3 substantially similar to a vehicle of the same model and model
4 year, that was manufactured for sale in the United States or if
5 there's no substantially similar vehicle, that the vehicle is
6 capable of being modified to conform to all applicable standards
7 based on dynamic crash test data or such other information as the
8 Secretary may require.

9 So NHTSA makes import eligibility decisions, and the
10 other requirement to bring in a vehicle that is not originally
11 manufactured to comply with all applicable Federal Motor Vehicle
12 Safety Standards is that the vehicle be imported by a registered
13 importer. If you're familiar with our HS-7 declaration form,
14 which has to be filed with Customs for every vehicle that's
15 imported into the United States, these are vehicles that are
16 covered under Box 3 of that form, and if you look at the text that
17 accompanies Box 3, it says that the vehicle not only must be
18 determined eligible for importation and be imported by a
19 registered importer, but it has to be imported under a bond.

20 The bond is offered on Form HS-474, and the bond
21 obligates the importer to bring the vehicle into conformity with
22 all applicable Federal Motor Vehicle Safety Standards within 120
23 days from its date of entry or that the vehicle be exported from
24 or abandoned to the United States.

25 So those are the basic ways that you would bring a

1 vehicle into the United States.

2 MR. YOHE: Is there any differences in a vehicle brought
3 into the United States from a manufacturer who was attempting to
4 import a group of vehicles that were brand new just off the
5 assembly line as opposed to one that might be two, three, five
6 years old, such as in the case of this accident. It wasn't a
7 brand new vehicle. It wasn't brand new, the vehicle we're talking
8 about in the Victoria accident, but is there any basic differences
9 in what would be required in documentation, a brand new vehicle
10 versus one that's two or three years old or one year old?

11 MR. SACHS: There are none. You have to remember that
12 the prohibitions in 49 U.S.C. 30112(a) do not -- most of the
13 prohibitions, that is there's a prohibition on manufacturing for
14 sale, offering for sale, selling, delivering for introduction into
15 interstate commerce or introducing into interstate commerce.

16 None of those prohibitions apply to vehicles after their
17 first sale for purposes other than resale, their first retail
18 sale. But the one prohibition in 30112(a) that sticks is the
19 prohibition against importing a motor vehicle manufactured after a
20 date that an applicable standard takes effect unless the vehicle
21 complies with the standard and is covered by a manufacturer's
22 certification.

23 MR. YOHE: Okay.

24 MR. SACHS: Except I would say there are obviously
25 exceptions to that prohibition including the exception for the

1 vehicles brought in under our RI Program.

2 MR. YOHE: Thank you. Again, you've answered part of
3 the next question. What processes are in place to verify that a
4 vehicle is FMVSS compliant?

5 MR. SACHS: As I indicated, you would have to look for
6 the certification label that's affixed to the vehicle by the
7 original -- permanently affixed by the original manufacturer.

8 MR. YOHE: Okay. And are there any other methods for
9 determining FMVSS compliance other than the certification
10 requirements of 49 C.F.R. 567?

11 MR. SACHS: Other than the fact to look for the
12 certification label --

13 MR. YOHE: Yes.

14 MR. SACHS: -- on a vehicle? Well, that's -- as I
15 indicated, there are vehicles brought in under the RI Program.
16 They're not going to have the manufacturer's label affixed to the
17 vehicle under Part 567 but they will have a label affixed by the
18 registered importer stating the vehicle was imported on such and
19 such a date by such and such an entity and the vehicle conforms to
20 all applicable standards in effect as of its date of manufacture.

21 MR. YOHE: Okay. I realize that NHTSA doesn't have
22 roving patrols out on the highway. However, from a NHTSA
23 perspective, what happens when a vehicle's found to be non-FMVSS
24 compliant and operating in the United States?

25 MR. SACHS: Well, you're right. We don't have roving

1 patrols. If a vehicle has been, you know, brought in recently and
2 we find that it's -- more often we'll find something offered for
3 sale on eBay quite frankly that doesn't belong in the United
4 States, and we will inquire, we'll look at our own database. We
5 have a motor vehicle importation information database principally
6 on vehicles that are brought in through registered importers to
7 see if the vehicle was brought in that way.

8 If that's not successful, we'll query one of the Customs
9 databases, the ACS database, to see if there's any evidence of the
10 vehicle having been brought in and if it appears that the vehicle,
11 we can find the vehicle and we can establish that it was
12 improperly declared, let's say it was brought in under Box 2(a) of
13 the HS-7 declaration form as a conforming vehicle, or under Box 8
14 of the HS-7 declaration form, as a vehicle not primarily
15 manufactured for on road use, and therefore not subject to the
16 FMVSS, well, we'll contact Customs, go through the port-of-entry
17 or through Customs Headquarters and try to take effort for the
18 vehicle to be exported from the United States.

19 MR. YOHE: Has this ever happened to the best of your
20 knowledge?

21 MR. SACHS: Yes, it happens quite frequently.

22 MR. YOHE: Okay. Thank you. Basically what is a VIN
23 number and what is its purpose?

24 MR. SACHS: A VIN number is a vehicle identification
25 number. It's a 17 character array of numbers and letters that is

1 affixed to a vehicle that is intended for sale in the United
2 States by a manufacturer. We have regulations at 49 C.F.R. Part
3 565 governing the contents and placement of the VIN and those
4 regulations state that the VIN consists of four sections.

5 The first section which comprises the first three
6 characters of the VIN is called the world manufacturer identifier
7 or the WMI. Here in the United States, the WMIs are assigned to
8 domestic motor vehicle manufacturers under contract to us by the
9 Society of Automotive Engineers, and the first section is supposed
10 to identify the make, model and type of vehicle.

11 The second section of the VIN has information such as
12 body style, line, type, those type of issues that are
13 characteristic of the vehicle.

14 The third section of the VIN which is symbol digit, it's
15 the ninth position of a VIN, is a check digit. In the VIN
16 regulation at 49 C.F.R. 565, there's a formula that would be used
17 to establish whether the VIN has been properly configured,
18 requiring multiplication of each of the characters of the VIN, a
19 certain kind of weighting and then a division by the number 11
20 with producing a remainder which is supposed to correspond to the
21 check digit of the VIN.

22 And the fourth section of the VIN has vehicle specific
23 information. The 10th character has model year information. That
24 section also has plant code and it ends with a number, a
25 sequential number to uniquely identify that vehicle.

1 Now I want to emphasize that these regulations pertain
2 to vehicles that are manufactured for sale in the United States.
3 So it would have to be manufactured for sale in the United States
4 to conform to the requirements of Part 565. A vehicle
5 manufactured for sale in another country is, of course, not
6 subject to those requirements.

7 MR. YOHE: Okay. So in this country, you know, we
8 import vehicles from multiple countries, you know, from Asia, some
9 from south of the border, north of the border, Europe. Would all
10 of these countries utilize the same VIN system that we use?

11 MR. SACHS: Well, that system would have to be used
12 again for vehicles that are manufactured for sale in the United
13 States. Vehicles manufactured for sale in the United States don't
14 have to be manufactured in the United States, of course, and as we
15 can see, many of them are not. Certainly if, you know, Mercedes
16 or BMW is building a vehicle for sale in the United States in
17 Germany, they'd have to conform to 565 with respect to that
18 vehicle and the same goes for vehicles, of course, built in Japan,
19 Korea, wherever else, you know, our imported vehicles come from.

20 But as far as our own domestic production is concerned,
21 they would not have to meet 565, those foreign countries.

22 MR. YOHE: Okay. So basically you're saying if it's
23 made in another country and it's going to be imported into the
24 United States, then it has to utilize our same VIN system?

25 MR. SACHS: Correct.

1 MR. YOHE: Is there any way by the -- by looking at the
2 VIN number, in and of itself, is there any way to tell whether or
3 not a vehicle, particularly a motorcoach is FMVSS compliant?

4 MR. SACHS: No, there's not. I've gone through the VIN
5 content requirements and as indicated, there is no section of the
6 VIN that specifically addresses whether the vehicle is FMVSS
7 compliant. There would be no need for that because our
8 regulations in Part 567 state that the FMVSS compliance is to be
9 shown by the certification label affixed to the vehicle and not by
10 the VIN.

11 MR. YOHE: Lastly, does there exist a database for FMVSS
12 compliance for commercial vehicles? And, if so, where would it be
13 located?

14 MR. SACHS: NHTSA does not maintain such a database. We
15 don't maintain a database on the compliance status, you know, of
16 any vehicles. Manufacturers are the ones who can tell whether a
17 particular vehicle was manufactured to our standards.

18 MR. YOHE: Okay. So there's no -- in other words, if a
19 vehicle, particularly in this case, a motorcoach, was coming
20 through the border, whether it be north or south, there would be
21 no way then for customs to access some sort of computerized
22 database to know specifically if that vehicle was FMVSS compliant.
23 Is that correct or not?

24 MR. SACHS: They could not access a NHTSA database
25 because we don't have that. Whether there's something out there,

1 you know, whether there's a means to contact a manufacturer and
2 establish the compliance of the vehicle that way, perhaps that
3 could be done but I'm not aware of anything that NHTSA maintains
4 on the conformity status of commercial or other vehicles that are
5 out there.

6 MR. YOHE: I have just one more question and at the risk
7 of being repetitive, I was wondering if you could, if it's
8 possible, to give a yes or no answer to this question. If it's
9 not, say that -- it's fine to say it's not. But one more time, is
10 it reasonable to believe that say a Customs officer at the border
11 could determine, in other words, if there is no sticker on it that
12 says meets Federal Motor Vehicle Safety Standards, there's no
13 other documentation just by a relatively brief inspection, is it
14 possible -- do you believe it's possible for a Border agent, a
15 Customs agent, or any MCSAP inspector, to say, yes, this vehicle
16 is fully FMVSS compliant?

17 MR. SACHS: I have to limit it to one word?

18 MR. YOHE: If possible.

19 MR. SACHS: Well, since you use the word fully, I'd have
20 to say no.

21 MR. YOHE: Okay. Thank you. Okay. That concludes my
22 questioning of Mr. Sachs.

23 MR. KOTOWSKI: Mr. Sachs, you indicated that in the 2005
24 withdrawal, one of the issues that talked about there was the tire
25 flaws in international trade. Could you define international

1 trade for me please?

2 MR. SACHS: As I indicated, no, there is no NHTSA
3 definition of international trade. I would just -- just taking a
4 look at the document itself, the 2005 document, something going
5 from one country to another, crossing a border, with the intent I
6 guess to remain permanently in the country to which it's delivered
7 would constitute international trade, but that is just my reading
8 of the document, and I'm not an expert on that particular subject.

9 MR. KOTOWSKI: Okay. And if -- and we talked about
10 importation and the methodology utilizing an import and the
11 registration that they were required to do and so forth. As far
12 as a registration is concerned, like we experienced in this
13 particular incident, where the bus was registered in Mexico and
14 then re-registered in California, would that be, in your opinion,
15 or under NHTSA's standards, would that be a form of importation?

16 MR. SACHS: Well, again, we don't define the term
17 import. The document talks about -- well, the 2005 notice of
18 withdrawal, discusses these clarifications, distinguishing
19 something that's engaged in international trade from something
20 that's permanently brought in. What the contours are of bringing
21 something permanently into the United States is not discussed and
22 really I'm not the person to question on that. As to whether some
23 of the permanences manifest by registration in a state, I'm
24 unwilling to commit to what that would be. You could also say
25 that despite the registration, that the nature of the use of the

1 vehicles continue to go cross border, back and forth, perhaps it's
2 continuing to engage in international trade as instrumentality but
3 once again, I'm not the expert on that.

4 MR. KOTOWSKI: That was -- basically that was -- I guess
5 where I was trying to go to, we're continually going back and
6 forth across the border and that would be considered international
7 trade.

8 MR. SACHS: Right.

9 MR. KOTOWSKI: And in the certification process, when a
10 manufacturer comes to NHTSA and says that this vehicle is
11 compliant in this particular area, and they support the
12 documentation and so forth that we've done these types of
13 engineering standards or tests and we've done this type of actual
14 crash testing or whatever, is there any follow up or is there any
15 testing that NHTSA does to ensure that what in fact the
16 manufacturer says on that particular vehicle, they actually do?

17 MR. SACHS: Well, first of all, you have to distinguish
18 our certification process from what's used in many foreign
19 countries. Many foreign countries have what's called type
20 approval in which a manufacturer is required to submit to a
21 government laboratory a prototype vehicle or to specifications for
22 the government itself to certify the vehicle's compliance with all
23 applicable standards. We don't have that system in place. We
24 have the self-certification process in place. So no manufacturers
25 come to us in the first instance in an effort to prove to use that

1 its vehicle conforms to our standards.

2 That would only come up in the context of a
3 noncompliance investigation in which we would find -- either we
4 would receive complaints on our hotline or we do our own testing,
5 our own compliance testing, and we try over a five year period or
6 to test pretty much many things, if not most of what's out there,
7 to our standards. If we find through that testing a potential
8 noncompliance, we'll ask the manufacturer to submit proof to us or
9 evidence to us of how it exercises due care in certifying the
10 vehicle to that standard. So it would only arise really in that
11 context.

12 MR. KOTOWSKI: And after a -- and if a label is issued
13 to a vehicle when it is compliant, the manufacturer says so and in
14 the instance of a motorcoach with flammability standards, so I
15 purchase a motorcoach and it meets the standards but I decide that
16 I'm not particularly happy with the type of seating that's in that
17 motorcoach. And so I go to an after market dealer and install
18 different seats into that motorcoach. Are there any requirements
19 for that after market vendor or manufacturer to provide me with
20 seats that meet the FMVSS compliance on flammability?

21 MR. SACHS: Well, no, there's not because the standard
22 of the flammability standard is a vehicle standard. So the
23 vehicle manufacturers is certifying that the vehicle complies with
24 the standard. So if seating equipment is sold in the after
25 market, it's not one of those 14 items that I mentioned, tires,

1 rims, brake hoses, et cetera. There's no -- a seat is not one of
2 the 14. So if a seat is sold as replacement equipment, there is
3 no requirement that its fabric be in compliance with the
4 flammability standards.

5 MR. KOTOWSKI: And in the construction of a vehicle, the
6 manufacturer of chassis that does this as an incomplete chassis,
7 he hasn't completed the vehicle, that manufacturer would insert a
8 vehicle that it meets the FMVSS compliance up to that stage. Is
9 that correct?

10 MR. SACHS: Well, there are separate certification
11 requirements for vehicles built in two or more stages, and those
12 are found at 49 C.F.R. Part 568. Each manufacturer in the chain
13 of production for a vehicle built in two or more stages has
14 certain certification responsibilities. The incomplete vehicle
15 manufacturer does have to -- first of all, assigns the VIN to the
16 vehicle and they do also have to affix a label to the vehicle and
17 -- but the label does not have to certify obviously the vehicle's
18 compliance with all applicable standards. The incomplete vehicle
19 manufacturer may identify standards, that the vehicle will meet as
20 manufactured as a incomplete vehicle, and it also furnishes an
21 incomplete vehicle document giving manufacturers in the later
22 stage of production guidance on how to complete the vehicle so
23 that it complies with all applicable standards.

24 Now we're dealing with vehicles built in two or more
25 stages. It's the final stage manufacturer who completes the

1 vehicle that has the ultimate responsibility for certifying the
2 vehicle's compliance with all applicable standards.

3 MR. KOTOWSKI: And one last question, and I just want to
4 make sure that I've got it straight in my mind. When we were
5 earlier questioning, we were talking about importers, and that if
6 I heard it correctly or maybe I did not, was that an importer
7 could also install a label that a vehicle meets the FMVSS?

8 MR. SACHS: Well, I was taking about registered
9 importers, for vehicles brought in, vehicles that are not
10 originally manufactured to conform to our standards but determined
11 eligible for importation by NHTSA and imported under bond by a
12 registered importer. The importer before releasing custody of the
13 vehicle, so that it can be licensed or registered for on-road use,
14 is required to affix a certification label to the vehicle
15 indicating that the vehicle now conforms after all conformance
16 modifications have been performed.

17 MR. KOTOWSKI: Okay. Thank you. That concludes my
18 questioning. Larry.

19 MR. YOHE: The next set of questions is for Mr. France
20 from the Commercial Vehicle Safety Alliance.

21 The first question, please describe the various levels
22 of vehicle and driver inspections that the CVSA has instituted.

23 MR. FRANCE: The Commercial Vehicle Safety Alliance now
24 has seven levels of inspection. Basically the Level 1 inspection
25 is a North American inspection and an inspection that includes

1 examination of driver's license, medical examiner's certificate in
2 skilled performance evaluations, alcohol, drugs, driver record of
3 duty status as required, seatbelts, vehicle inspection reports if
4 applicable, brake systems, coupling devices, exhaust systems,
5 frames, fuel systems, lighting devices, such as turn signals,
6 brake lamps, tail lamps, headlamps and lamps on projecting loads,
7 safe loading, steering mechanisms, suspensions, tires, van and
8 open top trailer bodies, wheels and rims, windshield wipers,
9 emergency exits for buses, hazardous material requirements as
10 applicable, hazardous material requirement inspection items will
11 be inspected only by certified HM inspectors.

