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DEPARTMENT OF TRANSPORTATION

4910-EX-P

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA-2016-0234]

RIN 2126-AB94

Parts and Accessories Necessary for Safe Operation; Windshield-Mounted

Technologies

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

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to allow the voluntary mounting of certain devices on the interior of the windshields of commercial motor vehicles (CMVs), including placement within the area that is swept by the windshield wipers. Section 5301 of the Fixing America's Surface Transportation (FAST) Act directs the Agency to amend the FMCSRs to allow devices to be mounted on the windshield that utilize “vehicle safety technology,” as defined in the Act. In addition, the section 5301 states that all windshield mounted devices/technologies with a limited 2-year exemption in effect on the date of enactment, shall be considered to meet the equivalent-or-greater safety standard required for the initial exemption. Promulgation of this final rule is a nondiscretionary, ministerial action that does not require prior notice and public comment under the Administrative Procedure Act (APA).

DATES: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Petitions for Reconsideration of this final rule must be submitted to the FMCSA

Administrator no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call or e-mail Mr. Luke Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, telephone: 202-366-0676; luke.loy@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone 202-366-0676.

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I. Executive Summary

Section 5301 of the FAST Act, enacted on December 4, 2015, but made effective

on October 1, 2015, pursuant to section 1003, directs the Secretary to revise 49 Code of Federal Regulations (CFR) 393.60(e) relating to the prohibition on obstructions to the driver's field of view, to provide an exception for the voluntary mounting on a windshield of "vehicle safety technology" likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved without the exception. Section 5301(c) provides that any windshield-mounted technology for which FMCSA had granted a limited exemption under 49 CFR part 381 that was in effect on the date of enactment of the FAST Act (October 1, 2015) shall be considered as meeting the equivalent-or-better level of safety. For this reason, FMCSA amends 49 CFR 393.60(e) to allow the use of all the devices for which limited exemptions had previously been granted, with restrictions on placement that are consistent with the restrictions that were included in the limited 2-year exemptions.

Specifically, the Agency replaces current § 393.60(e)(1) with (1) § 393.60(e)(1)(i), which requires antennas and similar devices to be mounted not more than 152 mm (6 inches) below the upper edge of the windshield, and outside the driver's sight lines to the road and highway signs and signals; and (2) § 393.60(e)(1)(ii), which provides an exception to paragraph (e)(1)(i) to allow devices that utilize certain vehicle safety technologies (including, but not limited to video event recorders, lane departure warning systems, collision mitigation or warning systems, transponders, and sensors that are part of a hands-free driver aid equipment package) to be mounted on the interior of the windshield and within the area swept by the windshield wipers. The Agency adds a definition of "vehicle safety technology" in § 393.5, specifically as it relates to § 393.60(e). The Agency believes the potential economic impact of these changes is

negligible. The amendments do not impose new or more stringent requirements, but simply codify the temporary exemptions granted pursuant to 49 CFR part 381 that allow the use of the above-mentioned devices/technologies in locations that would have previously been a violation of § 393.60(e)(1). More importantly, the amendments do not mandate the use of any devices/technologies, but simply permit the voluntary use of the devices/technologies while mounted in a location that maximizes their effectiveness without impairing operational safety.

II. Abbreviations

Full Name	Abbreviation or Acronym
Clean Air Act	CAA
Categorical Exclusion	CE
Code of Federal Regulations	CFR
Commercial Motor Vehicles	CMVs
Executive Order	EO
Federal Highway Administration	FHWA
Federal Motor Carrier Safety Administration	FMCSA
Federal Motor Carrier Safety Regulations	FMCSRs
Fixing America’s Surface Transportation Act	FAST Act
Motor Carrier Act, 1935	1935 Act
Motor Carrier Safety Act of 1984	1984 Act
National Environmental Policy Act	NEPA
Notice of Proposed Rulemaking	NPRM
Office of Management and Budget	OMB
United States Code	U.S.C.

III. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act, 1935 [1935 Act], the Motor Carrier Safety Act of 1984 [1984 Act], and the FAST Act of 2015.

The 1935 Act, as amended, provides that “[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2)

qualifications and maximum hours-of-service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.” [49 U.S.C. 31502(b)].

The 1984 Act provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to “prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate vehicles safely . . . ; (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title.” [49 U.S.C. 31136(a)].

