

E. Penalty Increases for Prior Violations

1. The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty. The general standard for increasing a baseline proposed penalty on the basis of prior violations is as follows:

- a. One prior case—25% increase over the pre-mitigation recommended penalty
- b. Two prior cases—50% increase over the pre-mitigation recommended penalty
- c. Three prior cases—75% increase over the pre-mitigation recommended penalty
- d. Four or more prior cases—100% increase over the pre-mitigation recommended penalty

2. A case of prior violations closed more than five years previously normally will not be considered in determining a proposed penalty.

F. Penalty Increases for Use of Expired Exemptions

Adjustments to the base line figures for use of expired exemptions can be made depending on how much material has been shipped during the period between the expiration date and the renewal date. If the company previously has been found to have operated under an expired exemption, the penalty is normally doubled. If the company has been previously cited for other violations, the penalty generally will be increased by about 25%.

Issued in Washington, DC on February 27, 1995 under authority delegated in 49 CFR part 1.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

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Federal Highway Administration**49 CFR Part 393**

[FHWA Docket No. MC-94-28]

Parts and Accessories Necessary for Safe Operation; Glazing and Window Construction; Petition for Waiver To Permit Use of Automatic Vehicle Identification Transponder

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Grant of petition for waiver.

SUMMARY: The FHWA is granting a petition from the Commonwealth of Kentucky, lead State for the ADVANTAGE I-75 Program, and Heavy Vehicle Electronic License Plate, Inc., (HELP) requesting a waiver from the requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to allow mounting of an automatic vehicle identification (AVI) transponder near the upper border at the approximate center of the windshields of commercial motor vehicles.

The FHWA is granting the waiver to permit the use of the transponders in commercial motor vehicles participating in the ADVANTAGE I-75 operational ("beta") test and the HELP corridor programs, subject to the conditions imposed in this notice.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Background**

On October 12, 1994, the FHWA published a notice in the **Federal Register** (59 FR 51540) requesting comments on petitions received from the Commonwealth of Kentucky (Kentucky) and HELP. The petitioners are the lead organizations in multi-State partnerships of public and private sector interests conducting a series of operational tests that fall within the Commercial Vehicle Operations (CVO) element of the Intelligent Transportation System (ITS) Program (formerly known as the Intelligent Vehicle-Highway Systems (IVHS) program). The ADVANTAGE I-75 and HELP programs were created to allow commercial motor vehicles (CMVs) that are equipped with transponders and that comply with safety and administrative requirements to travel any segment of their respective instrumented highways at mainline speeds with minimal stopping at weight/inspection checkpoints.

The AVI device proposed for use in both programs is an electronic transponder designed to send and receive signals from a CMV to ports of entry (POEs) and safety inspection sites. The devices would be used to transmit a variety of information, such as the identity of the motor carrier, the gross weight of the vehicle, and the status of the vehicle's registration and fuel tax payments. The transponder measures 84 mm (3.3 inches) high by 112 mm (4.4 inches) wide by 38 mm (1.5 inches) deep.

In order to function effectively, the transponder must be able to properly transmit and receive signals from roadside receivers installed at States' ports of entry. The physical location of the transponder is a critical factor in its operation because of the potential for internal and external electronic

interference. In addition, the device must be placed in a suitable location to allow drivers to read the instruction displayed on the transponder, i.e., to enter or to bypass the POE. An engineering evaluation performed by one of the ADVANTAGE I-75 electronic equipment contractors determined that a location near the center of the upper border of the windshield best allowed the device to meet both of these requirements.

However, 49 CFR 393.60(c) requires that no motor vehicle be operated with any label, sticker, decalomania, 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 to the bottom of the windshield, provided that no portion of any label, sticker, decalomania, or other vision-reducing matter may extend upward more than 114 mm (4.5 inches) from the bottom of the windshield. The requirements of § 393.60, particularly the 114 mm (4.5 inch) limit specified in § 393.60(c), are independent of the physical dimensions of windshields.