12 Level 2 inspection includes all the things that we
13 talked about in Level 1 except you do not go underneath the
14 vehicle. You'd look at all the same systems, basically on exactly
15 what it says, a walk around inspection, where you'd look at all
16 the driver credentialing, the vehicle credentialing, medical
17 certificates, and all of the systems that we previously talked
18 about that you can see without getting underneath of the vehicle
19 on a creeper or in a pit.

20 Level 3 is strictly a driver credentialing inspection.
21 That's where you look at all the driver credentials that he's
22 required to have at a roadside inspection. You would not look at
23 any equipment and on a Level 3 inspection report, you would not
24 list any vehicle defects, just the driver defects.

25 Level 4 is a special inspection. That's when we're

1 doing some type of a special project such as the brake operations
2 we do, periodically do in the year where we're concentrating on
3 brake violations on commercial motor vehicles or it would be a
4 special study that's being done by a jurisdiction on violations
5 that have occurred in their jurisdiction.

6 The Level 5 is a basically Level 1 without any driver
7 credentialing information. You do the full vehicle which means
8 you do the vehicle underneath, you get on a creeper, you get in a
9 pit, and you do all the parts and accessories to that vehicle.

10 Level 6 is now what we deemed as an enhanced hazardous
11 material inspection. It's done in the radioactive fields with the
12 transuranic wastes and highway route controlled hazardous
13 material. And it's a zero based inspection.

14 The Level 7 inspection is a reasonably new inspection.
15 We started it I believe approximately two years ago, and this is a
16 jurisdictional inspection process that's set up by jurisdictions.
17 And it's to encompass things like school bus inspections because
18 the interstate system, we don't really go in school buses because
19 of them being exempt from Federal Motor Carriers, but
20 jurisdictionally, there are a lot of jurisdictions that have the
21 responsibility and the enforcement community has the
22 responsibility of looking at school buses and making sure they're
23 safe operations for their jurisdictions. In those cases, they set
24 up their own inspection criteria and they're done to their local
25 jurisdiction criterias.

1 MR. YOHE: Okay. Question number 2, what is the purpose
2 of those inspections, and how do they relate to the safe operation
3 of the vehicle?

4 MR. FRANCE: The purpose of the Commercial Vehicle
5 Safety Inspection Program was to establish uniformity and
6 reciprocity for all highway enforcement and improve the safe
7 operation of commercial motor vehicles. CVSA has an Operational
8 Policy 5 that mandates and gives us directives to the
9 responsibilities of conducting these inspections and also for the
10 CVSA decal appliance.

11 Its purpose is to provide guidance and procedures for
12 driver vehicle inspections using the recommended North American
13 Standard Inspection Procedure, and it establishes the North
14 American Standard out-of-service criteria for drivers and
15 vehicles. Its objectives are to remove potentially unsafe drivers
16 and eminently hazardous vehicles from the highways. It directs
17 attention to the revisions of the Federal Motor Carrier Safety
18 Regulations, FMCSR, the hazardous material regulations,
19 transportation of dangerous goods regulations, the Canadian
20 National Safety Code, the Mexican Federal Safety Regulations and
21 compatible state and provincial rules by requiring repairs of
22 vehicle defects and appropriate remedial action for vehicle and/or
23 driver violations. It documents the violations that might be used
24 in subsequent enforcement actions. It obtains information
25 regarding carriers, drivers, vehicles and cargo relative to safety

1 and compliance and the overall program directions and evaluations.

2 The North American Standard Inspection as defined in 49
3 C.F.R. 350.105 means the methodology used by the State CMV safety
4 inspectors to conduct safety inspections of CMVs. This consists
5 of various levels of inspections of the vehicles or drivers or
6 both. The inspection criteria are developed by the FMCSA in
7 conjunction with the Commercial Vehicle Safety Alliance, CVSA, as
8 an association of states, Canadian provinces and Mexico, as
9 members agree to adopt these standards for the inspecting of
10 commercial motor vehicles in their jurisdictions.

11 MR. YOHE: Okay. Just very briefly, what is an out-of-
12 service violation and how is that determined?

13 MR. FRANCE: We have -- we publish what's considered the
14 out-of-service criteria. It covers for, for commercial property
15 carriers, 13 items. For buses, we add one more, the 14th item,
16 which is the safety exits for buses and motorcoaches. Basically
17 these criterias were set forth as eminent hazards. If you have a
18 violation of the system that is mandated in the out-of-service
19 criteria, and that defect gets to the point where its an eminent
20 hazard, it's going to break down, the vehicle will be put out of
21 service before it would be let go back out on the highway.

22 MR. YOHE: Okay. Just basically how does CVSA
23 inspection criteria relate to FMVSS criteria?

24 MR. FRANCE: We utilize the FMVSS through the Federal
25 Motor Carrier Safety Regulations when it is mandated by that

1 particular section of the regulation that says it must be built to
2 an FMVSS standard. We utilize that standard when we inspect that
3 particular item and we train inspectors to those specific items
4 when we go through the regulations.

5 MR. YOHE: All right. Does non-FMVSS compliance
6 constitute an out-of-service violation?

7 MR. FRANCE: No, sir.

8 MR. YOHE: It does not. Okay.

9 MR. FRANCE: If it is the regulation itself, and the
10 violation is out of compliance with the FMVSS, yes, it would
11 constitute out-of-service.

12 MR. YOHE: Okay.

13 MR. FRANCE: But not, not being non-compliant.

14 MR. YOHE: Okay. Basically you're saying if it's in
15 FMVSS and it's also something that relates to 393 of Federal Motor
16 Vehicle Safety Standards --

17 MR. FRANCE: Yes, sir, that's correct.

18 MR. YOHE: -- then it could be an out-of-service.

19 MR. FRANCE: That's correct.

20 MR. YOHE: All right. In many of the Federal Motor
21 Vehicle Safety Regulations, especially in 393, Part 393, there's a
22 reference to the Federal Motor Vehicle Safety Standard applicable
23 to the referenced equipment item. How does the CVSA inspection
24 process verify that these equipment items meeting FMVSS standards?

25 MR. FRANCE: Basically we try to make sure that the part

1 or piece that's addressed by the FMVSS is in compliance with our
2 out-of-service criteria and with the regulation.

3 MR. YOHE: Okay. Do you know of any state rule,
4 regulation or policy that would prevent a FMVSS non-compliant
5 vehicle from continuing to operate if found during a roadside
6 inspection?

7 MR. FRANCE: If you're talking about overall compliance
8 or having some kind of a seal or something on there, no, we would
9 look at the regulation, FMCSR.

10 MR. YOHE: Well, are you -- do you have some familiarity
11 with the accident we're talking about in Victoria --

12 MR. FRANCE: Yes, sir.

13 MR. YOHE: -- Texas? If you were to inspect that
14 vehicle, which I can tell you there was no label on it that says
15 meets Federal Motor Vehicle Safety Standards, and also there were
16 other things that were obvious, like air pressure gauges in bars
17 instead of psi, if you were to stop that vehicle or if it was
18 going through an inspection, a special event, and it was noticed
19 that it wasn't FMVSS compliant, as far as you knew, would you do
20 anything at all about it?

21 MR. FRANCE: Yeah, if it did not meet the requirements
22 of Federal Motor Carrier Safety Regulations, it would be put out
23 of service if it didn't have the required items on it.

24 MR. YOHE: Well, let's say it had -- well, okay. I'm
25 going to ask the same question that I asked Mr. Sachs. In your

1 opinion, have you ever read basically the Federal Motor Vehicle
2 Safety Standards? Are you familiar with them? There's brake
3 dynamic testing involved. There's, you know, some of it could be
4 pretty complex. I guess I'm going to ask you the same question I
5 asked Mr. Sachs. Do you think it's possible for a MCSAP inspector
6 to state one way or another whether the vehicle meets FMVSS,
7 whether it's fully FMVSS compliant?

8 MR. FRANCE: To say it's fully, no, we couldn't do that,
9 not at roadside.

10 MR. YOHE: Not at roadside.

11 MR. FRANCE: Because we can't test some of the
12 standards.

13 MR. YOHE: Okay. I believe that's all I have for Mr.
14 France. Thank you.

15 MR. KOTOWSKI: Mr. France, could you explain to us
16 briefly how an item is added to the out-of-service criteria?

17 MR. FRANCE: In order to add items to the out-of-service
18 criteria, you need to put in an issue request which goes to CVSA
19 and then it goes to the committee, whichever committee would be
20 looking at it. If it's an equipment item, it would go to the
21 Vehicle Committee. If it's a driver item, it would go needless to
22 say to the Driver Committee, and probably if it's motorcoach
23 related, it would go to the Passenger Vehicle Carrier Committee.
24 They would all put it through their committees.

25 In general, when you bring it there, you want to know

1 what you want to add, why you want to add it, and then give us
2 some solution as to how it gets added, and we also require some
3 data to substantiate the fact that it's a safety item because all
4 the out-of-service criteria items are safety items which would
5 affect the operation of the vehicle in a safe manner on the
6 highways. So you've got to have some data to support that.
7 Without data to support it, to say it is an item that is going to
8 cause a safety issue, it probably won't go into the out-of-service
9 criteria, but they will still -- they'll debate it and then the
10 committee will come back with a recommendation to the Executive
11 Committee. Once it's approved at the Executive Committee, then it
12 is sent out to the body, the whole organization, all the
13 enforcement communities, and it's voted on there and it has to
14 pass through the whole body before it's ever enacted into the out-
15 of-service criteria.

16 MR. KOTOWSKI: And are these out-of-service criteria
17 reviewed periodically or every several years or --

18 MR. FRANCE: Yes, sir. We've reviewed them, I think the
19 last time it's probably been four or five years ago. There was
20 some items in there that were taken out because there was no data
21 to support an out-of-service defect, because these were started
22 back at the beginning of the organization, which has been 25 years
23 ago. So needless to say, they've needed to have some tweaking.
24 Some items were taken out because there was no data to support
25 them. That's not saying that item couldn't be brought back up and

1 put back in if you can come with data to support it.

2 Data that's used is usually accident data, data that we
3 would get from commercial vehicle accidents that are reported by
4 law enforcement, and that data would be used to substantiate that
5 it's a contributing factor to accidents.

6 MR. KOTOWSKI: And the out-of-service criteria, how
7 often are they issued?

8 MR. FRANCE: Out-of-service criteria comes out annually.
9 It comes out every April, April 1st. Right now there are some
10 out-of-service items that will be voted on this week as we sit
11 here by Friday, and these items will be coming out in the out-of-
12 service criteria in April of this coming year.

13 MR. KOTOWSKI: Thank you.

14 DR. COURY: I'd like to pursue a line of questioning
15 with the Federal Motor Vehicle Safety Administration. This would
16 be questions for Mr. Vasser, Ms. Shelton and Mr. Minor. The first
17 line of questioning I'd like to pursue and this is primarily for
18 Mr. Vasser and Ms. Shelton is, we heard discussion yesterday about
19 a VIN verification program and we heard about it this morning, and
20 I guess my first question is to Ms. Shelton, if you could describe
21 that software and its purpose and its intended users.

22 MS. SHELTON: Sure, I can do that, and if I could
23 possibly have the slides we submitted to be shown, that would be
24 helpful. We developed what I'm going to call a VIN routine in our
25 roadside inspection software known as ASPEN. The routine was

1 intended to be used by the inspectors primarily for trucks
2 crossing, for the Cross-Border Demonstration Project.

3 I'll also tell you what it's not but it really is not a
4 VIN decoding. It is not backed by a database.

5 Let me show you what it does do. When an inspector
6 enters a VIN, the program checks whether or not the VIN has 17
7 characters. It does not verify every single character. It
8 basically shows the inspector if he didn't enter 17 characters,
9 that perhaps he should go back and enter more characters or check
10 the VIN that he entered. That's the first item it checks.

11 Secondly, the VIN validation routine checks for illegal
12 characters in the VIN such as Q and O and certain characters that
13 can't be in a VIN.

14 The next routine, it checks the check digit which we
15 heard Mr. Sachs talk about, looking to the right and left of the
16 calculated check digit to make sure it's proper. Okay. And
17 that's the display.

18 The fourth item, they check the model year entered into
19 ASPEN against the model year derived from the VIN. If they don't
20 agree, it sends a message like there, enter, you know, the year
21 doesn't match what you've entered, and so you're supposed to go
22 back and reenter some data.

23 Finally, the country of manufacture is checked, and if
24 the country is the United States or Canada, there's no further
25 message. If it's Mexico, the program looks at the year of

1 manufacture. If the year of manufacture is 1996 or later, no
2 error message is provided. If it's 1995 or prior, there will be a
3 message that you need to do further -- something further with this
4 vehicle. If the country of manufacture is a country other than
5 the United States, Canada or Mexico, this message will appear.

6 Okay. Again, there was mention yesterday of software
7 that the -- what we'll call the proof of concept software that was
8 tested first in the field, which did actually have a message that
9 a vehicle may comply with FMVSS or may not comply with FMVSS.
10 That was the proof of concept software and this is the actual
11 software that was installed into the system.

12 DR. COURY: I'd just like to clarify a few things. So
13 is it correct to say that these were software modifications to the
14 existing ASPEN application?

15 MS. SHELTON: Correct. It's what Jamie refers to as a
16 routine within our ASPEN software.

17 DR. COURY: And could you explain what ASPEN is and how
18 it's used?

19 MS. SHELTON: Okay. I'd like to defer to Jamie on that.

20 MR. VASSER: The ASPEN software, I'd like to refer to it
21 as a tool to be used by the inspector. It's to record his
22 findings in the course of a roadside inspection from the basic
23 information as to the date, the time, location of the inspection,
24 down to the driver and vehicle specifics and note each violation
25 discovered during the inspection.

1 DR. COURY: And what happens to that date once it's
2 recorded in ASPEN?

3 MR. VASSER: We send it up through our systems and it's
4 eventually stored in our primary database system, MCMIS.

5 DR. COURY: And what is that used for?

6 MR. VASSER: It is our system of record. We use it for
7 analytical purposes. We use the inspection defects for weighing
8 against a carrier's safety rating along with their crash and
9 compliance review data.

10 DR. COURY: So if a particular VIN is found not to be
11 compliant or doesn't pass the checks that occurred at ASPEN level,
12 is that data carried on all the way up and into your Motor Carrier
13 Management Information System?

14 MR. VASSER: The VIN does go all the way up but there
15 are no further checks on the compliance of it, no.

16 DR. COURY: Okay. Let me -- if I could stay with you
17 for a while, Mr. Vasser. In one of our exhibits, this is Section
18 1 NTSB Exhibit Y, and I think Ms. Shelton just referred to it,
19 there is a discussion about doing a FMVSS verification as a
20 requirement for software development. Is this the requirement
21 that Ms. Shelton referred to as a part of the BETA test?

22 MR. VASSER: I'm not really familiar with what exhibit
23 you're referring to.

24 DR. COURY: There's an exhibit, it's in Section 1 NTSB
25 Exhibit Y, which includes a series of e-mails and this one is

1 discussing estimate for adding FMVSS verification property to
2 VINchecker.pas, and in it, there is discussion of -- to add
3 additional processing to determine if the inspector needs to
4 verify the vehicle satisfies FMVSS. So -- and there is discussion
5 in here about what's required in order to do that, and my question
6 is, is this a -- was this an original intent in this BETA program
7 to incorporate that requirement?

8 MS. SHELTON: Yes.

9 MR. VASSER: The proof of concepts software that was
10 distributed, yes, that was the purpose of that. But for our ASPEN
11 software, the original intent was just for data quality purposes
12 to ensure that the VIN was input in the correct format.

13 DR. COURY: What led you to believe that your proof of
14 concept, when you tried to do this or did you try to do this in
15 your proof of concept? And if you did, what led you to believe
16 that you couldn't do it?

17 MR. VASSER: That we could not do it? We based both the
18 proof of concept software and what's currently in ASPEN now on
19 requirements provided to us by one of program offices, and that
20 was our -- that plus using the C.F.R. 49, 565.6, was our basis for
21 validating the VIN.

22 DR. COURY: So if I'm understanding correctly then,
23 there was no intent to use the VIN to try to establish compliance
24 with FMVSS?

25 MR. VASSER: That was a presumption that it could be

1 done but our final product in ASPEN, we decided it would best to
2 only indicate if there was a possible problem, not that the
3 vehicle definitely was FMVSS compliant.

4 DR. COURY: If I could refer for a moment to a DOT
5 exhibit. This is the memorandum in Section 2, DOT Exhibit G, it's
6 a memorandum for ASPEN modifications for implementation of
7 U.S./Mexico Cross-Demonstration Program. And in one of the
8 statements that's in here is that the ASPEN inspection software
9 was modified, and this is a memorandum of September 2007, that the
10 ASPEN software is modified to perform an electronic validation of
11 the values in the VIN, which we've already established, but the
12 validation compares the VIN values to the FMVSS criteria including
13 year and country of manufacture. So does that -- were there
14 additional modifications made to ASPEN to accomplish that?

15 MS. SHELTON: No.

16 MR. VASSER: No, that was in the base software.

17 CHAIRMAN HERSMAN: And, Dr. Coury, could you restate
18 which exhibit you're referring to? Is that DOT/OIG exhibit?

19 DR. COURY: Yes. Section 2, DOT/OIG Exhibit G.

20 In looking at the criteria used for determining the
21 rationale for doing this VIN verification, could you elaborate on
22 what that -- what those assumptions were and what the rationale
23 were for those criteria?