Section 5301 of the FAST Act directs FMCSA to exempt voluntary mounting of a vehicle safety technology on a windshield if that technology is likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved without the exemption [Pub. L. 114-94, 129 Stat. 1312, 1543, Dec. 4, 2015]. Section 5301(c) also specifies that any regulatory exemption for windshield-mounted technologies in effect on the date of enactment of the FAST Act “shall be considered likely to achieve a level of safety that is equivalent to or greater than the level of safety

that would be achieved absent an exemption . . .” It must be noted, however, that section 1003 of the FAST Act makes this provision effective on October 1, 2015, not on the date the act was signed.

The requirements of 49 U.S.C. 31136 (a)(1), (2) and (4) are applicable to this rulemaking action. The rulemaking amends 49 CFR part 393 to allow certain safety equipment to be mounted within the area of the windshield swept by the windshield wipers. The Agency has concluded that this modification will not impair operational safety. Because the amendments in this final rule are primarily technical changes that make permanent certain variances already allowed by regulatory exemptions, FMCSA believes that they will be welcomed by motor carriers and drivers alike and that coercion to violate these variances, which is prohibited by § 31136(a)(5), will not be an issue. FMCSA must consider the “costs and benefits” of any proposal before promulgating regulations [49 U.S.C. 31136(c)(2)(A), 31502(d)].

Adoption of this rule is a nondiscretionary ministerial action. Because prior notice and opportunity for comment could not affect the substance of this rule, FMCSA finds good cause under 49 U.S.C. 553(b) to make the rule immediately final. For the same reason, the Agency finds good cause to make the rule effective upon publication, as authorized by 49 U.S.C. 553(d).

IV. Background

The fundamental purpose of 49 CFR part 393, “Parts and Accessories Necessary for Safe Operation,” is to ensure that an employer does not operate a CMV or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of that part. However, nothing contained in part 393 should be construed to

prohibit the use of additional equipment and accessories, as long as it is not inconsistent with or prohibited by the FMCSRs, provided that such equipment and accessories do not decrease the safety of operation of the CMV on which they are used (§ 393.3).

Prior to 1998, § 393.60(c) (“Use of vision-reducing matter”) prohibited the operation of any CMV “with any label, sticker, decalcomania, or other vision-reducing matter covering any portion of its windshield or windows at either side of the driver’s compartment, except that stickers required by law may be affixed at the bottom of the windshield, provided that no portion of any label, sticker, decalcomania, or other vision-reducing matter may extend upward more than 4 ½ inches from the bottom of such windshield.” On March 6, 1995, the Federal Highway Administration (FHWA) granted a petition from the Commonwealth of Kentucky and Heavy Vehicle Electronic License Plate, Inc. for a waiver of the requirements of § 393.60(c) to allow mounting of an automatic vehicle identification transponder at the upper border of the windshield of CMVs. After reviewing automotive engineering recommended practices, the Federal Motor Vehicle Safety Standards, research regarding driver’s field of view, and CMV cab designs related to placement of interior mirrors and sun visors, FHWA concluded that mounting a transponder at the approximate center of the top of the windshield would be extremely unlikely to create a situation inconsistent with the safe operation of a CMV, and was unlikely to have any effect on a driver’s ability to observe nearby objects, such as pedestrians.

On April 14, 1997, FHWA published a notice of proposed rulemaking (NPRM) in which the Agency proposed general amendments to part 393 of the FMCSRs, including numerous revisions to § 393.60 regarding glazing materials, windshields and windows

(62 FR 18170). Among other things, FHWA proposed revising § 393.60(c) concerning the restrictions on the use of vision-reducing matter on windshields to allow the installation of antennas, transponders, and similar devices in the upper margin of windshields. Specifically, the NPRM proposed to replace § 393.60(c) with a new § 393.60(e), “Prohibition on obstructions to the driver’s field of view,” that would (1) require antennas, transponders, and similar devices to be located not more than 6 inches below the upper edge of the windshield, outside the area swept by the windshield wipers, and outside the driver’s sight lines to the road and highway signs or signals, and (2) retain the general requirement that inspection decals and stickers required under Federal or State laws must be mounted not more than 4 ½ inches from the bottom of the windshield, outside the area swept by the windshield wipers, and outside the driver’s sight lines to the road and highway signs or signals. The proposed revisions were intended to eliminate the need for motor carriers to petition FHWA for waivers to allow the use of windshield-mounted transponders and similar devices, such as the March 1995 waiver. The NPRM stated that “The proposed amendment would codify the March 6, 1995, waiver and help to promote the use of advanced technologies to improve the efficiency and safety of operation of commercial motor vehicles.”