Section 206(f) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(e), formerly 49 U.S.C. app. 2505(f)) authorizes waivers of any regulation issued under the authority of that Act upon a determination that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

The FHWA proposed to grant the waiver on October 12, 1994. The notice described the agency's review of automotive engineering recommended practices, the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards, and recent research concerning drivers' field of view. It also examined current CMV cab designs related to placement of interior mirrors and sunvisors which occupy approximately the same space proposed for the AVI transponder. Based on the information obtained from this review, the FHWA concluded that a transponder mounted 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. This location is well outside the area recommended for windshield wiper sweep under the Society of Automotive Engineers (SAE) Recommended Practice J198 (Windshield Wiper Systems—Trucks, Buses, and Multipurpose Vehicles) and the area recommended for windshield defrosting under Recommended Practice J342 (Windshield Defrosting Systems Performance Guidelines—Trucks,

Buses, and Multi-Purpose Vehicles). The findings of four recent research reports on the subject also suggested that the location of an object, such as a transponder device, near the upper margin of a CMV's windshield is unlikely to have any effect on a driver's ability to observe nearby objects, such as pedestrians.

In addition, the FHWA believes that the public interest would be furthered by granting this waiver. Drivers whose CMVs are in compliance with registration, safety inspection, and operating requirements and permits may receive a signal from inspection officials to bypass ports of entry or inspection sites. This would have the effect of greatly improving inspection efficiency and effectiveness by enabling officials to focus their resources on vehicles with safety and size and weight infractions.

Discussion of Comments to the Docket

The FHWA received five comments to the notice of petition. Advocates for Highway and Auto Safety (AHAS) opposed the windshield mounting location for the transponder and criticized the prior field activity under the ADVANTAGE I-75 "alpha" test. The Department of California Highway Patrol (CHP) supported the general concept of the waiver, but expressed concern with the windshield mounting location due to a potential conflict with its State regulations. The Illinois Department of Transportation, Heavy Vehicle Electronic License Plate (HELP), Inc., and the Commonwealth of Kentucky Transportation Cabinet commented in favor of the waiver.

The AHAS stated its opposition to "any action or item of equipment that might obstruct [the] view of CMV drivers," and added that "[a]ny waiver that might pose an impediment to driver vision must be carefully scrutinized to assure that it is consistent with safety." "It is axiomatic," it noted, "that vision plays a central role in the driving task * * *." The AHAS believes the design of the transponder is inappropriate, and that the transponder hardware should be separated from the visual indicator provided for the driver.

The AHAS stated that it "might support the FHWA's proposal because of the small size of the transponder, and the fact that it will be placed at the top of the windshield and outside the general field of view of the driver." However, "Advocates cannot support the transponder proposal at this time since there are unresolved issues regarding the necessity of placing the device on the windshield." The AHAS also asserted that the FHWA provided insufficient technical justification for

the windshield mounting location. It dismissed the agency's reasoning as merely rationalizing the "convenience" of that location.

The FHWA disagrees with the AHAS' assertions. The FHWA is required to evaluate the safety, not to regulate the design, of equipment for which a waiver is requested. The design is a product of the petitioners' engineering judgment. ADVANTAGE I-75 and HELP requested a waiver for tests of a device whose design had already been selected. The only issue was whether the placement of the AVI device would reduce motor carrier safety. The FHWA has fully considered that question.

The FHWA requested, and has received, a copy of engineering notes from Delco Electronics documenting its assessment of alternate transponder mounting locations. A copy of the test report has been placed in the docket.

Delco Electronics performed two tests of antenna pattern characterization to compare the strength of the signal received at the roadside reader. The first compared mounting locations at the lower-right, upper-right, upper-left, and lower-left corners of the driver's side of the windshield. The second compared two alternate locations with the transponder attached to the windshield (upper-right and lower-left corners of driver's side) with a third location utilizing a mounting bracket (upper-right corner of driver's side) that held the transponder just off the windshield. In both tests, the location at the upper-right corner of the driver's side of the windshield delivered a superior signal, as measured by relative attenuation in dBm [decibel-milliwatts, a measurement of signal power on a logarithmic scale]. The signal from the upper-right driver's side windshield mounting location was as much as 10 dBm stronger compared to other locations and to the bracket-mounted alternative.

For radio frequency (RF) devices to successfully perform their functions, their transmitted signals must be strong enough to reach their targets. The upper-right driver's side windshield mounting location appears to be the best among the several alternatives that Delco Electronics evaluated. The 10 dBm difference in the signal strength can be a key factor in facilitating the transponder's successful field implementation.