24 MR. MINOR: If you're referring to the concept of
25 looking at the year of manufacture, so that if the vehicle is

1 manufactured in 1996 or later, then we would operate under the
2 assumption that it is likely to meet the FMVSSs, that's based on
3 some conversations that the agency held with the vehicle
4 manufacturers down in Mexico to find out about the types of
5 vehicles that they were producing and whether those vehicles meet
6 the FMVSSs. So we were relying on information from the Truck
7 Manufacturers Association as well as the vehicle manufacturers
8 down in Mexico, many of which were presented to us as being
9 subsidiaries of a lot of U.S. manufacturers, and at that time,
10 they indicated that the vehicles that they built in 1995 and
11 earlier years were not likely to comply with the FMVSSs, while
12 those built in 1996 or later were likely to comply with the
13 FMVSSs.

14 DR. COURY: So this criteria is not in the current
15 version of the modifications to ASPEN for VIN verification?

16 MS. SHELTON: No, it is. It is.

17 DR. COURY: That is part of the --

18 MS. SHELTON: Right.

19 DR. COURY: So that the underlying assumption if I have
20 it correctly is that if the VIN -- if the vehicle is 1996 or
21 newer, you're assuming that if the VIN is correct, if it passes
22 your initial correct, your check, that it will be considered
23 compliant with FMVSS standards?

24 MS. SHELTON: It may be compliant.

25 DR. COURY: May be compliant.

1 MS. SHELTON: Right.

2 DR. COURY: Is there any indication that to the person
3 who's entering this data that that vehicle may not be compliant?

4 MR. VASSER: If the VIN entered shows that the model
5 year is prior to 1997, 1996 or greater, and it passed all the
6 other checks and the country of manufacture is Mexico, there's a
7 warning displayed that the vehicle may not be FMVSS compliant.

8 DR. COURY: And these changes in the ASPEN software,
9 those have been carried forward into current release programs?

10 MR. VASSER: Yes.

11 DR. COURY: And in the release notes for ASPEN 2.8.2,
12 and this is November 2007, it says enhancements and other
13 modifications to ASPEN 2.8.2 and one of the enhancements is
14 referenced to test a vehicle's compliance with Federal Motor
15 Vehicle Safety Standards and Canadian Motor Vehicle Safety
16 Standards. Has there been some other development beyond what
17 we've talked about to do that kind of compliance testing in ASPEN?

18 MR. VASSER: No.

19 DR. COURY: So is there any current ongoing effort to
20 develop the capability to do FMVSS compliance verification based
21 on VIN?

22 MR. VASSER: No.

23 DR. COURY: Okay. My final question is to Mr. Minor.
24 We've talked about this NPRM and the fact that it's been with the
25 one that was withdrawn in 2005. Could you help explain to us what

1 the NPRM was intended to do and why it was withdrawn? If you
2 could just remind us again.

3 MR. MINOR: At the time we published the notice of
4 proposed rulemaking in 2002, the Department of Transportation
5 operated under an interpretation that the use of a commercial
6 motor vehicle to transport passengers or freight into the United
7 States constituted importation into the United States. So based
8 under the assumption that we were considering these vehicles to be
9 imports at that time, we put the NPRM out on the street to
10 establish a process for trying to ensure that the Canadian and
11 Mexican carriers operating in the United States, that their
12 vehicles did have proof of compliance with the FMVSSs.

13 After reviewing the public comments to the docket, we
14 came to the conclusion that there were alternative interpretations
15 of the term importation and decided that the roadside inspection
16 process was an acceptable alternative to ensuring the safe
17 operation of those vehicles in the United States, that if we
18 performed a comprehensive inspection of the vehicles to ensure
19 that they comply with all the Federal Motor Carrier Safety
20 Regulations, including those Federal Motor Carrier Safety
21 Regulations that cross-reference the Federal Motor Vehicle Safety
22 Standards, that that was an assurance that the vehicles were in
23 safe and proper operating condition for use on the U.S. highways.

24 DR. COURY: Thank you very much. That's concludes my
25 questioning for FMCSA.

1 MR. KOTOWSKI: I just have I guess one follow up
2 question. I guess it relates back somewhat to the questioning
3 from yesterday again but for Mr. Minor.

4 We stated that we were aware that the FMCSA has
5 repeatedly said that they're likely to comply with the standards
6 if it was manufactured after 1996, and that leads me to believe
7 and if I'm incorrect, then let me know, but that leads me to
8 believe that the FMCSA is aware that there may be other vehicles
9 out there, that there are a number of vehicles that are not
10 compliant with the FMVSS that we're not able to capture under this
11 particular system. Would that be a true statement?

12 MR. MINOR: I think that our decision in the rulemaking
13 process is a reflection that the manufacturer's certification
14 label is the manufacturer's statement that the vehicle was built
15 to meet the FMVSSs on that date, but once the vehicle has been
16 introduced into commerce, and it's under the maintenance program
17 of a carrier, and you have no way of knowing whether the carrier
18 has properly maintained the vehicle to continue to meet the
19 original performance requirements under the FMVSS. So we approach
20 it from the standpoint that we're trying to ensure compliance with
21 the Federal Motor Carrier Safety Regulations. We're not trying to
22 ensure that the vehicle has been maintained to meet all the
23 specific performance requirements under the FMVSSs, that we
24 recognize that that certification label only applies to the
25 manufacturer's validation that the vehicle was built to meet all

1 the requirements in effect at the time it was manufactured, meets
2 all the FMVSSs that applied, and we're approaching it from a
3 standpoint of trying to make sure that the carrier is operating a
4 safe vehicle and that it meets all the Federal Motor Carrier
5 Safety Regulations at the time. So we don't try to verify that a
6 vehicle does or does not meet the FMVSSs regardless of whether it
7 has a certification label.

8 MR. KOTOWSKI: And in the absence of such a label, then
9 it is the FMCSA's position that we would still be able to ensure
10 that the vehicle is safe to operate based upon those inspections?

11 MR. MINOR: It's our belief that if a vehicle meets all
12 of our Federal Motor Carrier Safety Regulations which apply to all
13 carriers, regardless of the country of domicile, when they're
14 operating in the U.S., they all have to meet the same safety
15 requirements under our Federal Motor Carrier Safety Regulations,
16 and if they meet all of those requirements, including the cross-
17 references to the FMVSSs, that it is safe for operation in the
18 U.S.

19 MR. KOTOWSKI: And are all the buses that come across
20 the border, are they subjected to a Federal Motor Vehicle Safety
21 Inspection at the time they enter the U.S.?

22 MR. MINOR: If we select a bus for inspection, and it
23 undergoes our comprehensive Level 1 inspection, and it passes that
24 Level 1 inspection, then we believe it is safe for operation in
25 the U.S. and if there are items where it fails our Federal Motor

1 Carrier Safety Regulations, then those violations may be cited and
2 if those violations are severe enough to be covered by the North
3 American Uniform Out-of-Service Criteria, the vehicle will be
4 placed out of service until those defects are corrected.

5 MR. KOTOWSKI: Okay. My question was are all the buses
6 that come across the border subjected to a Federal Motor Vehicle
7 Safety Inspection?

8 MR. MINOR: We do not currently have a program that
9 would inspect every single bus that comes across the border every
10 single trip. We do not do that.

11 MR. KOTOWSKI: Can you give us an estimate of how many
12 vehicles, how many motorcoaches are inspected a day that come
13 across the border?

14 MR. MINOR: That are inspected per day?

15 MR. KOTOWSKI: That are inspected per day, yes, sir.

16 MR. MINOR: I'm unable to provide that information at
17 this time.

18 MR. KOTOWSKI: Could you provide to this Board in the
19 future, the number of buses that cross the border and the number
20 of buses that are inspected at the border?

21 MR. MINOR: We have basic year end totals for the number
22 of buses that cross the border and the number of bus inspections
23 we do but I don't have it on a per day basis.

24 MR. KOTOWSKI: Okay. Could you give us the latest
25 statistics that you have on the number of buses crossing and the

1 number of buses inspected?

2 MR. MINOR: If I could review my notes for just a second
3 here.

4 MR. KOTOWSKI: Okay.

5 MR. MINOR: The latest information I have is from 2007,
6 and I believe there were 136,400 bus crossings. So that's not
7 separate, individual buses, but the number of times a bus crossed
8 over the border, that's 136,000 on the northern border and we have
9 265,160 bus crossings in the southern border in 2007.

10 MR. KOTOWSKI: And how many of those buses were
11 inspected?

12 MR. MINOR: As far as the actual number of inspections
13 that were conducted, let me check my notes here. For the northern
14 border, we performed 5,000 bus inspections in the year 2007 and in
15 the southern border we performed 13,500 inspections.

16 MR. KOTOWSKI: Thank you. I have no further questions.

17 MR. YOHE: Mr. Minor, or any of the FMCSA folks, we talk
18 about pre and post-1996 and we're basically saying that the post-
19 1996 heavy trucks, is that basically what we're talking about,
20 that they meet the FMVSS standards. Is that correct? Most of the
21 post-1996 trucks.

22 MR. MINOR: That is correct. That's the information
23 that we're relying on from the truck manufacturers and the
24 inference is that it was for use in looking at trucks, not for
25 buses.

1 MR. YOHE: Okay. And so if they meet the standards, why
2 don't they just have certification and a sticker on them or do
3 they? Because if they meet the standards, I mean that way it
4 removes the ambiguity and we heard Mr. France say that certainly a
5 MCSAP officer, I mean he couldn't certify -- he couldn't credibly
6 say that the vehicle's fully compliant.

7 MR. MINOR: For a question like that, we have to defer
8 to the vehicle manufacturers as to why they do or do not affix the
9 certification labels.

10 MR. YOHE: Okay. That's all. Thank you, Mr. Minor.

11 MR. KOTOWSKI: That concludes the questioning by the
12 Tech Panel to this -- at this time.

13 CHAIRMAN HERSMAN: Okay. I know that the Tech Panel
14 probably has some more follow-up questions. And so what we'll do
15 is we'll take a short break, we'll go to the Parties and the Board
16 of Inquiry and then we'll go for a second round. If everybody
17 could be back in 10 minutes, at 10:35, we'll begin again.

18 (Off the record.)

19 (On the record.)

20 CHAIRMAN HERSMAN: We'll now continue with the
21 questioning for the third Panel, as we continue our rotation
22 around for the Parties. We'll start out questions with NHTSA.

23 MR. HARRIS: Thank you, Madam Chair. I'd like to direct
24 some questions to Mr. Sachs. Specifically, Mr. Sachs, can you
25 explain the cooperation that exists between NHTSA, FMCSA and the

1 CBP on importation programs?

2 MR. SACHS: Yes, I can. Thank you. CBP has people
3 obviously positioned at each of the ports-of-entry and their our
4 eyes and ears as to what's coming in. NHTSA is a small agency.
5 We have around 500 people. We're mostly in Washington with a
6 smattering in our Regional Offices. We don't have any inspection
7 teams deployed to the various ports-of-entry. We're dependent on
8 CBP to do our work for us there to see what's coming in.

9 There is a requirement as I mentioned for the importer
10 of any motor vehicle to file an HS-7 declaration form. Those
11 forms are filed with CBP. If a Customs House Broker is used for
12 the entry, there's an electronic equivalence to the HS-7 that's
13 filed. All of that goes through the CBP database. So we're
14 dependent on CBP to tell us what's coming in.

15 MR. HARRIS: Can you also briefly describe what
16 assistance we provide to the states with respect to non-conforming
17 vehicles?

18 MR. SACHS: What assistance we provide to the states
19 with respect to non-conforming vehicles? Can you provide me a
20 little bit more --

21 MR. HARRIS: Yeah. Have we provided any assistance to
22 the licensing and registration officials with respect to non-
23 conforming vehicles?

24 MR. SACHS: Well, when someone presents a motor vehicle
25 to a State Department of Motor Vehicles for registration,

1 oftentimes the state will inquire as to whether the vehicle was
2 originally manufactured to comply with all applicable standards
3 and if there's a question as to whether it really is, the state
4 will oftentimes come to us for some kind of a verification. This
5 arises most often in the context of the small motor scooters that
6 are offered for registration around the country, when there's some
7 doubt as to whether the vehicle meets our standards.

8 What we look to, as I testified previously, at least in
9 that context, we don't have a database on vehicles that are built
10 to our standards but there are certain procedural requirements the
11 motor vehicle manufacturers have to meet. A manufacturer has to
12 identify itself to us and the products it manufactures to our
13 standards no later than 30 days after the manufacturing process
14 begins. A manufacturer has to submit to use VIN deciphering
15 information, and if the manufacturer is not located in the United
16 States, it has to designate a U.S. resident as agent for the
17 service of process. So when we get those inquiries from State
18 DMVs, we look to see whether the particular scooter manufacturer
19 has met those requirements, but ultimately it turns on whether the
20 manufacturer is actually certified, has affixed a label to the
21 vehicle in the right position.

22 MR. HARRIS: Can you also briefly describe how NHTSA's
23 defects authority applies also to motor vehicles that are imported
24 here into the U.S.?

25 MR. SACHS: Well, you know, we do run a very significant

1 defects investigation program, since that's one of the principal
2 functions of our agency. And manufacturers have an obligation
3 under our statute and regulations to provide owners of vehicles of
4 notification of any safety-related defects that might develop in
5 their products and to remedy those defects without charge. If an
6 importer is bringing a vehicle into the United States, the
7 importer is defined in our statute as a manufacturer. So the
8 importer could be held responsible to remedy a safety-related
9 defect or a noncompliance of the safety -- the Federal Motor
10 Vehicle Safety Standards in an imported vehicle.

11 MR. HARRIS: What programs does NHTSA have in place to
12 determine compliance once a vehicle is certified as being
13 compliant to the standards?

14 MR. SACHS: Well, as I indicated, we do run our own
15 compliance tests. We try to test pretty much everything that's
16 out there on the market over about a five-year period, and we, to
17 my knowledge, subject vehicles to a full battery of tests to
18 establish compliance with most or all of the standards to which
19 they must meet and if we discover a potential noncompliance, we
20 certainly get back to the manufacturer and have them -- we engage
21 in a discussion with them through our investigative process and
22 have them prove to them that they exercise due care in certifying
23 a product. Also we do have an auto safety hotline if any consumer
24 out there suspects that a vehicle does not comply with a
25 particular standard, they can certainly give us that information

1 through the consumer hotline, and we will investigate that as well
2 if there are a sufficient number of similar complaints that
3 warrants such action.

4 MR. HARRIS: Could you briefly explain NHTSA's authority
5 to deal with rendering inoperative any particular requirements
6 that's applicable FMVSS certification?

7 MR. SACHS: Yes. Thank you. I appreciate your bringing
8 that up because that was kind of a glaring absence in what I said
9 before, and I said once a vehicle was sold for purposes other than
10 resale, it's no longer subject to many of the restrictions in our
11 statute.

12 But there is one statutory provision that states that no
13 motor vehicle manufacturer, dealer, distributor or repair business
14 shall make inoperative any device or element of design installed
15 on a vehicle in compliance with a Federal Motor Vehicle Safety
16 Standard. Now the most apparent instance of that would be if you
17 brought a vehicle let's say into a dealer, and the dealer snipped
18 off your safety belts for you. Then the dealer would be making
19 inoperative the vehicle with respect to an aspect of compliance
20 covered by a standard, and that would be prohibited by that
21 particular statute that prohibits it. There is -- we could bring
22 civil penalties against the dealer in that instance.

23 We did have an investigation. It was our first
24 investigation of the rendering inoperative. It was then called
25 rendering inoperative provision. Back in around 1989 and 1990, we

1 had an investigation against Auto Tint Installation Shops which
2 were installing tint film that reduced the light transmittance
3 level below 70 percent which is required in the appropriate
4 standard. And so this was a classic rendering inoperative. It
5 was a commercial enterprise. They was doing something to bring
6 the vehicle out of compliance.

7 MR. HARRIS: Does this rendering inoperative authority
8 apply to buses and motorcoaches?

9 MR. SACHS: It would apply to any class of vehicles that
10 we regulate. Now we regulate motor vehicles. Motor vehicles are
11 defined in our statute that is driven or drawn by mechanical power
12 and manufactured primarily for use on public roads. You have in
13 49 C.F.R. 571 definitions of various vehicle types including bus.
14 I believe a motorcoach would qualify as a bus. As a bus, it's
15 subject to standards, and I believe anyone who takes a bus out of
16 compliance with one or more applicable standards, provided they're
17 a manufacturer, dealer, distributor or repair business, they could
18 stand in violation of the making inoperative prohibition.

19 I would add, too, that repair business has a very broad
20 definition in our regulations and in our interpretations of those
21 regulations to encompass almost any commercial enterprise.

22 MR. HARRIS: You provided earlier testimony on a program
23 that deals with non-conforming vehicles. Can you give us some
24 examples of instances where we have taken action and caused either
25 the vehicle to be exported through CBP or other measures?

1 MR. SACHS: Well, as I mentioned, we do monitor what's
2 going up on eBay constantly. There are certain vehicles that are
3 very popular in the United States that should not here because
4 they haven't been determined eligible for importation and they
5 haven't been brought in by registered importers. Many times they
6 could be smuggled into the United States and when we see those, we
7 do get in touch with the CBP to assure the vehicle is exported
8 from the United States.