On January 9, 1998, FHWA published a final rule adopting the amendments as proposed in the April 1997 NPRM (63 FR 1383). In adopting the amendments, FHWA stated that “revising § 393.60 to allow the use of windshield-mounted transponders and similar devices will help to promote increased efficiency and safety of motor carrier operations.” FHWA reviewed accident reports concerning the transponder-equipped CMVs operating under the terms of the 1995 waiver, and determined that there had been

no crashes that could be attributed to the mounting of such devices in the uppermost area of the center of the windshields of the CMVs. Based on this, FHWA concluded that “the real-world experience of the motor carriers operating approximately 10,000 transponder-equipped CMVs indicates that allowing other CMVs to be similarly equipped is consistent with the public interest and the safe operation of CMVs.” The amendments adopted in the January 1998 final rule, establishing § 393.60(e), have remained unchanged over the past 18 years.

In the past several years, FMCSA has granted numerous temporary exemptions from 49 CFR 393.60(e)(1) for a variety of devices and safety technologies that require a clear forward-facing visual field to function most effectively. In conditions of rain or other inclement weather, these devices must be located partially or entirely in the area of the windshield swept by wipers. Many of these devices/safety technologies, such as video event recorders, lane departure warning system sensors, and forward collision warning and mitigation systems, did not exist when the requirements of § 393.60(e) were first established in 1998.

V. FAST Act – Windshield Technology

Section 5301(a) of the FAST Act directs FMCSA to amend § 393.60(e) of the FMCSRs to “exempt from that section the voluntary mounting on a windshield of vehicle safety technology likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved absent the exemption.” “Vehicle safety technology” is defined in Section 5301(b) to include (1) a fleet-related incident management system, (2) performance or behavior management system, (3) speed management system, (4) lane departure warning system, (5) forward collision warning or

mitigation system, (6) active cruise control system, and (7) any other technology that the Secretary considers applicable.

Section 5301(c) also states that “any windshield mounted technology with a short term exemption under part 381 of title 49, Code of Federal Regulations, on the date of enactment of this Act, shall be considered likely to achieve a level of safety that is equivalent to or greater than the level of safety that would be achieved absent an exemption.” The following is a list of temporary exemptions from § 393.60(e) that were in effect on October 1, 2015, the effective date of the FAST Act pursuant to section 1003:

- On March 13, 2015 (80 FR 13460), FMCSA granted a 2-year exemption from § 393.60(e)(1) to Volvo/Prevost, LLC motorcoaches for a lane departure system mounted not more than 7 inches above the lower edge of the area swept by the windshield wipers, and outside the driver’s sight lines to the road and highway signs and signals. The lane departure warning system alerts drivers who unintentionally drift out of their lane of travel, thus promoting improved safety performance.
- On March 18, 2015 (80 FR 14222), FMCSA granted Mobileye, Inc., a 2-year exemption from § 393.60(e)(1) for CMVs utilizing a camera-based collision avoidance system mounted not more than 4 inches below the upper edge, or above the lower edge, of the area swept by the windshield wipers, and outside the driver’s sight lines to the road and highway signs and signals. The collision avoidance system warns drivers of potential hazards by detecting other vehicles, pedestrians and cyclists on the road, and lane markings and traffic signs.

- On March 18, 2015 (80 FR 14231), FMCSA granted Lytx Inc. (formerly DriveCam, Inc.), a renewal of a 2-year exemption from § 393.60(e)(1) for CMV utilizing video event recorders mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and located outside the driver's sight lines to the road and highway signs and signals. Use of the video event recorders increases safety through (1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness, (2) enhanced monitoring of passenger behavior for CMVs in passenger service, and (3) enhanced collision review and analysis. This exemption was initially granted on April 15, 2009, and was renewed for successive 2-year periods in 2011, 2013, and 2015.
- On April 2, 2015 (80 FR 17818), FMCSA granted Greyhound Lines, Inc. a renewal of a 2-year exemption from § 393.60(e)(1) for its buses utilizing video event recorders mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and located outside the driver's sight lines to the road and highway signs and signals. Use of the video event recorders increases safety through (1) identification and remediation of risky driving behaviors such as distracted driving and drowsiness, (2) enhanced monitoring of passenger behavior for CMVs in passenger service, and (3) enhanced collision review and analysis. This exemption was initially granted on March 19, 2009, and was renewed for successive 2-year periods in 2011, 2013, and 2015.