As ITS matures, it is likely that technical advancements and competition among manufacturers will improve the packaging and reduce the size of transponders and other ITS devices. It is conceivable that future clearance transponders could be mounted in locations other than a

CMV's windshield, and indicator lamps added to dashboard instrumentation, as the AHAS recommends in its comments.

The FHWA believes that the AHAS' comments reflect a misinterpretation of the visibility issue. For example, the AHAS argued that the visible indicator was not necessary because the transponder would be hidden by a sunvisor. There is nothing in the notice that warrants that conclusion. Sunvisors are not always extended. The FHWA made the comparison between the vertical dimension of the transponder and that of sunvisors and sunshades in reference to a driver's useful field of view. The AHAS also questioned other technical issues regarding the transponder's placement without presenting research results comparable to those cited by the FHWA in support of the proposed waiver.

In addition, the AHAS contended that the FHWA should have followed formal waiver procedures for the ADVANTAGE I-75 Alpha Test, rather than issuing an enforcement moratorium that had the same effect. The FHWA disagrees. The Alpha Test was merely a technical shakedown of AVI transponders on a small number of vehicles (up to 200) to ensure that the equipment would work properly during the operational Beta Test. This kind of fine-tuning could not be done with stationary vehicles. The Alpha Test was closely controlled and monitored by the FHWA's State partners, since the participating States and motor carriers needed to be aware of problems before starting the Beta Test. The FHWA simply allowed ADVANTAGE I-75 to complete this preparatory evaluation. As the agency and the ADVANTAGE I-75 States expected, no visibility problems caused by the transponders were reported.

The Department of California Highway Patrol (CHP) did not object to the use of the transponder. It did, however, express a concern about the proposed mounting location: "California law prohibits any object from being installed or affixed on any portion of the windshield except for * * * a 7-inch square in the lower corner of the windshield opposite the driver or in a 5-inch square in the lower corner of the windshield near the driver." The CHP provided a copy of the relevant regulation, California Vehicle Code Section 26708.

California's regulation differs from § 393.60(c). In the fall of 1994, the FHWA notified the CHP, as the State's Motor Carrier Safety Assistance Program (MCSAP) grant recipient, that the regulation must be brought into conformance with the FMCSRs. The

FHWA is working with California to address this issue, and recommends that the CHP accept the terms of this waiver while efforts are ongoing by the State to seek a legislative change.

The Illinois Department of Transportation (IDOT) strongly supports the waiver. The IDOT noted that windshield-mounted transponders are also being actively considered for automated toll collection and commercial vehicle [electronic] pre-clearance systems planned by Illinois and other States. The IDOT believes the waiver would not sacrifice truck safety, but would allow the transponders used in the programs to be positioned in vehicles so as to work more effectively.

HELP, Inc. stated that it is working with Intelligent Transportation Systems technology to provide benefits to both motor carriers and weigh station controllers. HELP emphasizes the importance of the location of the AVI transponder to insure that transmitted signals are received properly. It noted that the proposed "right center quadrant" windshield location is similar to the standard location of an inside rear-view mirror, reducing the impact of reduced or obstructed driver views. HELP is also working with the CHP to implement a weigh station bypass service called PRE-PASS™ which requires placement of the AVI transponder in that optimal location. Citing the CHP's comment to this docket, HELP notes that it is working with the CHP to draft legislation which will modify current California law to allow the AVI transponder to be mounted in this location. HELP strongly supports the proposed waiver and requests the FHWA's approval so that State governments and the motor carrier industry can proceed with implementing PRE-PASS™ and gain improvements in transportation productivity and efficiency.

The Commonwealth of Kentucky Transportation Cabinet (Kentucky), as lead State in the ADVANTAGE I-75 partnership, strongly supports the proposed waiver. Kentucky stated that over 200 trucks operated with the transponders for over a year. Staff from the Transportation Cabinet and the Kentucky Transportation Center rode in the trucks during testing, and also talked with drivers, dispatchers, maintenance personnel, and fleet managers. Kentucky became "convinced that, when properly mounted, the transponder does not in any way obstruct the driver's view of the roadway. We have not had a single report of an incident or a concern relating to a transponder obstructing a

driver's view." Kentucky goes on to state that

Safety is a vital element of the ADVANTAGE I-75 project. The project is supported by Motor Carrier Enforcement Personnel in each of the participating states and province. We would not support any practice that we believed would compromise the safety of travelers on our nation's highways. Our support of the proposed waiver is based upon our conviction that the transponder does not obstruct the driver's vision or in any other way create a safety hazard. We invite those with strong concerns to visit one of our ADVANTAGE I-75 sites and to climb into the cab of a transponder-equipped truck.