9 There's been an interest in recent years in bringing in
10 -- these are U.S. manufactured right-hand drive Jeep Cherokees
11 that are manufactured by Chrysler Corporation for sale in Japan,
12 and as a consequence, they're not labeled by Chrysler Corporation
13 as complying with all applicable Federal Motor Vehicle Safety
14 Standards. They're labeled for export only, and they're sent to
15 Japan for -- obviously for use in Japan. Well, there's a rather
16 brisk trade right now in bringing those back to the United States
17 for use by rural letter carriers. So we've had frequent occasion
18 in recent years, particularly in the last year, to ensure those
19 vehicles are not properly imported. Many of them are improperly
20 declared as conforming motor vehicles or improperly declared as
21 off-road vehicles. So we are very determined that they not be
22 imported in that fashion, and we take every effort to get them out
23 of the country, and if necessary, to prosecute through cooperation
24 with our own Office of Inspector General and Immigration Customs
25 Enforcement and the EPA which also has a responsibility over some

1 aspects of vehicles to get those out.

2 MR. HARRIS: Can you briefly describe NHTSA's current
3 program to do outreach for addressing non-compliant equipment
4 items?

5 MR. SACHS: Addressing non-compliant equipment items.
6 Well, yes, I can. You know, people may be aware that back in the
7 summer of 2007, we had what was called the summer of recalls where
8 we had toothpaste with diethylene glycol being imported from a
9 specific -- Thomas the Tank Engine being imported with lead-based
10 paint, food stuffs that were tainted, and there was a Presidential
11 Interagency Taskforce that was convened on import safety and they
12 came out with a detail of the strategic guidelines and an action
13 plan in November of last year which encouraged agencies to brief
14 each other on their importation requirements and to also issue
15 best imported practices for the importers of products that they
16 regulate. And we are the first agency in the Federal Government
17 to put out a recommended or a proposed set of recommended best
18 imported practices. We're now considering comments we got on
19 those and we're going to be issuing them in final form, and we
20 also brief industry groups on how to manufacture equipment items
21 that are subject to our standards to ensure that they comply with
22 our standards.

23 MR. HARRIS: Thank you, Mr. Sachs. My next set of
24 questions would be for Mr. Franco (sic). You indicated earlier in
25 your testimony some of the requirements that you go through for

1 doing either a Level 1 through a Level 5 inspection, motor
2 vehicles and more particular, motor carriers. Could you briefly
3 explain some of the requirements you go through for doing I guess
4 a Level 1 brake inspection?

5 MR. FRANCE: Brake inspection is usually done at a Level
6 1 situation. It could also be done at a Level 2. At a Level 2,
7 you would just verify that they are working, have the driver apply
8 them. You don't go underneath.

9 If you're doing a Level 1, you're going to underneath
10 and you're going to look at all the brake system. You would look
11 at all the component parts that you can look at. All of our
12 inspection procedures are visual inspections. There's no pulling
13 apart of any equipment on the vehicle itself. For most commercial
14 motor vehicles, they don't use vacuum plates on their brake
15 systems. However, in the motorcoach industry they do use vacuum
16 plates. So when you start looking at component parts, the
17 foundation brake system, you cannot see all the parts behind the
18 vacuum plates. You do check to make sure if they are airbrake
19 systems and they are -- type brake chambers, what the push rod
20 throw is, and we have a set standard that came from the industry
21 of what constitutes a brake in compliance, what does not. So we
22 measure those brakes. Then in the out-of-service criteria with
23 CVSA, we use what we call a 20 percent criteria which means if 20
24 percent or more of your brakes are out of adjustment, that vehicle
25 does not continue until they're fixed.

1 But you look at all the components, you look at all the
2 brake lines, you look the mountings, you look at the brake system
3 for its condition. Is it rusted? Does it have holes in the brake
4 chambers? Are they permanently attached? Is there any movement?
5 Are there any worn parts on it?

6 MR. HARRIS: In your inspection, is the inspection
7 predicated on the requirements that are established in FMVSS 121?

8 MR. FRANCE: We do use the 121 standard because that's a
9 referral when you look at brakes and look at brake systems in
10 Federal Motor Carrier Safety Regulations. So when we train
11 inspectors to that, we now provide them with a copy of the 121
12 brake standard for airbrake systems.

13 MR. HARRIS: I assume you are familiar with the accident
14 bus?

15 MR. FRANCE: I am somewhat familiar, not totally
16 familiar.

17 MR. HARRIS: Do you realize that this had a European
18 brake system on it?

19 MR. FRANCE: No, sir, I'm not.

20 MR. HARRIS: Okay. Well, the next line of questions I
21 was going to ask you was the difference between a European brake
22 system and one required under the Standard 121 but I assume you
23 don't know the difference?

24 MR. FRANCE: No, I wouldn't know the difference.
25 Depending on the manufacturer, some of the Van Houle (ph.) systems

1 that are in this country, they're using for American standard
2 buses.

3 MR. HARRIS: Okay. Well, I'd just like to point out for
4 the record, that there are substantial differences and that the
5 Board may want to look into this.

6 CHAIRMAN HERSMAN: Thank you.

7 MR. HARRIS: Thank you.

8 CHAIRMAN HERSMAN: Customs and Border Protection, do you
9 have any questions?

10 MR. GARZA: No, ma'am, we have no questions.

11 CHAIRMAN HERSMAN: Thank you, Mr. Garza. How about ABA?

12 MR. LITTLER: Yes, ABA has a few questions, and I'm
13 going to direct the first several questions to Mr. Sachs.

14 Mr. Sachs, how do Border port inspectors determine
15 compliance to the FMVSS if the vehicle doesn't have a label and
16 you don't maintain a database or a list of approved vehicles? Do
17 they routinely contact the agency with questions or is there a
18 connection between NHTSA and the Border and port inspectors?

19 MR. SACHS: There's not a routine, constant contact. If
20 a vehicle should be imported that appears to be a motor vehicle,
21 meets the definition of motor vehicle, is lacking the
22 certification label and has one or more readily apparent
23 noncompliances with the standard, let's say it has tires that lack
24 the proper tire designation, proper DOT labeled rims, lighting
25 equipment that isn't properly marked, the Customs agent at the

1 border could contact us with regard to that matter for further
2 guidance. They'll furnish us oftentimes with photographs of the
3 particular aspect of the vehicle that they're focusing on for our
4 confirmation as to whether the standard has or has not been met.

5 MR. LITTLER: So this is something that's routinely
6 done?

7 MR. SACHS: Well, it doesn't come up in the context of
8 motorcoaches coming across the border. It comes up very
9 frequently with motor scooters, motorcycles, that type of thing
10 that are more likely to be out of compliance, where there's some
11 presumption that, you know, we have to -- they have to actually
12 focus on that because there's a history there, there's a record
13 where these things are coming in, in a non-compliant state.

14 MR. LITTLER: Okay. Thank you. We heard this morning
15 that not all of the Federal Motor Vehicle Safety Standards are
16 referenced within the body of the Federal Motor Carrier Safety
17 Regulations, you know, such as interior flammability standards,
18 controls and displays, accelerators, even the wheelchair lift
19 standards. If a vehicle is not labeled as compliant, how would an
20 inspector determine full compliance as currently required under
21 the Motor Vehicle and Highway Traffic Safety Act of 1966 with only
22 the FMCSRs to rely on?

23 MR. SACHS: Well, as I testified, hopefully the
24 inspector would look for the DOT certification label affixed by
25 the original manufacturer to establish full compliance of the

1 vehicle when originally manufactured.

2 MR. LITTLER: In this case, the subject bus didn't have
3 that certification and yet it made it up.

4 MR. SACHS: Well, it's my understanding at the time --
5 I'm not aware of the circumstances when it first came across, but
6 if the subject were engaged strictly in cross-border trade, it
7 would not have met the definition of import, so it would not have
8 triggered the need for that.

9 MR. LITTLER: But we, at least within the association,
10 are aware of other buses that have made it in through various
11 ports and we don't believe our compliance. So I guess that was
12 where that question was going. The other questions are directed
13 to -- well, the next one would be to FMCSA and CVSA, and it's at
14 the border, do we know in the vehicle check, when we're reviewing
15 the vehicle, are we also looking at compliance with the vehicle
16 weight standards, axle weight standards and those requirements
17 under Title 23, that federal highways would have under say the
18 bridge formula, size and weight limits?

19 MR. MINOR: Generally FMCSA would not be doing size and
20 weight enforcement, actually doing axle weights, we would not be
21 doing that.

22 MR. LITTLER: Okay. In this case, the subject bus was
23 at the limits on the axle, over the limits with a full load.
24 Again to FMCSA. Does FMCSA, do you have any knowledge, and I'll
25 leave this to anyone on the Panel from the agency, have any

1 knowledge of how many Mexican buses entering the U.S. have FMVSS
2 certification plates? Is there any collection of or any review of
3 the bus information of vehicles coming across?

4 MR. MINOR: If you're looking for a definitive number on
5 the exact number of buses that come across with the certification
6 label?

7 MR. LITTLER: Yeah, is the information being collected I
8 guess? Is it something that's being looked at?

9 MR. MINOR: We do not have a definitive document that
10 will tell you exactly how many buses come across with the
11 certification label.

12 MR. LITTLER: Thank you. And I guess the last question,
13 I got into this a little yesterday and I just want to bring it
14 back up around again because we again heard of the question of
15 vehicles, the assumption that vehicles built in Mexico after 1996
16 were assumed or at least may be compliant with FMVSS, and I really
17 want to understand how the agency made the assumption that buses
18 built in Mexico from 1996 and later were likely to be compliant
19 with the FMVSS based on the letter from the truck manufacturers,
20 and as we know, the truck manufacturers were speaking of trucks
21 and have no direct knowledge of bus manufacturing in Mexico.

22 MR. MINOR: I'd like to clarify that the agency did not
23 make any assumption that the approach that we're using for trucks
24 apply to buses, that the docket that's in one of the exhibits that
25 indicates that the software indicated that the bus met the FMVSSs,

1 that that was simply the inappropriate application of that
2 software to the bus inspection.

3 MR. LITTLER: Right, but the memo that went out, the
4 interoffice memo or the memo that went out from the agency in 2005
5 to the field offices states that it's likely that buses
6 manufactured or that commercial motor vehicles manufactured after
7 1996, when we were talking of trucks, it all of a sudden became
8 all commercial motor vehicles and I guess that's the question
9 we've got is, we seem to have had buses lumped in and I'm
10 wondering if that was considered during the drafting of that memo,
11 whether there were significant or substantial differences between
12 trucks and buses?

13 MR. MINOR: The 2005 memo was put out with the
14 understanding that we thought that at some point in the not too
15 distant future from then, we would be opening the border to
16 commercial motor vehicle traffic, and basically given that the
17 only opening of the border that has happened was under Cross-
18 Border Demonstration Project, the 2007 document is the one that we
19 are actually using today as opposed to the 2005 guidance.

20 MR. LITTLER: Thank you. That's all the questions that
21 I had.

22 CHAIRMAN HERSMAN: Volvo/Prevost.

23 MR. BERTRAND: Yes. One question to Mr. Minor. We have
24 heard that there are quite a few vehicles, especially buses coming
25 through the border from Mexico. And, I would imagine several of

1 those or most of those are also coming back on a regular basis,
2 and the VIN are checked but are they recorded so the vehicle don't
3 have to go through a so intensive inspection every time they go
4 through?

5 MR. MINOR: For vehicles that actually pass the Level 1
6 inspection, the common practice is to apply a CVSA inspection
7 decal so that other inspectors will know that that bus has been
8 inspected recently, and generally if the bus has CVSA decal that's
9 been issued within the previous three months or so, and there's no
10 visible defects or other problems with the vehicle, then they
11 typically would not subject it to another Level 1 inspection
12 during that three month period that the CVSA decal is valid, so
13 that the CVSA decal is our means of not continually inspecting the
14 same vehicle over and over again.

15 MR. BERTRAND: Thank you. My other questions is to Mr.
16 Sachs. Referring to the NPRM that was withdrawn in 2005, if I
17 remember well, one of the reasons it was withdrawn was because it
18 was considered that commercial vehicles were considered to be
19 equivalent with FMVSS but not necessarily fully compliant. Am I
20 right saying that?

21 MR. SACHS: We were relying on the FMCSA program to
22 conduct inspections. We said that that offered a sufficient
23 assurance that motor vehicle safety would not be diminished by the
24 operation of those vehicles in the United States.

25 MR. BERTRAND: Thank you. No further questions.

1 CHAIRMAN HERSMAN: UMA.

2 MR. PRESLEY: Yes, ma'am. I have a couple of questions.

3 Mr. Minor, am I safe in assuming that I can operate a
4 fleet of 2005 Volvos in the United States as long as -- as far as
5 the FMCSA is concerned as long as I meet the Federal Motor Carrier
6 Safety Regulations?

7 MR. MINOR: As long as the vehicles meet our Federal
8 Motor Carrier Safety Regulations, and the carrier that's
9 responsible for the operation has the appropriate authority, then,
10 yes.

11 MR. PRESLEY: Thank you. Mr. Sachs, am I safe to assume
12 that NHTSA probably is not going to come and knock on my door
13 while I'm operating that fleet?

14 MR. SACHS: That's a safe assumption, yes.

15 MR. PRESLEY: Thank you.

16 CHAIRMAN HERSMAN: I'm sorry. IRP. I was just so
17 intrigued by the last answers, I had to write them down. Thanks.

18 MS. PARIS: Thank you very much. We have no questions.

19 CHAIRMAN HERSMAN: And DOT/OIG.

20 MR. COMÉ: We have no questions.

21 CHAIRMAN HERSMAN: And FMCSA?

22 MR. HUGEL: Thank you, Madam Chair. I have several
23 questions.

24 First for Mr. Sachs. I'd like to clarify again your
25 testimony related to the legal significance of the Federal Motor

1 Vehicle Safety Standards. From what I understand, they apply to
2 the manufacturers that have to certify that a given vehicle
3 manufactured for sale in this country meets those standards? And
4 secondly, when a vehicle is imported into the country, that it
5 meet those standards. Is that correct?

6 MR. SACHS: Yes, as I testified, the FMVSS are new
7 vehicle standards. The manufacturer is required to certify that
8 the vehicle as newly manufactured conforms to the standards and we
9 do require at the time of importation. For a vehicle to come in
10 without, you know, any further involvement, it would have to be
11 certified, have the requisite certification label.

12 MR. HUGEL: Thank you. Now once that vehicle enters the
13 stream of commerce, are you aware of any federal law or regulation
14 that prohibits a vehicle that is not at that moment in compliance
15 with those standards from operating on our nation's highways?

16 MR. SACHS: As I testified, 49 U.S.C. 30112(a) prohibits
17 the introduction into interstate commerce of the vehicle that's
18 built after the date that an applicable standard takes effect
19 unless the vehicle complies with the standard and is covered by a
20 certification issued by the original manufacturer, but there is an
21 exception to that prohibition with respect to vehicles that have
22 already been sold for purposes other than a resale. So if a
23 vehicle is already in a used condition, that prohibition does not
24 apply.

25 MR. HUGEL: And, in fact, if a vehicle meets those

1 standards, has received the certification through whatever source,
2 and the minute it leaves the dealer's lot, is in a small crash or
3 the owner of that vehicle doesn't maintain it appropriately,
4 there's no guarantee that that vehicle is going to be safe, is
5 there?

6 MR. SACHS: Well, that's correct, and it's not safe.
7 There's no guarantee that it complies with all of the standards
8 with which it was originally manufactured, and once it's sold, it
9 becomes a used vehicle.

10 MR. HUGEL: Thank you. One final question. Does NHTSA
11 have any figures on the number of crashes and injuries that may
12 have been caused by vehicles that are non-FMVSS compliant let's
13 say over the last five years?

14 MR. SACHS: I personally don't know. I could certainly
15 ask within the agency and get back to you on that, but I don't
16 have that information.

17 MR. HUGEL: Thank you. Mr. Minor, you have heard one of
18 the Technical Panel members ask earlier questions related to which
19 and why the FMCSA or FMCSRs do not incorporate all the FMVSS
20 compliance requirements. Can you explain which ones were accepted
21 and which ones may not be contained in those and the purpose?

22 MR. MINOR: Generally when we cross-reference the
23 FMVSSs, we try to stick to the ones that we think are most closely
24 related to safety, things that we can actually look at during the
25 visual inspection of the vehicle. So we would focus on things

1 like the basic operation of the airbrake system, to make sure all
2 the critical components are there. For example, the National
3 Highway Traffic Safety Administration requires automatic brake
4 adjusters on certain airbrake vehicles. So you look to see if the
5 vehicle has the automatic brake adjusters. They require anti-lock
6 braking systems on certain vehicles, so that we'll look, when we
7 do the brake inspection, to see if it has an ABS system. So we're
8 looking to do the visual inspection, looking at those things that
9 we could just detect doing a visual inspection of the vehicle as
10 opposed to trying to get into some of the specifics of the FMVSSs
11 that would actually require the performance testing that a
12 manufacturer would do, things that would have to happen at a
13 laboratory. So there are certain FMVSSs that we do not cross-
14 reference not because we don't think they're important but because
15 we really have no practical means of trying to enforce it at the
16 roadside through our visual inspection process.