- On May 20, 2015 (80 FR 29151), FMCSA granted the Virginia Tech Transportation Institute a 2-year exemption from § 393.60(e) to allow certain motor carriers operating up to 150 CMVs that are part of a National Highway Traffic Safety Administration (NHTSA) research program on the reliability of collision avoidance systems to mount camera-based data acquisition systems within and/or below 3 inches of the bottom of the driver side windshield wiper sweep, and out of the driver's sight lines to the road and highway signs and signals. The data acquisition system provides an external view of the road and an internal view of the driver, scanning the facial features of the driver for detection of impaired driving.
- On June 22, 2015 (80 FR 35697), FMCSA granted Help, Inc. a 2-year exemption from § 393.60(e)(1) for motor carriers using Help, Inc. transponders mounted 2 inches right of the center of the windshield, and 2-3 inches above the dashboard. If however, because of the design and mounting of the windshield wipers on a particular CMV, use of the mounting location identified above did not result in the transponder being located within the swept area of the wipers, where it could function optimally, the transponder could be positioned: (1) to the right of the center of the windshield; and (2) as low as possible in the swept area of the wipers. The transponders transmit and receive data that is used to help determine a vehicle's compliance with safety, weight, and credential requirements while traveling at highway speeds, saving motor carriers time, fuel, and money, reducing congestion around inspection facilities, and

improving inspection efficiency and effectiveness by enabling officials to focus their resources on vehicles with safety and size and weight infractions.

- On November 18, 2013, FMCSA renewed (and published on November 25, 2013, 78 FR 70396) for 2 years an exemption from § 393.60(e)(1) for motor carriers using lane departure warning systems and collision mitigation systems mounted not more than 50 mm (2 inches) below the upper edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. The lane departure warning system alerts drivers who unintentionally drift out of their lane of travel, thus promoting improved safety performance. This exemption was initially granted in 2011, renewed (through November 25, 2015) in 2013, and again (through November 17, 2017) on December 7, 2015 (80 FR76061). The 2011 exemption was in effect on the date of enactment of the FAST Act.

Less than one month after enactment of the FAST Act, FMCSA granted one additional temporary exemption from § 393.60(e) that is currently in effect:

- On December 21, 2015 (80 FR 794112), FMCSA granted Volvo Trucks of North America a 2-year exemption from § 393.60(e)(1) for motor carriers operating Volvo CMVs to use a rain and ambient light detection sensor mounted in the lower part of the passenger side of the windshield within the bottom 7 inches of the area swept by the windshield wipers, outside the driver's sight lines to all mirrors, highway signs, signals, and view of the road ahead. The sensors are part of a hands-free driver aid equipment package intended to improve driver safety.

Video event recorders (Lytx, Greyhound), lane departure warning systems (Bendix, Volvo/Prevost), and collision avoidance systems (Mobileye) were specifically identified in the definition of “vehicle safety technology” in section 5301(b) of the FAST Act. FMCSA considers both the VTTI data acquisition system, which scans a driver’s facial features for the detection of impaired driving, and the Volvo rain and ambient light sensor, which is part of a hands-free driver aid equipment package, to be “performance or behavior management systems” under the definition in the Act. While transponders do not fall into any of the specific categories included in the definition of “vehicle safety technology” in the Act, these devices have been permitted to be mounted in the windshield of CMVs since the granting of the 1995 waiver, and will be included in the amendments made via this rule as the HELP, Inc., temporary exemption was in effect at the time the Act was published.