Conditions of the Waiver

The conditions of the waiver proposed in the October 12, 1994, notice have been modified somewhat for the reasons set forth below.

As an alternative to complying with the wiring requirements of 49 CFR 393.27 and 393.33, the petitioners may, if they choose, comply with SAE Recommended Practice (RP) J1292, Automobile, Truck, Truck-Tractor, Trailer, and Motor Coach Wiring. The guidelines contained in RP J1292 provide more comprehensive guidance and are equivalent to, and slightly more stringent than, §§ 393.27 and 393.33 of the FMCSRs. The RP covers 3 areas. It cross-references the same RPs incorporated by reference in § 393.27 (Wiring Specifications) for battery cable (SAE RP J1127) and for low-tension primary cable (SAE RP J1128). It cross-references SAE RP J163, Low-tension wiring and cable terminals and splice clips, which is indirectly referenced in § 393.33, Wiring [and] installation. The RP also requires wiring overload protective devices, fuses, or circuit breakers in this type of low-current application. While this last item is a slight change, the agency notes that the transponder's installation manual requires the power wire to be connected to the fused side of battery power, and states that a one-amp in-line fuse may be added for additional protection.

The duration and termination of the waiver discussed in Conditions III and VI have been changed so that the waiver shall remain in effect unless revoked by the FHWA. The grantees will be required to report the number of participating motor carriers and the number of transponder-equipped CMVs. Removing the time limit on the waiver will enable the grantees to continue operating their programs, provided the reports submitted indicate that the transponders are not affecting the safe operation of CMVs.

Condition VII now requires that the project reports be submitted within two

years of the effective date of the waiver. A review after two years will enable the petitioners and the FHWA to assess a significant amount of data.

Condition IV has been modified to recognize the potential for the existence of nonconforming State or local laws or regulations that may not have been brought to the FHWA's attention.

Condition V of the October proposal would have limited the number of CMVs eligible for the waiver to 30,000. This restriction has been eliminated. Although that figure was a reasonable estimate of the number of participating vehicles, it would have required the petitioners to request adjustments to the ceiling, possibly more than once, if additional motor carriers wished to join the test program. Because the agency's review of the engineering standards and research on field of view discussed above indicated that use of the transponder would be very unlikely to create an unsafe operating situation, the FHWA has decided not to impose a numerical limit on the number of vehicles included in the program. However, both ADVANTAGE I-75 and HELP will be required to submit information on accidents involving the vehicles equipped with transponders, in accordance with Condition III.

I. Location of the Transponder

The transponder shall be mounted at or near the top center of the windshield, outside the area swept by the CMV's windshield wipers, or, at a minimum, outside the driver's sight lines to the road and highway signs or signals.

II. Compliance With Wiring Requirements of the FMCSRs

The installation of the transponder shall be required to comply with either (a) 49 CFR 393.27, Wiring specification, and 49 CFR 393.33, Wiring [and] installation, or (b) with SAE Recommended Practice J1292, Automobile, Truck, Truck-Tractor, Trailer, and Motor Coach Wiring.

III. Duration of Waiver; Accident and Incident Monitoring

The waiver for HELP and ADVANTAGE I-75 is effective beginning April 5, 1995. The waiver shall remain in effect indefinitely, unless revoked by the FHWA.

Motor carriers participating in ADVANTAGE I-75 and HELP shall provide the FHWA with information on accidents (as defined in 49 CFR 390.5) involving the vehicles equipped with the transponders. Accident reports shall be submitted every 6 months, and shall contain the information listed below:

1. A copy of all accident reports prepared and required by State or other governmental entities or insurers.

2. Interview information with the driver and occupants of the CMV involved. The information shall specifically indicate whether the driver of the transponder-equipped vehicle believed that the presence of the transponder was a factor in the accident. The interview shall be conducted by a motor carrier employee responsible for supervising the driver of the transponder-equipped vehicle.