17 MR. HUGEL: And can you give the Board and the Panel
18 some examples of what they are?

19 MR. MINOR: For example, we do not specifically cross-
20 reference some of the vehicle braking performance requirements
21 that are in the FMVSSs. For example, the 60 mile per hour
22 stopping distance test that may be laid out in Standard Number
23 121, we would not try to enforce that as an agency because there's
24 no way that we would be doing an actual 60 mile per hour stopping
25 distance of the vehicle.

1 MR. HUGEL: Thank you. Now related to the vehicle
2 involved in this crash in Victoria, Texas, are you familiar with
3 the NTSB investigation of this incident as well as that of the
4 local law enforcement agency?

5 MR. MINOR: I am familiar with that investigation.

6 MR. HUGEL: And having reviewed that report, is there
7 any indication that the noncompliance of that vehicle with these
8 standards contributed in any way to the crash or injury of some of
9 the passengers?

10 MR. MINOR: I'm not aware of any information in that
11 document that would suggest that noncompliance with the FMVSSs
12 contributed to --

13 CHAIRMAN HERSMAN: I think the police report and
14 probable cause are things that we don't want to get into in this
15 hearing. We're not trying to cause of the accident. So I just
16 caution the parties to be careful.

17 MR. HUGEL: Thank you. Mr. France, you stated that it's
18 very difficult, if not impossible, to determine at roadside that a
19 vehicle lacking the FMVSS label meets those standards as
20 compliant. Can you determine -- if you can't determine that, can
21 you determine if the vehicle itself is safe to operate on the
22 nation's highways? And if so, how do you do that?

23 MR. FRANCE: By checking the Federal Motor Carrier
24 Safety Regulations. For safe compliance for all the systems that
25 we currently look at, which is basically on trucks is 13 and with

1 the motorcoach it adds 1 more. As long as we look at those
2 systems, in our inspection process we can conceivably by visual
3 inspection say the vehicle is safe to go down the highway.

4 MR. HUGEL: Thank you. I have no further questions.

5 CHAIRMAN HERSMAN: Mr. Magladry.

6 MR. MAGLADRY: Good morning. I think I'll continue my
7 line of questioning with Mr. France based on some of questions
8 that Mr. Yohe asked earlier.

9 You indicated that there are a number of equipment items
10 that you look at on a bus that are required by FMVSS, braking
11 systems or tires for example.

12 MR. FRANCE: Yes, sir.

13 MR. MAGLADRY: Lighting systems. If, if that equipment
14 isn't on the bus, the appropriate tires for example, then that
15 would be an out-of-service criteria item?

16 MR. FRANCE: Depending on the level of the tire itself,
17 we go into standards of the tire, how much tread depth, so forth,
18 if you're looking at that or how much damage or if it's a dual
19 tire, both tires would have to meet an out-of-service criteria.
20 They would all be noted as violations but it may not put the coach
21 or the vehicle out of service.

22 MR. MAGLADRY: Correct. I misspoke. I took us a step
23 too far. If the vehicle has all the appropriate equipment and
24 it's in proper working order, but does not have an FMVSS sticker,
25 is that an out of service?

1 MR. FRANCE: No, sir.

2 MR. MAGLADRY: Thank you. Those are the questions I had
3 for you. I have a couple of questions for Mr. Sachs.

4 Mr. Sachs, you were discussing earlier that there is a
5 mechanism to import non-FMVSS compliant vehicles which requires I
6 think a registered importer has to certify that it can be modified
7 and then ultimately follows through and modifies it.

8 MR. SACHS: It requires two things, that the agency
9 decide that the vehicle is capable of being modified to conform
10 and then it would have to be brought in by a registered importer.

11 MR. MAGLADRY: With respect to the bus that was involved
12 in this accident, the Volvo bus, has any registered importer made
13 any attempt to bring that bus through your process?

14 MR. SACHS: No.

15 MR. MAGLADRY: And so then NHTSA would not be making any
16 decisions on whether it's appropriate to bring in or not bring it
17 in unless they were prompted by either a manufacturer who wanted
18 to import or a registered importer that wanted to bring it in?

19 MR. SACHS: Well, we would not have made a decision as
20 to whether it was capable of being readily modified to conform to
21 our standards or modified to conform to our standards. If the bus
22 were permanently imported into the United States, it would have
23 had to have been either certified to our standards or brought in
24 through that RI process.

25 MR. MAGLADRY: All right. Let me go to the importation

1 issue a little more. You've talked about kind of cross-border
2 commerce where vehicles do not necessarily need to meet the FMVSSs
3 if they're kind of in and out. And in the case of a bus coming in
4 from Mexico, are we limiting that cross-border activity to a
5 commercial zone?

6 MR. SACHS: I was testifying with regard to the 2005
7 notice of withdrawal of the NPRM that would have, you know, would
8 have required those vehicles to be declared as imported and there
9 was also a requirement, a NPRM proposal to require certification
10 labels and the like, all of that was withdrawn. As far as, you
11 know, operating within the commercial zone, beyond the commercial
12 zone, that's kind of beyond my can (ph.) to tell you the truth.
13 And maybe the FMVSS has more guidance on that.

14 MR. MAGLADRY: Well, I would pose the question to Mr.
15 Minor, and I'd encourage your comments if you would like, Mr.
16 Sachs, is it possible for me to bring this Volvo bus in and out of
17 the United States on a regular basis from Mexico and without
18 meeting the FMVSSs and be legal to do that?

19 MR. MINOR: Yes, it is possible as long as the vehicle
20 meets our Federal Motor Carrier Safety Regulations.

21 MR. MAGLADRY: Mr. Sachs, if I do that, am I importing
22 the bus?

23 MR. SACHS: If you look at the 2005 notice of
24 withdrawal, if something is strictly engaged in international
25 commerce, going back and forth even repeated times, I don't think

1 it would constitute importation.

2 MR. MAGLADRY: So I haven't violated any importation
3 requirements for NHTSA and I haven't violated any operating
4 requirements for FMCSA. Is that correct?

5 MR. SACHS: Is that to me?

6 MR. MAGLADRY: It's actually to both of you.

7 MR. SACHS: Well, as far as NHTSA is concerned, if the
8 vehicle is strictly engaged in international trade, it would not
9 be considered imported for the purpose of triggering the need to
10 be certified in through a registered importer.

11 MR. MINOR: If the carrier has the required operating
12 authority and the vehicle meets all of our safety requirements,
13 then, yes, it can be operated.

14 MR. MAGLADRY: Okay. So let me take it one step
15 farther. Mr. Sachs, if I brought this bus in from Mexico, and I
16 engage in only trade say between Houston and Chicago, I operate it
17 internally in interstate commerce or perhaps intrastate commerce,
18 I only go from San Antonio to Houston, have I imported it in those
19 cases?

20 MR. SACHS: Well, if the vehicle is brought into the
21 United States for the purpose of remaining here --

22 MR. MAGLADRY: Yes.

23 MR. SACHS: -- and it's engaging in transporting
24 passengers through routes solely within the United States, it
25 certainly would tend to indicate that it is no longer engaged in

1 international trade and therefore the intent was to permanently
2 bring it into the United States and it would have to have been
3 either certified or brought in through the RI Program when it was
4 imported.

5 MR. MAGLADRY: But as long as I'm going from Mexico to
6 someplace in the United States and back to Mexico, that's not
7 importing it?

8 MR. SACHS: Relying on the 2005 notice of withdrawal, I
9 would say that's correct.

10 MR. MAGLADRY: I think that's the end of my questions.

11 CHAIRMAN HERSMAN: Dr. Ellingstad.

12 DR. ELLINGSTAD: Thank you. Mr. Sachs, I'd like to be
13 clearer about how the certification is essentially implemented,
14 verified, memorialized. You've indicated this is basically a
15 self-certification process on the part of manufacturers. Is that
16 correct?

17 MR. SACHS: That's correct.

18 DR. ELLINGSTAD: Is that -- with respect to any
19 manufacturer, is that somehow or another formally confirmed with
20 respect to some line of buses for example?

21 MR. SACHS: No, the only confirmation is the affixing of
22 the label to the vehicle by the manufacturer.

23 DR. ELLINGSTAD: All right. So that the whole
24 certification then as I understand it, is an act of the
25 manufacturer to make a label that declares that it complies with

1 the FMVSS standards?

2 MR. SACHS: That's correct. As I indicated, the
3 manufacturer also has to identify itself to us, give us VIN
4 deciphering information, if it's not located in the United States,
5 has to designate an agent for service of process.

6 DR. ELLINGSTAD: Okay. So you are essentially saying
7 there is that the manufacturers are registering with you and
8 telling you something about their business practices but they're
9 not providing you with any kind of technical information with
10 respect to anything that they're manufacturing.

11 MR. SACHS: Well, they would only do so in the case of a
12 noncompliance investigation, where we would ask the manufacturer
13 to produce evidence that it built the vehicle to our standards.

14 DR. ELLINGSTAD: Okay. We'll get to that. Now this
15 self-certification is essentially the manufacturer's producing a
16 sticker on a new bus. Is the registered importer's label
17 functionally equivalent to that certification?

18 MR. SACHS: Yes. It states that the vehicle, as a
19 result of the modifications performed, complies to all standards
20 in effect, applicable standards in effect at the time the vehicle
21 was originally manufactured. So it is the functional equivalent.

22 DR. ELLINGSTAD: Okay. Now I think you indicated also
23 that basically the only mechanism that you had to evaluate the
24 adequacy of that certification was through an accepted detection
25 through, you know, defect detection programs, that sort of thing?

1 MR. SACHS: Well, as I said, we also do test things that
2 are on the market. We have a compliance testing program. We go
3 out and buy vehicles.

4 DR. ELLINGSTAD: Okay. If I'm a bus manufacturer, how
5 likely do I expect that you're going to take one of my buses and
6 test it?

7 MR. SACHS: I cannot say that we've ever bought a
8 motorcoach for the purpose of that compliance testing.

9 DR. ELLINGSTAD: So you're not aware of compliance
10 testing for buses?

11 MR. SACHS: I'm not personally aware of a bus having
12 been purchased for that purpose.

13 DR. ELLINGSTAD: Okay. You had also indicated that in
14 the standards there are, there are stipulated test procedures and
15 you had also indicated that sometimes those test procedures could
16 be -- could have substituted for them engineering analysis such as
17 modeling. Are any of those testing requirements validated,
18 verified, certified by NHTSA?

19 MR. SACHS: Well, we issue test procedures and we
20 publish those on our website. So we do -- once a standard is
21 issued, we have a team of compliance engineers that look at the
22 standard and devise test procedures to establish compliance with
23 the standard. We do publish those. They are available on our
24 website.

25 DR. ELLINGSTAD: So basically you're providing advice to

1 the manufacturers but no actual verification that anything that
2 they're telling you is, in fact, valid?

3 MR. SACHS: The test procedure and the standard is the
4 notice to the world of what we will do, when we test the vehicle
5 to determine its compliance with the standard.

6 DR. ELLINGSTAD: Okay. Although you're not aware that
7 you have actually tested any buses?

8 MR. SACHS: I'm not personally aware of that.

9 DR. ELLINGSTAD: Okay. Mr. France, is it a standard
10 CVSA inspection practice to look for a FMVSS certification or an
11 RI certification?

12 MR. FRANCE: No, sir.

13 DR. ELLINGSTAD: So you wouldn't as a matter of course
14 essentially look for that evidence of this self-certification of
15 meeting the FMVSS standards?

16 MR. FRANCE: No, sir. It's not part of our criteria.

17 DR. ELLINGSTAD: Okay. For FMCSA, first of all, just to
18 clarify with Ms. Shelton or Mr. Vasser, the ASPEN program that we
19 were talking about, am I correct in understanding that that's
20 basically a data entry mechanism that gets inspection information
21 into MCMIS?

22 MR. VASSER: That's correct. It's to be used by the
23 roadside inspector during an inspection.

24 DR. ELLINGSTAD: And MCMIS is, in fact, a comprehensive
25 database of inspection results?

1 MR. VASSER: Yes, sir. And crashes and compliance --

2 DR. ELLINGSTAD: Okay. I guess one of the things that
3 I'm sort of noticing over the last couple of days is that there's
4 not a huge number of databases that sort of inform this whole
5 enterprise but that, in fact, is one. Is there any interaction
6 between the FMCSA process with your inspectors in their use of
7 ASPEN to get data into MCMIS and any of the state registration
8 data systems?

9 MS. SHELTON: In terms of registering the vehicles.

10 DR. ELLINGSTAD: Would anybody -- well, let me ask both
11 you and Mr. France, would anybody, in an inspection, inquire as to
12 the registration status from a state motor vehicle registration
13 system?

14 MR. FRANCE: From the CVSA side, yes, sir. When we do
15 inspections, we're verifying that the vehicle is registered,
16 credentialing is proper.

17 DR. ELLINGSTAD: So you would, in fact, have a better
18 chance of catching importation issues than --

19 MR. FRANCE: Possibly but we would not be looking a VIN
20 number for importation or anything of that category. We're just
21 going to make sure it's properly registered to operate, with
22 operating authority.

23 DR. ELLINGSTAD: Okay. Thank you. Mr. m minor, you had
24 indicated that, I believe, if I looked at your numbers correct,
25 that your bus inspection rate at the southern border is something

1 less than five percent. Is that a fair statement?

2 MR. MINOR: I think I'd want to point out that we talked
3 about the total number of --

4 DR. ELLINGSTAD: In 2007.

5 MR. MINOR: That we're talking about the total number of
6 bus crossings, not the number of individual buses that cross, and
7 we talked about the total number of inspections --

8 DR. ELLINGSTAD: Okay.

9 MR. MINOR: -- but didn't indicate --

10 DR. ELLINGSTAD: Okay. Let me restate that. So that
11 five percent of the bus crossing experienced an inspection. Is
12 that -- at least a ballpark estimate?

13 MR. MINOR: That would be a more appropriate
14 characterization of the data, yes.

15 DR. ELLINGSTAD: What percentage of trucks crossing the
16 same border do you inspect?

17 MR. MINOR: I do not have that information with me
18 today.

19 DR. ELLINGSTAD: Could you provide that for us?

20 MR. MINOR: Yes, we can.

21 DR. ELLINGSTAD: Thank you. Finally, I'm intrigued by
22 this process of changes that might happen to compliance with FMVSS
23 standards with a bus that's in service, and I guess I'd like to
24 have some comments from Mr. Sachs, Mr. Minor and Mr. France.

25 After a bus has -- after the FMVSS certification has

1 been accepted for a bus, one way or another, we'll just stipulate
2 that that has happened, when it's in service, there can be changes
3 that happen to it, I think an example one of you had used was you
4 could change the seats and that that could knock it out of
5 compliance with a particular standard. I assume you could change
6 glazing. You could change a number of other things that would be
7 ordinary parts of the maintenance of that bus that might, in fact,
8 make it no longer comply with the as manufactured FMVSS standards.

9 I guess my question to all of you is whose
10 responsibility would it be to catch that? Mr. Minor?

11 MR. MINOR: The FMCSA would focus on making sure that
12 the vehicle meets all of the Federal Motor Carrier Safety
13 Regulations and with regard to those regulations that cross-
14 reference the Federal Motor Vehicle Safety Standards, we would
15 cover that during our inspections and as part of that process, for
16 example, if the carrier for whatever reason chose to remove the
17 automatic brake adjusters, we could catch violations like that.
18 If the carrier did not properly maintain the anti-lock braking
19 system as required on the new vehicles, we could catch those
20 violations.

21 DR. ELLINGSTAD: What if they just changed the seats?

22 MR. MINOR: If they just changed the seats, we would not
23 detect violations of that type.

24 DR. ELLINGSTAD: Mr. France?

25 MR. FRANCE: I would agree with Mr. Minor. Changing of

1 major components such as braking systems, if you -- if they
2 required the automatic slack adjusters and they decided they
3 wanted to back to manuals, that's illegal and they can't do that.
4 That would be caught at roadside, and if you found one, a wheel
5 that had a manual slack adjuster in there, that would be a brake
6 that would be considered not functioning properly, and it would be
7 considered in the out-of-service criteria in the 20 percent.

8 Seats would not likely be caught on a roadside
9 inspection because you're not going to get down and verify numbers
10 that were on the seats that were installed in the coach when you
11 checked it. We're checking for things like making sure they're
12 secure, making sure they're there, and for the driver's seat, make
13 sure there's seatbelts and --

14 DR. ELLINGSTAD: Well, I guess the thing I'm trying to
15 get at is that I think we expect that most expensive commercial
16 vehicles are going to go through these kinds of processes of
17 maintain and repair and updating, and is there any mechanism in
18 this whole process that assures that the way that that is done
19 maintains this compliance? Is there anything that NHTSA does?

20 MR. SACHS: Well, as I had testified, the motor vehicle
21 manufacturers, dealers, distributors and repair businesses cannot
22 bring a vehicle out of compliance with a standard it is built to
23 comply with. So you cite an example, let's say changing the
24 glazing. Glazing has to be DOT compliance. If non-complying
25 glazing is installed by one of those entities, by a repair

1 business, that would be a violation of the making inoperative
2 prohibition and render that repair business subject to civil
3 penalties.

4 DR. ELLINGSTAD: Okay. So then you could, in fact, go
5 after some repair station or the operator I suppose --

6 MR. SACHS: Well, it's interesting you mention operator
7 because the requirement does not reach the consumer level. So if
8 the operator is the owner of the vehicle and is doing that to a
9 vehicle that it owns, if the operator itself goes out and changes
10 the glazing, there a question as to whether it's subject to the
11 making inoperative prohibition.