VI. Discussion of Final Rule

As directed by the Act, this final rule amends § 393.60(e) to allow certain vehicle safety technologies to be mounted on the interior of the windshield of a CMV, within a defined portion of the swept area of the windshield. FMCSA adds a definition of “vehicle safety technology” in § 393.5 of the FMCSRs, to include all of the technologies that had been granted temporary exemptions from § 393.60(e) that were in effect at the time the FAST Act was enacted. Consistent with the terms and conditions outlined in the various temporary exemptions currently in effect, the amended rules require devices that must be mounted within the area swept by the windshield wipers to be located (1) not more than 100 mm (4 inches) below the upper edge, and (2) not more than 175 mm (7 inches) above the lower edge of the area swept. Additionally, and consistent with the existing regulation

and the terms and conditions of the temporary exemptions, the devices must be located outside the driver's sight lines to the road and highway signs and signals.

Similar to the 1995 waiver and the 1998 amendments to § 393.60, this rule updates the FMCSRs in response to the development and proliferation of devices that utilize new and innovative vehicle safety technologies that did not exist at the time the previous requirements were adopted. These devices/technologies have been proven to improve safety and vehicle operations. As the first temporary exemption from 393.60(e)(1) was granted in March 2009, FMCSA has over 7 years of real-world experience of motor carriers operating CMVs using devices mounted on the interior of the windshield and marginally within the area swept by the windshield wipers. During that time, FMCSA is unaware of any crashes that have been attributed to the location of such devices.

Section 5301(b) of the Act directs the Agency to permit specific vehicle safety technologies (i.e., fleet-related incident management system, performance or behavior management system, speed management system, lane departure warning system, forward collision warning or mitigation system, and active cruise control system) to be mounted lower in the windshield than currently allowed, and "any other technology that the Secretary considers applicable." At this time, the Agency is unaware of any other existing technologies that should be included in the amendments made via this rule.

VII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an

international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

VIII. Section-by-Section Analysis

Under this final rule, the requirements of 49 CFR 393.60 are revised to allow for the utilization of specific vehicle safety technologies that would be mounted on the interior of the windshield of a CMV, and within the area swept by the windshield wipers. FMCSA also adds a definition for “vehicle safety technology” in 49 CFR 393.5

IX. Regulatory Analyses

A. Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by Executive Order 13563)

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011); is not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980, 44 FR 11034, February 26, 1979); and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Therefore, the Office of Management and Budget has not reviewed it under that Order. The Agency estimates that the economic benefits and costs of the voluntary use of vehicle safety technologies will be less than \$100 million. Carriers will not incur costs associated with adopting any technologies identified in this final rule because all such technologies are purely optional. Manufacturers of technologies currently exempted will experience a minor cost savings through the elimination of the biennial burden to renew existing exemptions. Manufacturers not currently named in exemptions that wish to develop and market such

technologies will have new business opportunities. Carriers that choose to purchase and install currently exempt technologies may be more confident in doing so since there will be no question as to whether an expiring exemption will be renewed.

Furthermore, the net impact of this rule, although small, should be beneficial to the motoring public. When FMCSA previously granted each exemption involved here, it found that doing so would likely achieve a level of safety equivalent to, or greater than, the level of safety achieved without the exemption. Based on the technical information available, there is no indication that the rain and ambient light detection sensors, lane departure warning system sensors, collision mitigation or avoidance system sensors, video event recorders or transponders would obstruct drivers' views of the roadway, highway signs and surrounding traffic. Generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver; and the location within the top four inches of the area swept by the windshield wipers and out of the driver's sightline or within the bottom 7 inches of the area swept by the windshield wipers and out of the driver's sightline will be reasonable and enforceable at roadside. Moreover, no exemption has been rescinded due to: (1) Motor carriers and/or commercial motor vehicles failing to comply with the terms and conditions of an exemption; (2) A lower level of safety than that prior to the granting of an exemption; or (3) Inconsistency between continuation of an exemption with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b). For the reasons stated above, the Agency estimates that the net impact of this rule will be positive.

The economic impact of this final rule is expected to be small because it merely makes permanent certain temporary exemptions to the windshield-obstruction rule, and

none of its provisions involve new or more stringent requirements than those already allowed by current exemptions. This final rule does not approach the \$100 million annual threshold of economic significance with respect to costs; in fact, it adds no new costs. With respect to benefits, this final rule will marginally increase the usage of vehicle safety technologies as defined in Section 5301(b) of the FAST Act, thereby producing safety benefits that the Agency lacks data to quantify. However, as the vehicle safety technologies permanently exempted in this rule are already commercially available and used by many carriers, the Agency expects their usage to increase only slightly faster than without this rule. The Agency therefore expects the benefits of this final rule will not rise to the \$100 million annual threshold for economic significance. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest.