12 DR. ELLINGSTAD: All right. Thank you. Mr. Beckjord.

13 HEARING OFFICER BECKJORD: Thank you. My question is to
14 the FMCSA. Do you have a document that specifically cross-
15 references your FMCSRs to the FMVSSs that you would give out to
16 your inspectors so they could really pay attention and they could
17 start to document if there was a violation of a FMCSR but it
18 didn't rise to the level of out of service but yet it was a non-
19 compliant part?

20 MR. MINOR: You're speaking to items that are not in the
21 out-of-service criteria, FMVSS cross-references that are not in
22 the out-of-service criteria?

23 HEARING OFFICER BECKJORD: I'm saying that throughout
24 the hearing you kept stating that you would be looking for the
25 cross-referencing between the FMCSRs and the FMVSSs to make sure

1 that vehicle was technically safe according to what you've been
2 saying. So is there a document? Is there any kind of memorandum
3 that's gone out to your inspectors to say as of the 2005
4 memorandum, we will be expecting you to take notice so that we can
5 either document or keep up or see if doing what we did in
6 withdrawing the 2005 NPRM really is verifying that we're catching
7 these cross-referencing non-compliant parts under our FMCSRs?

8 MR. MINOR: Our inspection program was never intended to
9 look for -- look specifically for compliance with the FMVSSs. We
10 have our Federal Motor Carrier Safety Regulations and many of them
11 cross-reference the FMVSSs but it was never intended to generate a
12 data collection program to see the extent to which carriers do or
13 do not comply with the FMVSSs. We're focusing strictly on the
14 FMCSRs. Is the brake system okay? Do they have the emergency
15 exits? Do they have the required lights or reflectors, so that
16 any violation of our FMCSRs, including the FMCSRs that cross-
17 reference the FMVSSs, those would be noted as violations of the
18 FMCSRs and it would not be specifically noted as a violation of
19 the underlying FMVSS. So our database would gather all the
20 violation codes as violations of the Federal Motor Carrier Safety
21 Regulations.

22 HEARING OFFICER BECKJORD: So there really wouldn't be
23 any point at this time, any way for us to cross-reference to see
24 how many non-compliant FMVSS parts are going to be out there. So
25 let's say, for example, you've got a severity level of violations

1 of your FMCSRs before you'll put a service out of service.
2 Technically a lot of these vehicles could be not out of service
3 but go around with a certain percentage of non-FMVSS complaint
4 parts on them. Am I understanding that correctly?

5 MR. MINOR: If there are some violations of some Federal
6 Motor Carrier Safety Regulations that cross-reference the FMVSSs,
7 but those violations are not severe enough to be included the out-
8 of-service criteria, those violations may still be noted on the
9 roadside inspection report. So that the violations would be cited
10 but the vehicle simply would not be placed out of service and
11 under our regulations, the motor carrier operative vehicle would
12 have a certain amount of time to correct those violations and send
13 proof back to the inspecting agency that the violations have been
14 corrected.

15 HEARING OFFICER BECKJORD: Okay. So then my next
16 question for you is then you were talking about the percentage, I
17 believe you said for 2007, 265,000 crossings and I know you did
18 say that, you know, it could be multiple crossings, and I
19 understand that, 13,500 approximately had inspections. What
20 number of those inspections were the Level 1 where you would
21 actually be doing all the FMCSRs that would apply to a cross-
22 reference, the FMVSSs.

23 MR. MINOR: I'd like to check on it, but it's my
24 understanding that those would be Level 1 inspections.

25 HEARING OFFICER BECKJORD: All 13,500?

1 MR. MINOR: We'd have to double check that to see if all
2 13,000 or what percentage of the 13,000 were Level 1 inspections.

3 HEARING OFFICER BECKJORD: Okay. So for every bus that
4 crosses the border that you inspected in 2007, more than likely
5 got a Level 1?

6 MR. MINOR: I would like to get back to you with that
7 information.

8 HEARING OFFICER BECKJORD: Okay. Thank you. So for
9 those buses that were brought across the border that were not
10 FMVSS compliant but are no longer in operation where they cross
11 the border but let's say they go from Omaha to Denver and back,
12 and you are no longer doing en route inspections, how would you
13 catch the non-FMVSS compliant parts that cross-reference the
14 FMCSRs if you're not doing en route inspections or roadsides?

15 MR. MINOR: One of our other alternatives is to do
16 destination inspections. If there's a major location such as the
17 National Park where a lot of the motorcoaches are going, we can do
18 destination inspections. So we're not stopping them along the way
19 to their destination. We'll just catch them at the destination
20 where we know that there's large gatherings of motorcoaches.

21 HEARING OFFICER BECKJORD: Uh-huh. So then is it my
22 understanding as well that you consider the safe operation of a
23 vehicle, the FMCSRs, to equal the safe performance of the vehicle
24 in a crash the way that the FMVSSs were set up, the intent and
25 purpose of the FMVSS?

1 MR. MINOR: We wouldn't characterize it quite that way
2 but we're trying to ensure the safety as far as whether it meets
3 all the original performance requirements under the FMVSSs, and
4 whether it's going to meet all the crash protection requirements
5 under the FMVSSs. We're focusing strictly on the FMCSRs and
6 certain ones that cross-reference the FMVSSs and in the case of
7 emergency protection measures, we're looking at the emergency
8 exits on buses as well as part of our FMCSRs. So we're looking at
9 as many of the FMVSSs as we can cover through a visual inspection
10 of the vehicle and making sure that the vehicle is safe for
11 operation on the highways, based on the FMCSRs, but we're not
12 necessarily trying to verify that it meets all of the FMVSSs that
13 were applicable at the time of manufacture.

14 HEARING OFFICER BECKJORD: Okay. Thank you. My
15 question would be this one to Mr. Sachs. So if the FMVSS, if it's
16 listed that the intent or the purpose of the Act was for the
17 performance of a motor vehicle, and I'm paraphrasing, to protect
18 the public against unreasonable risk of accidents occurring
19 because of the design and construction, or against unreasonable
20 risk of death or injury in an accident including non-operational
21 safety of a motor vehicle when the National Highway Traffic Safety
22 Administration concurred with NHTSA or with FMCSA to withdraw the
23 NPRM from the non-compliant labeling. How would you be able to
24 ensure that the cross-referencing of the FMCSRs could then help to
25 protect the intent of the FMVSSs as listed in the Safety Act from

1 1966?

2 MR. SACHS: Well, we looked at the FMCSA program as
3 described in the 2005 notice. It consisted of some pre-audit
4 inspections and some certifications to be made at the -- I'm
5 sorry. It was pre-authorization audits, some certifications that
6 was to be made by the carrier at that stage as to compliance of
7 the vehicle with the FMVSS and quite frankly with the FMCSA
8 inspection program, as providing a sufficient measure of
9 protection to ensure that motor vehicle safety needs were met.

10 HEARING OFFICER BECKJORD: Thank you. Those are all my
11 questions.

12 CHAIRMAN HERSMAN: Over the past day and a half there
13 have been a lot of questions that have been asked about FMVSS and
14 the responses that have come back have dealt with the FMCSRs. I
15 would like to clarify for the record, are the FMVSS standards the
16 same thing as the FMCSRs? Mr. Sachs.

17 MR. SACHS: I don't know personally the extent to which
18 the Federal Motor Carrier Safety Regulations correspond to the
19 FMVSS.

20 CHAIRMAN HERSMAN: You don't know?

21 MR. SACHS: I personally do not know. I know that
22 certainly Mr. Minor has testified that there are cross-references
23 between the two standards. I know that to be the case but I do
24 not know the extent to which the two systems correspond.

25 CHAIRMAN HERSMAN: Okay. But are they the same? That's

1 my question. I'm not asking if there's cross-walking going on.
2 I'm asking if they're the same. Are FMVSSs supposed to be the
3 same thing as FMCSRs?

4 MR. SACHS: Well, the FMVSS are new vehicle standards
5 that are certified by the manufacturer. The vehicle as originally
6 manufactured provides those levels of safety performance that are
7 incorporated into the standard and my understanding of the Federal
8 Motor Carrier Safety Regulations is that they're in-service
9 standards. So they probably are not directly, you know, identical
10 in all respects.

11 CHAIRMAN HERSMAN: Right. The FMVSSs are standards for
12 manufacturing and the FMCSRs are operating standards for safe
13 operation.

14 MR. SACHS: I believe that to be the case, yes.

15 CHAIRMAN HERSMAN: Okay. All right. Mr. Collins, could
16 you pull up that last slide that was the one that was added today
17 about the VINs in Ms. Shelton's presentation.

18 Ms. Shelton, in your slide when you were talking about
19 this, this error message that would come up, you stated that other
20 -- that if a vehicle is manufactured in a place other than Canada,
21 U.S. or Mexico, they get this error symbol, that it was
22 manufactured in a foreign country. Is that accurate?

23 MS. SHELTON: That's correct.

24 CHAIRMAN HERSMAN: Have we recently annexed Canada or
25 Mexico and they're not foreign countries anymore?

1 MS. SHELTON: Perhaps the message is not well written,
2 but the intent was if it's not manufactured in the U.S., Mexico or
3 Canada, they get this message.

4 CHAIRMAN HERSMAN: Why wouldn't they get a message about
5 Canada or Mexico manufactured vehicles?

6 MS. SHELTON: Because in previous checks for a country,
7 we are -- there's no warning, there's no policy to report those to
8 Headquarters. In this case, if they get this message, the policy
9 that's the '07 policy, asks that they report these to Headquarters
10 through our Borders Division.

11 CHAIRMAN HERSMAN: Does this necessarily mean that they
12 accept any vehicles that come in from -- that are manufactured in
13 Canada or Mexico to the U.S. without getting a warning?

14 MS. SHELTON: No warning would come up for those
15 particular vehicles. The Mexican, and I think that one was not in
16 this particular set of slides, but if Mexican manufactured
17 vehicles are manufactured prior to '96, there's a message for
18 those, and those are also reported to the Borders Division at
19 Headquarters.

20 CHAIRMAN HERSMAN: Right. And, Mr. Vasser, you talked
21 about that. There was a warning that the pre-'96 vehicles have
22 that say they may not be compliant. What's the value of a warning
23 says something may not be compliant? What are you expecting
24 people to do about that?

25 MR. VASSER: According to the memo, they were supposed

1 to take action. We felt that in the software, there was no value
2 in directing them that the vehicle definitely was not compliant.
3 It could have been after market changes to make it compliant.

4 CHAIRMAN HERSMAN: So what's the action that they're
5 supposed to take according to the memo?

6 MR. VASSER: They're supposed to make a copy of the
7 inspection and forward it to Headquarters.

8 CHAIRMAN HERSMAN: Not place it out of service?

9 MR. VASSER: We don't have that authority.

10 CHAIRMAN HERSMAN: Why not? Because this whole system
11 is basically predicated to try to figure out what's compliant and
12 what's not compliant and you basically determine that post-'96
13 vehicles were essentially compliant but pre-'96 vehicles may or
14 may not be compliant. Why flag it but not do anything about it?

15 MR. VASSER: That was the direction we were given by the
16 Program Office to implement the software.

17 CHAIRMAN HERSMAN: Okay. Mr. Minor, you said FMCSA
18 doesn't address size and weight when you were asked a question I
19 think earlier about the axle weight on the buses?

20 MR. MINOR: Yes, that is correct. When we do an
21 inspection, we're not doing the size and weight enforcement.

22 CHAIRMAN HERSMAN: Has FMCSA paid for scales for weight
23 for the border for border inspections --

24 MR. MINOR: Yes, we have.

25 CHAIRMAN HERSMAN: -- at border facilities? What's the

1 purpose of paying for those scales if we're not doing weight?

2 MR. MINOR: To enable our state partners to do the size
3 and weight enforcement.

4 CHAIRMAN HERSMAN: Okay. So, Mr. France, the state
5 partners, are they able to do weight enforcement? You can take a
6 look at that bus that's in that picture over there and it probably
7 looks different from most of the motorcoaches you see as a
8 roadside inspector. Can you tell me why?

9 MR. FRANCE: Other than the fact that it's a two axle
10 motorcoach and not a three axle.

11 CHAIRMAN HERSMAN: Do you usually see two axle
12 motorcoaches?

13 MR. FRANCE: Not generally, not in that six.

14 CHAIRMAN HERSMAN: Right. So would a state inspector,
15 and I know you're not from a border state but would a state
16 inspector perform a weight inspection of a bus?

17 MR. FRANCE: Generally if it's a motorcoach, depending
18 on the state. Some states do not pull motorcoaches into weight
19 scale facilities. I think it's jurisdictional as to whether we do
20 or we don't. My particular state, Maryland, motorcoaches are
21 supposed to go through weight facilities and they're weighed
22 because they're subject to weights. Weights are not part of the
23 CVSA inspection process. It's handled by another agency or it's
24 Federal Highway Administration. We do weights through those
25 because of the highway bills.

1 CHAIRMAN HERSMAN: Sure.

2 MR. FRANCE: But our enforcement folks do both, the CVSA
3 inspection and weight inspections.

4 CHAIRMAN HERSMAN: Okay.

5 MR. FRANCE: And then they may just weigh the coach and
6 not do an inspection on the coach because it's en route somewhere
7 and they don't see an obvious defect.

8 CHAIRMAN HERSMAN: Okay. Since we've established that
9 the FMCSRs and FMVSS are not the same, and I know that I may be
10 asking you a question that's going to get a really long answer,
11 but, Mr. Sachs, why do the FMVSSs exist? So let's just kind of,
12 if I was asking why the NTSB exists, I would kind of look at our
13 mission statement, to improve transportation safety. We
14 investigate transportation accidents and make recommendations to
15 improve the accidents from occurring -- reoccurring. Why do the
16 FMVSSs exist?

17 MR. SACHS: To establish a minimum level of safety
18 performance for new motor vehicles that are manufactured for sale
19 in the United States.

20 CHAIRMAN HERSMAN: Okay. So manufactured or for sale in
21 the United States. We're not concerned about vehicles that are
22 operated in the United States and whether or not they comply with
23 the FMVSS. It's really only about vehicles that are manufactured
24 and for sale in the United States?

25 MR. SACHS: That has more to do with our jurisdiction.

1 Our jurisdiction for the most part ends, with the exception of
2 investigating safety related defects and with the exception of the
3 making inoperative prohibitions that I discussed, our jurisdiction
4 ends at first retail sale. So we're regulating the manufacturing
5 process. So that has more to do with the limited nature of our
6 jurisdiction.

7 CHAIRMAN HERSMAN: Okay. So I would like to ask each of
8 the Panels, and obviously FMCSA you can appoint one spokesperson,
9 but does your organization have the ability to enforce the FMVSS
10 requirements that a vehicle must comply? Can you impound a
11 vehicle? Can you put a vehicle out of service? Can you export
12 the vehicle? If there is a non-FMVSS compliant vehicle and your
13 roadside inspectors or, you know, any of your employees identify
14 it, can you do anything about it, FMCSA?

15 MR. MINOR: Generally we would not try to enforce the
16 FMVSSs. We don't have the authority to impound a vehicle and
17 force it to be exported from the U.S.

18 CHAIRMAN HERSMAN: Okay. And, Mr. Sachs, if a vehicle
19 is identified that is non-FMVSS compliant, and it's operating in
20 the U.S., can NHTSA or anyone employed by NHTSA do anything about
21 that?

22 MR. SACHS: If it's a used vehicle, of course, we have
23 to look for where's the violation, and as I testified before, if a
24 vehicle is imported, that takes out of the equation whether it's
25 new or used. So there's a requirement that the vehicle in order

1 to come into our restriction, that it be manufactured and comply
2 with all applicable standards, all applicable Federal Motor
3 Vehicle Safety Standards and be so certified or it could be
4 imported under our RI program. So if we have evidence that a
5 vehicle does not comply, was permanently imported into the United
6 States and does not comply with all applicable Federal Motor
7 Vehicle Safety Standards, we would inquire as to the basis of its
8 entry? How is the vehicle declared on the HS-7 declaration form
9 filed with Customs at the time it was entered? If it appears that
10 there's a false declaration, it is a vehicle that does not, in
11 fact, comply, was declared as a fully compliant vehicle, was
12 declared under the RI Program, then we would seek to take action.

13 CHAIRMAN HERSMAN: Okay. But let's talk about this
14 accident bus, and I think Green River in Dallas that facilitated
15 the registration is an RI. You've kind of said that they didn't
16 go through the process to bring this bus in, right? It wasn't
17 declared at Customs. They didn't have an HS-7.

18 MR. SACHS: We have no evidence, you know, that this
19 vehicle was declared with us.

20 CHAIRMAN HERSMAN: Right.

21 MR. SACHS: And moreover, I did mention the procedural
22 requirements that manufacturers have to meet to offer vehicles for
23 sale in the United States. Volvo of Mexico has not met those
24 procedural requirements. So they obviously were not intending to
25 sell the vehicle in the United States.

1 CHAIRMAN HERSMAN: Right. So any bus that is sold in
2 another country, not in the U.S. and driven across a border would
3 be considered used or imported and it wouldn't be subjected to
4 NHTSA oversight?

5 MR. SACHS: If it was a used vehicle, it would still be
6 subject to our importation -- prohibition of importing a motor
7 vehicle that does not comply with all applicable standards unless
8 it was brought in through the Registered Imported Program.