The FMCSA has determined that it has good cause under 5 U.S.C. 553(b) to adopt this final rule without prior notice and opportunity for comment. The Agency finds that notice and comment are “unnecessary” because section 5301(a) of the FAST Act required FMCSA to revise § 393.60(e) within 180 days of the date of enactment, essentially to codify as permanent regulations those exemptions to the windshield-obstruction rule that have been issued in recent years. Section 5301(c) specified that any exemption from § 393.60(e) in effect on the date of enactment of the FAST Act must be considered to meet the statutory test for an exemption in 49 U.S.C. 31315(b)(1), i.e., “likely [to] achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” Because section 5301 gives FMCSA no discretion in amending the regulations to allow vehicle safety technology, the Agency has determined that notice and comment are unnecessary.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104-121, 110 Stat. 857, March 29, 1996), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. FMCSA determined that it has good cause to adopt the rule without notice and comment.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please

consult the FMCSA personnel listed in the **For Further Information Contact** section of the final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 et seq.), that results in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$155 million (which is the value of \$100 million in 2014 after adjusting for inflation) or more in any 1 year.

E. Paperwork Reduction Act (Collection of Information)

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). FMCSA has determined that no new information collection requirements are associated with this rule under OMB control number 2126-0003, "Inspection, Repair, and Maintenance."

F. Executive Order 13132 (Federalism)

A rule has Federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this final rule under Executive Order 13132 and determined that it does not have Federalism implications.

G. Executive Order 12988 (Civil Justice Reform)

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

H. Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this final rule will not create an environmental risk to health or safety that may disproportionately affect children.

I. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

J. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will

affect the privacy of individuals. This final rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this final rule will not result in a new or revised Privacy Act System of Records for FMCSA.

K. Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

L. Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

M. Executive Order 13175 (Indian Tribal Governments)

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

N. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt its own technical standards, there is no need to submit a separate statement to OMB on this matter.

O. Environment (National Environmental Policy Act, Clean Air Act, Environmental Justice)

FMCSA analyzed this final rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under our environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, Appendix 2, paragraph 6.bb. The Categorical Exclusion (CE) in paragraph 6.bb. addresses regulations concerning vehicle operation safety standards (e.g., regulations requiring: certain motor carriers to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (e.g. fire extinguishers and flares). A Categorical Exclusion Determination is available for inspection or copying in the Regulations.gov.

FMCSA also analyzed this final rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this final rule in accordance with the Executive Order, and has determined that it has none, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety

For the reasons stated above, FMCSA amends 49 CFR chapter III, subchapter B, as follows:

PART 393--PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

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

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); sec. 5301 and 5524 of Pub. L. 114-94, 129 Stat. 1312, 1543, 1560; and 49 CFR 1.87.

2. Amend § 393.5 by adding a definition for “Vehicle safety technology” in alphabetical order to read as follows:

§ 393.5 Definitions.

* * * * *

Vehicle safety technology. Vehicle safety technology includes a fleet-related incident management system, performance or behavior management system, speed management system, lane departure warning system, forward collision warning or mitigation system, active cruise control system, and transponder.

* * * * *

3. Amend § 393.60 by revising paragraph (e)(1) to read as follows:

§ 393.60 Glazing in specified openings.

* * * * *

(e) *Prohibition on obstructions to the driver’s field of view—(1) Devices mounted on the interior of the windshield.* (i) Antennas, and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

(ii) Paragraph (e)(1)(i) of this section does not apply to vehicle safety technologies, as defined in § 393.5, that are mounted on the interior of a windshield.

Devices with vehicle safety technologies must be mounted:

(A) Not more than 100 mm (4 inches) below the upper edge of the area swept by the windshield wipers;

(B) Not more than 175 mm (7 inches) above the lower edge of the area swept by the windshield wipers; and

(C) Outside the driver’s sight lines to the road and highway signs and signals.

* * * * *

Issued under the authority of delegation in 49 CFR 1.87 on: September 12, 2016

T.F. Scott Darling, III
Administrator

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