9 CHAIRMAN HERSMAN: Okay. Okay. So it kind of hinges on
10 whether or not this is considered or imported or not.

11 MR. SACHS: That's correct.

12 CHAIRMAN HERSMAN: Okay.

13 MR. SACHS: Thank you.

14 CHAIRMAN HERSMAN: Let me finish with Mr. France. Do
15 you, your roadside inspectors, CVSA roadside inspectors have any
16 authority to put a non-FMVSS complaint vehicle out of service or
17 take any enforcement against --

18 MR. FRANCE: No, not directly FMVSS. If it didn't
19 comply with the Federal Motor Vehicle Safety Regulations, yes.

20 CHAIRMAN HERSMAN: Okay.

21 MR. FRANCE: But no deportation.

22 CHAIRMAN HERSMAN: All right. And I think we started
23 this hearing by talking about identifying loopholes that exist,
24 and I think that is kind of what this conversation is about.

25 Mr. Sachs, I'd like to go back to this issue of the

1 definition of importation because I think it's pretty important
2 here. You explained to me why the FMVSSs exist and I was
3 wondering if we have any motorcoaches that are manufactured in the
4 U.S.

5 MR. SACHS: I don't know whether any are still
6 manufactured in the U.S. They were at one time, but I think most
7 of the motorcoaches are imported from abroad at this point, if not
8 all.

9 CHAIRMAN HERSMAN: I'm going to advise that all of the
10 motorcoaches are manufactured abroad. If anybody else on the
11 Panel has any other understanding that we have U.S. manufactured
12 motorcoaches, please let me know or speak up.

13 (No response.)

14 CHAIRMAN HERSMAN: Okay. So therefore if all
15 motorcoaches in the United States must be imported into the United
16 States, but your -- in your response to a question Mr. Yohe asked,
17 what is the definition of import, your response was there is no
18 statutory or regulatory definition of import.

19 MR. SACHS: Well, if something is manufactured to be
20 brought into the United States, you know, permanently for use in
21 the United States, to be sold in the United States, all of those
22 foreign manufactured motorcoaches that you're referring to are
23 manufactured to our standards and they're manufactured by
24 companies that have identified themselves us, given us VIN
25 deciphering information, designate agents for service of process,

1 and most importantly affixed certification labels to the vehicles
2 so they can come right in without restriction as conforming motor
3 vehicles. So if something is manufactured for sale in the United
4 States, it would be regarded by us as an importation at the time
5 it crosses the border and those requirements would apply.

6 CHAIRMAN HERSMAN: But we're having a discussion about
7 vehicles that cross the border and those standards don't apply.

8 MR. SACHS: Well, then again we're looking at the 2005
9 notice of withdrawal of the NPRM in which we said that buses that
10 are engaged strictly in international trade are not deemed to be
11 imported at the time they cross the border because of the
12 existence of alternate mechanisms, the FMCSA inspection program,
13 the need to comply with the Federal Motor Vehicle Safety
14 Regulations which to our thinking satisfied the need for motor
15 vehicle safety with regard to those vehicles.

16 CHAIRMAN HERSMAN: Well, and you mention that and you
17 based the 2005 withdrawal and I think it was also a pulling back
18 from the '75 interpretation in your withdrawal which really opened
19 the door on this importation issue, to be predicated on the fact
20 that FMCSA was going to do pre-authorization on checks of
21 operators and things like that. That would apply to approved
22 foreign operators but this accident we know is not about an NAFTA
23 operator. This is about a U.S. operator. This is not someone who
24 is participating in the Pilot Program. This is a U.S.-based
25 carrier with U.S. DOT operating authority who purchased a bus in

1 Mexico and brought it over into the U.S. and was operating it in a
2 line run, as a charter operator between Houston and Monterey,
3 Mexico.

4 So I think Mr. Presley asked a very pertinent question.
5 What's to prohibit any operator in the United States from bringing
6 in a whole fleet of non-compliant vehicles and who is going to
7 stop that?

8 MR. SACHS: I think it would depend on the nature of the
9 operation. If the operation was strictly, you know, within the
10 United States, then that would indicate that was a vehicle that
11 was intended for permanent entry into the United States and would
12 have to meet our requirements for certification or for importation
13 through the RI Program. If the nature of the runs are
14 international in nature, if they're going from a foreign country
15 to one state and then back to the foreign country, I think it
16 falls within the discussion of what does not constitute a
17 importation in that 2005 withdrawal notice.

18 CHAIRMAN HERSMAN: So how often would you have to make a
19 trip into a foreign country to qualify as someone who's still
20 participating in international trade? Once a year.

21 MR. SACHS: I don't think the agency parsed the issue
22 through to that extent, Madam Chairman. I think you have to take
23 the statement for what it is. We are not really experts in this
24 area. We did make a statement. We did agree at the time that
25 based on the regimen that was then in place, we were satisfied

1 that the needs for motor vehicle safety in this country would be
2 met. You're getting into an area that really is beyond my can.
3 Perhaps, you know, a lawyer who is with the agency or with the
4 department who is schooled in international trade might be better
5 able to address those issues.

6 CHAIRMAN HERSMAN: Well, you've given some very
7 excellent question. So you'll forgive me if I'm asking you to
8 reach beyond the area in which we've been talking. I think that
9 this is the loophole issue that we're trying to identify. When we
10 look at just the big picture of this issue, I'm reading comments
11 from, this is Exhibit 1(m) from the May 2002 rulemaking. These
12 are ATA comments to the NPRM on the FMVSS. And it says,
13 "Apparently the USDOT is so smug that it believes only the United
14 States can -- appropriate motor vehicle safety standards and the
15 label showing new vehicle compliance to these standards meaning
16 the in-service vehicle is safe. This is simply not true." Why
17 don't we just get rid of the standards? Why have standards if
18 they don't make any difference?

19 MR. SACHS: They certainly make a difference with respect
20 to the vast majority of vehicles that are in this country. Every
21 vehicle that's brought in for use, permanent use in this country
22 has to comply with the standards either as originally manufactured
23 or be brought in through a program to reasonably assure that the
24 vehicle's modified to comply with those standards, and I think
25 they are very important. They do deserve a place.

1 As you indicated, there is somewhat of a loophole here
2 with regard to a limited number of motor carriers that are engaged
3 in international trade. I don't think the fact that that exists
4 diminishes the significance of the standards or their importance
5 to motor vehicle safety.

6 CHAIRMAN HERSMAN: I think that one point that I took
7 away from the ATA comments have to do with that standards are
8 important and there are many types -- different types of
9 standards, and I know that we've looked extensively, NHTSA and
10 FMCSA, at the Canadian standards and how closely they mirror the
11 U.S. standards. There are other standards. There are European
12 standards. Are there Mexican standards?

13 MR. SACHS: Through reading some of the documents in the
14 file, I gather there are. The CMVSS, the Canadian Motor Vehicle
15 Safety Standards, and the FMVSS are very parallel to each other.
16 We coordinate with the Canadians. The Canadians, you know, are
17 partners with regard to doing some of the compliance testing and
18 whatnot. I don't believe the same level of correspondence exists
19 and quite frankly, I cannot address, you know, what standards the
20 Mexican government has.

21 CHAIRMAN HERSMAN: Okay. Well, we know this bus was
22 manufactured to your European standards according to Volvo, the
23 manufacturer, and I think that the point is that the U.S. doesn't
24 have any U.S. manufacturers of buses and that's important to
25 remember. It doesn't mean that a foreign bus is unsafe, but what

1 it does mean is that the public has to trust that the government
2 has the appropriate processes in place to ensure that the buses
3 that are imported or brought into the U.S. meet U.S. safety
4 standards and that's why the FMVSS exists, and it's a question of
5 trust. All of us sitting up on these higher seats, everyone
6 sitting at that table answering these questions, we're all public
7 servants. We all get paid by the taxpayers, and it's a question
8 of trust. There are people who are trusting us to ensure that the
9 standards get upheld and that they're complied with, and I think
10 that what we've identified here is that there's a loophole big
11 enough to drive a bus through and they have been. They've been
12 driving buses across the border that don't comply with U.S.
13 standards. And what I've heard for the last day and a half is
14 that we don't really have a way to identify those buses when
15 they're being checked at the border to see if they comply, and
16 then once they get in, I'm not at all confident that any mechanism
17 exists to identify them and then deal with them appropriately.

18 Is there any effort to harmonize standards for
19 commercial motor vehicles, specially those carrying passengers?
20 Because I understand with this definition of importation, I feel
21 that NHTSA has effectively stripped their ability to enforce that
22 FMVSS compliant vehicles operate in the U.S. Is there any effort
23 to harmonize the bus standards for safety?

24 MR. SACHS: We have various harmonization efforts going
25 on, principally with Europe but I'm not any of those that are

1 specifically directed at standards that apply to motorcoaches or
2 to buses lets say.

3 CHAIRMAN HERSMAN: Well, and I think again, it goes back
4 to a question of public trust. With respect to the aviation area
5 and the marine area, we have international standards that have
6 been harmonized. If you get on a plane and it enters the United
7 States, if it operates in the United States, it does not matter
8 where it originates from, the public trust that we have made sure
9 that that equipment complies with U.S. standards. We have
10 experience in transportation dealing with cross-border
11 transportation.

12 We have experience in the marine and the aviation
13 industry with doing these. I think that it again shows that
14 there's a secondary level of attention paid to safety on our
15 nation's highways and there's a level of tolerance that's there
16 that, you know, we are not holding everyone to the same standard.
17 This bus was manufactured to some standards but I think what we're
18 afraid is that there's going to be commercial vehicles carrying
19 passengers that are going to enter the U.S. and that we have no
20 way to detect if they comply with any standards whatsoever.

21 The purpose of, I think, issuing the NPRM in the first
22 place, the 2002 NPRM was because of Congressional action. In the
23 press release that I referred to earlier, Exhibit 1(1), it said
24 that Secretary Mineta said that they've taken steps today, and
25 this is based on the publishing of those various rulemakings, to

1 ensure that all trucks, buses and drivers entering the U.S. from
2 Mexico will meet U.S. safety standards and operate safely on U.S.
3 roads. And it talks about that the responsiveness to the
4 Transportation Appropriations Act in 2002 that had various
5 requirements for this, and the withdrawal of the NPRM in 2005,
6 NHTSA stated:

7 "One of the reasons for the withdrawal was because the
8 compliance of all applicable FMVSSs were not raised during the
9 debates and hearings on the safety of Mexican commercial motor
10 vehicles. Rather, Congress stated concern was with the level of
11 maintenance."

12 I strongly disagree with that statement and I think that
13 the standards were important and I think they were discussed at
14 the time and I think that is what precipitated the 2002
15 rulemaking, and I think it was reiterated in SAFETEA-LU after the
16 rulemaking that was withdrawn, that asked FMCSA to look at foreign
17 commercial motor vehicles and do a study of the vehicles to
18 determine the degree to which Canadian and Mexican commercial
19 vehicles, including motor carriers of passengers currently operate
20 and are expected to operate in the U.S. comply with the FMVSS.

21 I think Congress has been very clear. I think they want
22 vehicles operating in the U.S. to comply, and I was down on the
23 border at Laredo and I was only there for a couple of hours, and I
24 saw at least one non-compliant bus come across in a couple of
25 hours. Maybe 20 buses came across. One came that was non-

1 compliant, and I think it's clear that there have been cottage
2 industries that have sprung up to facilitate these buses entering
3 and getting registered and when's it going to stop? And what
4 standard do we have to get down to before people decide that they
5 want to close these loopholes?

6 So I think this is the purpose that we've had this
7 hearing, and I think that you've gotten into the weeds on a lot of
8 issues and there's been hairsplitting over what definitions mean,
9 but at the end of the day the question is are vehicles that are
10 operating on U.S. roads guaranteed to be one level of safety,
11 manufactured to the same level of safety? Do you believe that
12 that's the case right now, Mr. Sachs?

13 MR. SACHS: To the extent that we do have this program
14 to allow vehicles that are engaged in international trade to come
15 in, I have to say, no, we don't have that same level.

16 CHAIRMAN HERSMAN: Okay. Thank you very much.
17 Technical Panel, do you all have any follow up questions? Any
18 second round?

19 MR. KOTOWSKI: No, we don't.

20 CHAIRMAN HERSMAN: Dr. Coury.

21 DR. COURY: For FMCSA, I think just a couple of
22 clarifications. This one I think is a question to Ms. Shelton.
23 ASPEN applies to -- is a utility that's used for roadside
24 inspections for all commercial vehicles. Is that correct?

25 MS. SHELTON: Correct.

1 DR. COURY: Okay. One question to Mr. Vasser, just to
2 clarify about the BETA test. Was there a capability developed
3 during that BETA test to use the VIN to verify FMVSS compliance?

4 MR. VASSER: No, there wasn't.

5 DR. COURY: And one final question to Mr. Sachs. You
6 testified that the manufacturer is the only one that can really
7 tell if the vehicle is manufactured in compliance with FMVSS. Is
8 that correct?

9 MR. SACHS: That's correct.

10 DR. COURY: So does that mean if I gave the manufacturer
11 the VIN number that they would know?

12 MR. SACHS: Yes, that's correct.

13 DR. COURY: Okay. Thank you.

14 CHAIRMAN HERSMAN: Any more questions from the Tech
15 Panel?

16 MR. YOHE: I have one.

17 CHAIRMAN HERSMAN: Mr. Yohe.

18 MR. YOHE: To Mr. Minor. If a bus, a Mexican bus was
19 coming into this country like for a charter operation, is it
20 allowed to go -- do you know if it's allowed to go anywhere? In
21 other words, 48 state operation. Let's say it's coming in for a
22 30 day tour with Mexican plates. Do you know if that is
23 permissible?

24 MR. MINOR: It's my understanding that charter
25 operations are permitted.

1 MR. YOHE: Totally different. Okay. But in a line run
2 operation, scheduled line operation, I'm thinking of one right now
3 coming into Colorado operating with Mexican plates and some buses
4 that appear to be FMVSS compliant and others not. Would that a --
5 is there any federal regulation to enforce there or is that
6 strictly up to each individual state to say, well, you're not
7 licensed here, you're not licensed to come in, and I mean there
8 may be others but coming from the border up to various states, if
9 they are running on Mexican plates, one, is it legal? And, two,
10 if it's not legal, who has to take the action on that? Is that
11 something that FMCSA or is it something strictly a state-by-state
12 thing?

13 MR. MINOR: I'm not entirely sure I understand the
14 question. If you're referring just to the license plates
15 themselves or are you talking about the operating authority of the
16 carrier?

17 MR. YOHE: The license plate. I'm even thinking of one
18 that has a federal -- has a USDOT number but are using buses that
19 have strictly Mexican plates and a mixed fleet, some that are
20 known to comply and others that don't but anyhow they're running
21 with Mexican plates only up to Colorado for example. Factually I
22 mean I'm aware of that. Like I said, would that be strictly
23 something for the state to take care of, to say this vehicle
24 should be registered her because it's coming in here every day or
25 is it a -- would that be a federal -- is it something that FMCSA

1 would take action on?

2 MR. MINOR: As far as the actual registration of the
3 vehicle itself, that would be something that we would leave to the
4 state agencies. That's not something that we would try to
5 enforce. Strictly the state.

6 MR. YOHE: I have no further questions.

7 CHAIRMAN HERSMAN: No further questions from the Tech
8 Panel?

9 (No response.)

10 CHAIRMAN HERSMAN: How about the Parties? Customs.

11 MR. GARZA: No, ma'am.

12 CHAIRMAN HERSMAN: UMA or the ABA.

13 MR. LITTLER: No, ma'am.

14 CHAIRMAN HERSMAN: Volvo/Prevost.

15 MR. BERTRAND: No further questions.

16 CHAIRMAN HERSMAN: UMA.

17 MR. PRESLEY: No further questions.

18 CHAIRMAN HERSMAN: IRP.

19 MS. PARIS: No further questions.

20 CHAIRMAN HERSMAN: DOT/OIG.

21 MR. COMÉ: One question related to a comment that
22 Mr. Sachs made. He mentioned that one of the reasons for the
23 withdrawal had to do with the requirement for self-certification
24 by the Mexican-domiciled carriers regarding FMVSS. I wondered if
25 any of the FMCSA members could comment on whether that self-

1 certification would also apply to U.S. carriers who might be
2 operating in international trade using Mexican buses?

3 MR. MINOR: As far as the self-certification on the OP1,
4 the application for operating authority?

5 MR. COMÉ: Well, this would be self-certification
6 related to the U.S. carrier. So that wouldn't be the OP1 or OP2,
7 done by a U.S.-domiciled carrier.

8 MR. MINOR: Well, the U.S.-domiciled carriers in
9 operating for hire, do the operating authority form and it's my
10 understanding that we do not require that certification for U.S.-
11 domiciled carriers filling out the operating authority
12 application.

13 MR. COMÉ: Okay.

14 CHAIRMAN HERSMAN: Thank you, Mr. Comé. FMCSA.

15 MR. HUGEL: No questions.

16 CHAIRMAN HERSMAN: NHTSA.

17 MR. HARRIS: Yes. Mr. Smith would like to ask some
18 questions.

19 CHAIRMAN HERSMAN: Mr. Smith needs to go through Mr.
20 Harris who is the spokesperson. Sorry.

21 MR. HARRIS: Okay. I'd like to ask a couple of
22 questions to Mr. Sachs. Number one, there's been some concern
23 about definitions for importation but Mr. Sachs, can you elaborate
24 on how that is determined from NHTSA in working with CBP on this
25 issue?

1 MR. SACHS: Well, as I testified before, the CBP is our
2 -- provides the eyes and ears for us at the border. They're the
3 ones that have the operative definitions as far as we're concerned
4 as to what constitutes an importation. They're the one, if
5 something is to be permanently imported, it's going to require the
6 filing of the HS-7 declaration form or its equivalence. So we
7 would look to CBP to ensure that that documentation is furnished.

8 MR. HARRIS: And would you reiterate the fact that if
9 something was brought to our attention, how NHTSA takes action on
10 that?

11 MR. SACHS: If something is brought to our attention, if
12 something was not properly declared at the time of entry, we would
13 investigate the matter ourselves and bring in other related
14 agencies such as CBP, OIG and if the situation is such that a
15 vehicle was smuggled into the United States, was not properly
16 declared, we would seek to have it exported through CBP.

17 MR. HARRIS: Also there was some further follow-up
18 questions on the issue of the NHTSA testing program. Could you
19 further clarify what kind of spot checks that we engage in to
20 ensure compliance?

21 MR. SACHS: Well, not only do we have the conformance,
22 you know, testing that I testified to but we do have compliance
23 engineers who work with the Office of Vehicle Safety Compliance
24 who do go to trade shows, who go to dealerships, who go to sites
25 around the country to inspect vehicles to determine, you know,

1 whether there are any readily apparent noncompliances with
2 applicable FMVSS.

3 MR. HARRIS: Okay. Also, and are you aware of any
4 specific focus that NHTSA has with respect to buses at this point
5 in time?

6 MR. SACHS: Am I aware of any specific focus that NHTSA
7 has with respect to buses at this time? I'm not personally aware.
8 I think there was a defect investigation involving buses. Aside
9 from that, I'm not aware of anything else.

10 MR. HARRIS: Okay. Has anything beyond what you've
11 stated earlier been brought to our attention dealing with this
12 whole issue of bus importation?

13 MR. SACHS: Has anything else been brought to our
14 attention dealing with the issue of bus importation?

15 MR. HARRIS: Yes, either by federal agencies or state
16 agencies.

17 MR. SACHS: No.

18 MR. HARRIS: Okay. As you've testified earlier, if
19 those things are brought to our attention, through the appropriate
20 channels, that we will take appropriate action. Is that correct?

21 MR. SACHS: Yes, that's correct.

22 MR. HARRIS: Okay. Last but not least, I want to also
23 get into the issue of the whole issue of the loophole that was
24 mentioned by the Chairman of the Board of Inquiry. Is it -- to
25 the best of your knowledge, are we -- has it been brought to our

1 attention that there's been any significant influx of non-
2 compliant buses brought into the U.S. in the recent five years?

3 MR. SACHS: No.

4 MR. HARRIS: Are you aware of how the majority of buses
5 are imported here into the U.S.?

6 MR. SACHS: Yes. The majority --

7 MR. HARRIS: Will you please explain that?

8 MR. SACHS: Yes. As I testified, the majority of buses
9 manufactured comply with all applicable U.S. Federal Motor Vehicle
10 Safety Standards, they're certified to those standards in the
11 manner required by regulations and they're manufactured by
12 companies who have done what they should in terms of identifying
13 themselves to us and designating an agent for service of process.

14 MR. HARRIS: Do they provide any HS-7 forms to the
15 Customs and Border Patrol process?

16 MR. SACHS: Well, there's an HS-7 form that should be
17 filed for everything that's -- every motor vehicle or regulated
18 item of motor vehicle equipment that crosses the border. Original
19 manufacturers of compliant vehicles to file with us, they
20 generally file on a periodic basis a single HS-7 to which they
21 attach lists of the compliant vehicles that they've brought in.

22 MR. HARRIS: Okay. So you can assume that the majority
23 of buses that are brought into the U.S. for resale do come through
24 some scrutiny on the part of NHTSA?

25 MR. SACHS: As long as you're mentioning resale, if

1 something is brought in for the purpose of resale, it would have
2 to be either originally manufactured to conform or be brought in
3 through the RI Program.

4 MR. HARRIS: Okay. Thank you.

5 CHAIRMAN HERSMAN: Yes, sir, Mr. Garza.

6 MR. GARZA: I'm sorry. I would just like to clarify
7 that there's been several people that have address Customs and
8 Border Protection as Customs and Border Patrol. I would like to,
9 for the record, state that it's Customs and Border Protection,
10 Fields Operation Office.

11 CHAIRMAN HERSMAN: Super, and I know that there have
12 been a few slips on that, and we'll make sure they're corrected
13 for the record when we get the transcript.

14 Board of Inquiry. Mr. Magladry.

15 MR. MAGLADRY: Mr. Sachs, I just want to clarify
16 something for my own recollection. My notes are not sometimes
17 readable. By regulation, all vehicles that are imported into the
18 United States are subject to or all vehicles that are imported or
19 domestically manufactured are to meet the FMVSSs.

20 MR. SACHS: Correct.

21 MR. MAGLADRY: However, by policy, you are allowing
22 those vehicles that might be involved in international commerce to
23 not necessarily meet the FMVSSs. Is that correct?

24 MR. SACHS: The issue is whether those have been
25 imported. I guess if they have not been imported, then there's no

1 need to meet the FMVSS. To be certified to conform to the FMVSSs
2 is a condition for entry.

3 MR. MAGLADRY: Okay. But we do generally expect that
4 for FMCSA those vehicles, we would trust that the vehicles
5 involved in international commerce, they come into the United
6 States that do not necessarily meet -- are not required to meet
7 the FMVSSs would meet the FMCSRs?

8 MR. SACHS: Is that a question for me?

9 MR. MAGLADRY: No, that's for Mr. Minor.

10 MR. MINOR: It is correct that FMCSA would require that
11 all the carrier meet the same requirements under the FMCSRs.

12 MR. MAGLADRY: Okay. So I guess what we're talking
13 about here in loopholes or something is the ability to actually
14 determine that, that the vehicles involved in international
15 commerce like the bus involved in the Victoria accident, the
16 likelihood of someone getting stopped either at the border or
17 after the border, I think is a little limited. Is that a fair
18 assessment?

19 MR. MINOR: I'm not sure I'd say it's limited. We have
20 a program for trying to prioritize which carriers we're looking
21 for, for purposes of inspection and for purpose of compliance
22 reviews, so that if we are aware that a carrier exists, they fill
23 out the motor carrier identification report to let us know they
24 exist, they've applied to us for the proper operating authority,
25 then we would make it a point to prioritize these passenger

1 carriers so that we do have a safety oversight program for
2 passenger carriers and we work very closely with our state
3 partners to oversee the safety of operation of passenger carriers
4 operating in the United States.

5 MR. MAGLADRY: Is there any additional emphasis placed
6 on carriers that are involved in international commerce?

7 MR. MINOR: I wouldn't say that there's an additional
8 emphasis placed on carriers operating in international commerce,
9 just that we're overseeing all the passengers carriers to make
10 sure that they're safe.

11 MR. MAGLADRY: Thank you.

12 CHAIRMAN HERSMAN: Dr. Ellingstad.

13 DR. ELLINGSTAD: No questions.

14 CHAIRMAN HERSMAN: Ms. Beckjord.

15 HEARING OFFICER BECKJORD: I believe my question would
16 be for Ms. Shelton. Who furnishes the cross -- the information
17 that you get from the border about the trucks crossing and the
18 number of trucks crossing and the number of buses crossing? Who
19 furnished that information to you?

20 MS. SHELTON: Our Borders Division has that data. I
21 really -- I don't collect that myself. I'd have to get that for
22 you, the source.

23 HEARING OFFICER BECKJORD: Is it fair to say that for
24 the trucks you have FMCSA at the border 24/7 collecting it or do
25 you think that comes from Customs and Border Protection? Where

1 would the information come, all those statistics that you have on
2 your website?

3 MS. SHELTON: I believe that's Customs.

4 HEARING OFFICER BECKJORD: Customs provides that?

5 MS. SHELTON: Uh-huh.

6 HEARING OFFICER BECKJORD: Do they delineate for the
7 trucks about how many times that particular truck goes across the
8 border or is it the same as what it was for the buses where you
9 have 265,000 per year but you can't determine whether or not it's
10 multiple crossings by the same bus or individual crossings?

11 MR. SHELTON: I believe we have some estimates of unique
12 crossings as well as total crossings.

13 HEARING OFFICER BECKJORD: For the trucks?

14 MS. SHELTON: Yes.

15 HEARING OFFICER BECKJORD: Do you have it for the buses?

16 MS. SHELTON: I believe so. I just -- I can provide
17 that to you later what I have.

18 HEARING OFFICER BECKJORD: Okay. And how do you
19 determine that?

20 MS. SHELTON: In terms of unique crossings?

21 HEARING OFFICER BECKJORD: Uh-huh.

22 MS. SHELTON: I do not do that. I would have to get
23 back to you on that source of data.

24 HEARING OFFICER BECKJORD: Would it be safe to say
25 perhaps by VIN or license plate or by company name?

1 MS. SHELTON: I'd have to get back to you on how they do
2 that.

3 HEARING OFFICER BECKJORD: Okay. Thank you. And then
4 my other question I believe would be to Mr. Minor or to Mr. Sachs,
5 and it's kind of a drilling down question. I just want to make
6 sure that I understand. In all the things that we've talked
7 about, if we're talking about the vehicle being imported, for
8 example, I'm across the border, obviously if it comes across on a
9 cargo container, we would know it, but if it's being driven across
10 the two borders, we have the northern border and the southern
11 border, if we're saying that CMVSSs are almost or similar to the
12 FMVSS, and we say that trucks post 1996 also are very similar to
13 the FMVSSs in terms of the NPRM withdrawal, the only ones that
14 we're really drilling down to are pre-1996 trucks and buses at the
15 Mexican border to the information that we do not know?

16 MR. MINOR: I think what we're drilling down to is that
17 for the trucks, we have a policy in place to try to determine
18 whether they're likely or unlikely to meet the FMVSSs, and that's
19 where the 1996 date comes in. And for the buses, we would operate
20 under the assumption that if it does not have a FMVSS
21 certification label, then it most likely does not comply with the
22 FMVSSs.

23 HEARING OFFICER BECKJORD: Okay. So we're really pretty
24 much drilling down to one specific subset at one specific set of
25 locations?

1 MR. MINOR: Generally we would be drilling down to the
2 subset of trucks manufactured before 1996 as being unlikely to
3 meet the FMVSSs.

4 HEARING OFFICER BECKJORD: And you have a VIN
5 verification program to work for that?

6 MR. MINOR: We have the VIN check software that Ms.
7 Shelton described in her testimony to help us out with trying to
8 determine whether a vehicle is likely or unlikely to meet the
9 FMVSSs.

10 HEARING OFFICER BECKJORD: And nothing for the buses?

11 MR. MINOR: That is correct, not to check the buses for
12 whether they're likely or unlikely to meet the FMVSSs. We just go
13 with the assumption that if it's a bus, and it does not have a
14 FMVSS certification label, then it is an indication that it does
15 not meet the FMVSSs.

16 HEARING OFFICER BECKJORD: Okay. Thank you. That's all
17 I have.

18 CHAIRMAN HERSMAN: Any additional questions?

19 (No response.)

20 CHAIRMAN HERSMAN: From the Tech Panel?

21 (No response.)

22 CHAIRMAN HERSMAN: How about from the Parties?

23 MR. HARRIS: Just one. I have one.

24 CHAIRMAN HERSMAN: Sure. Mr. Harris.

25 MR. HARRIS: To Mr. Sachs. Can you briefly explain

1 again jurisdiction over operations?

2 MR. SACHS: We have no jurisdiction over operations.

3 MR. HARRIS: And how does that apply to the motorcoach
4 activities?

5 MR. SACHS: To the extent that their operations are at
6 issue, we don't have any jurisdiction.

7 MR. HARRIS: And in your previous testimony, you
8 mentioned the issue about new vehicles and oversight of new
9 vehicles, and you mentioned the issue about non-conforming
10 vehicles in used condition. Is there any stipulation that covers
11 those two areas which would involve the operation of a vehicle
12 itself?

13 MR. SACHS: We don't regulate vehicle operation.
14 Vehicle operation is left to the federal level, to the FMCSA for
15 motor carriers and in all other respects to the states. It's just
16 an area that we have no jurisdiction over.

17 MR. HARRIS: Okay. So if an operator was to somehow
18 bring in a fleet of non-compliant vehicles, through international
19 trade, are there any provisions which we currently have, either in
20 regulations or statutory authority, which could address this?

21 MR. SACHS: Well, as I had testified previously, we have
22 a prohibition on the introduction in interstate commerce of a non-
23 conforming vehicle but that does not apply to a vehicle that's
24 already been sold for purposes other than resale. So in essence,
25 there is no NHTSA administered statute or regulation that we could

1 use in order to take enforcement action in that instance.

2 MR. HARRIS: How would that apply to an importer?

3 MR. SACHS: Well, the -- how would that apply to an
4 importer?

5 MR. HARRIS: Yes.

6 MR. SACHS: What do you mean?

7 MR. HARRIS: If we were to make a determination on
8 importation, how would the regulation apply to an importer?

9 MR. SACHS: Well, there is a prohibition on the
10 importation of a non-conforming vehicle. So we could, you know,
11 if an importer is bringing in a non-conforming vehicle, we
12 certainly have the means available to take enforcement action
13 against the importer.

14 MR. HARRIS: But the importer as NHTSA has determined
15 are those that are not engaged in the operation activities. Is
16 that correct?

17 MR. SACHS: An importer is someone who causes an article
18 to be imported into the United States, whether engaged in
19 operational activities or not, I can't say.

20 MR. HARRIS: Okay. So under our current definitions of
21 an importer, it would be difficult to construe a motor carrier
22 which has a fleet of vehicles to be considered an importer at this
23 point unless they engage in some kind of activities which would
24 come through our normal process of Customs entry. Is that
25 correct?

1 MR. SACHS: Well, we wouldn't -- we don't regulate motor
2 carriers as motor carriers. If a motor carrier is engaged in
3 importation, I suppose they could be regulated insofar as they're
4 importing vehicles or regulated items of motor vehicle equipment.
5 But certainly with respect to their operation of vehicles in the
6 U.S., we don't regulate that.

7 MR. HARRIS: Okay. All right. Thank you.

8 MR. SACHS: You're welcome.

9 CHAIRMAN HERSMAN: See that there are no further
10 questions and no additional witness to be called upon to testify
11 at this time, this portion of the Safety Board's investigation
12 into the motorcoach rollover in Victoria, Texas, is concluded.

13 In accordance with our procedures, this investigation
14 will remain open to receive at anytime new and pertinent
15 information regarding this accident and related safety issues.

16 To repeat what I said in my opening statement yesterday,
17 the parties to this hearing do have the opportunity to propose and
18 submit findings, conclusions and recommendations. Please forward
19 any such submissions to Ms. Beckjord, our Hearing Officer, within
20 30 calendar days from today. That would be no later than November
21 8, 2008. Any parties making such a submission should also submit
22 copies of their proposal to all of the other parties to this
23 hearing and to the accident investigation. The proposals will be
24 made a part of our public docket and will receive careful
25 consideration during the Safety Board's review of our final report

1 for this accident.

2 From the evidence that has been collected, the Safety
3 Board will then determine probable cause and make any
4 recommendations necessary to prevent similar accidents from
5 reoccurring. The final report will likely take several months to
6 complete, although safety recommendations could be made at
7 anytime.

8 I would like to thank all of the parties for their
9 participation and cooperation in this proceedings, and also
10 throughout our investigation. I'd also like to thank all of the
11 witnesses and commend the witnesses on this panel as well as the
12 witnesses yesterday for providing forthright and illuminating
13 testimony. You will be very helpful for all of us in improving
14 transportation safety. We're going to be working very hard to
15 analyze all of the information that was collected over the next
16 several months as well as to make recommendations to improve
17 transportation safety.

18 I would like to recognize all of our staff, all of the
19 Technical Panel staff and the Board of Inquiry, as well as our
20 administrative and support staff, and in particular, our hearing
21 officer, Ms. Michele Beckjord for all of the work that they have
22 put into this hearing. And, you know, I have to say, a lot of
23 people said that they thought that this was going to be a pretty
24 esoteric or even shall I say it, boring topic, but I have found it
25 to be anything but. I think that it was very interesting and I

1 think this third panel was underrated. You've all really
2 performed well and gave us a lot to talk about. So never let it
3 be said that VIN verification is a boring subject.

4 So thank you all very much for your participation and
5 for your presence here today.

6 The hearing's adjourned.

7 (Whereupon, at 12:30 p.m., the hearing in the above-
8 entitled matter, was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: THE PUBLIC HEARING ON THE FATAL
MOTORCOACH ACCIDENT NEAR VICTORIA,
TEXAS, JANUARY 2, 2008
(FOCUSED ON LOOPHOLES THAT ALLOW
REGISTRATION OF NON-COMPLIANT
FOREIGN VEHICLES)

DOCKET NUMBER: 68754

PLACE: Washington, D.C.

DATE: October 8, 2008

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

Timothy J. Atkinson, Jr.
Official Reporter