IV. State and Local Laws

This waiver applies to all participating vehicles operating in interstate commerce. Although incompatible State laws or regulations perhaps cannot be changed to coincide with the start of the waiver period, the FHWA strongly encourages State and local authorities with safety regulations that would prohibit the use of the proposed transponders to accept the terms and conditions of this waiver.

V. Vehicles To Be Equipped With Transponders

The names and USDOT numbers of the motor carriers participating in the ADVANTAGE I-75 and HELP programs, as well as the number of transponder-equipped CMVs operated by each carrier, shall be provided to the FHWA. Motor carriers not participating in these programs may not equip straight trucks, tractors, or motor coaches with the transponders discussed in this waiver.

VI. Termination of Waiver

The FHWA may terminate this waiver at any time without prior warning if it determines that continued use of the transponders decreases the operational safety of the vehicles on which they are installed. Upon receipt of a notice of termination, motor carriers participating in the ADVANTAGE I-75 and HELP projects must immediately remove the transponders from their vehicles.

VII. Report

ADVANTAGE I-75 and HELP shall provide separate reports describing the transponder's installation and use within two years after the effective date of the waiver. The reports shall include information obtained from the drivers on the device's effect on visibility through the windshield.

The FHWA has fully considered the information presented in the request for waiver, engineering and other technical material reviewed concerning requirements for visibility from vehicles, and the comments received. The FHWA hereby concludes that the

waiver is consistent with the public interest and the safe operation of commercial motor vehicles. Accordingly, the FHWA hereby grants the Commonwealth of Kentucky and Heavy Vehicle Electronic License Plate, Inc., their petition for a waiver from the requirements of 49 CFR 393.60(c).

Authority: 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: February 21, 1995.

Rodney E. Slater,

Federal Highway Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 95022357-5057-01; I.D. 120594A]

RIN 0648-AG95

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Pacific Halibut Bycatch

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final 1995 specification of Pacific halibut bycatch allowances.

SUMMARY: NMFS issues a final rule to revise the management of seasonal Pacific halibut bycatch allowances annually specified for nontrawl fisheries in the Bering Sea and Aleutian Islands management area (BSAI). This final rule also provides NMFS the authority to determine annually whether to apportion a halibut bycatch allowance to the BSAI jig gear fishery or the BSAI or Gulf of Alaska (GOA) hook-and-line gear fisheries for sablefish or to exempt these fisheries from halibut bycatch restrictions. Final 1995 halibut bycatch allowances for the GOA hook-and-line gear fisheries and the BSAI nontrawl fisheries, seasonal apportionments thereof, and the manner in which these seasonal apportionments will be managed under the final rule are specified. This action is necessary to manage halibut bycatch allowances consistent with seasonal apportionments of groundfish total allowable catch (TAC) amounts, prevent preemption of the BSAI jig gear fisheries by the attainment of halibut bycatch allowances apportioned to other

nontrawl fisheries, and support the implementation of the sablefish/halibut individual fishing quota (IFQ) program. This action is intended to promote management and conservation of groundfish and other fish resources and to further the objectives contained in the fishery management plans for Alaska groundfish fisheries.

EFFECTIVE DATE: April 3, 1995.

ADDRESSES: Copies of the environmental assessment/regulatory impact review prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by vessels in the exclusive economic zone of the GOA and BSAI is managed by NMFS according to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 620, 672, 675, and 676.

Regulations for the management of halibut bycatch limits established for the GOA groundfish fisheries are set out at § 672.20(f). Regulations for the management of prohibited species bycatch limits established for the BSAI groundfish fisheries are set out at § 675.21. A proposed rule was published in the **Federal Register** on December 29, 1994 (59 FR 67268), that would revise the management of the halibut bycatch limits established for the GOA hook-and-line gear groundfish fisheries and the BSAI nontrawl groundfish fisheries. The proposed action would (1) address concerns about the potential closure of the BSAI jig gear fishery due to halibut bycatch in other nontrawl fisheries, (2) allow for the management of the seasonal apportionment of the halibut bycatch allowances annually specified for the BSAI Pacific cod hook-and-line gear fishery consistent with the management of the amount of Pacific cod TAC allocated to this fishery, and (3) authorize the exemption of the GOA and BSAI hook-and-line gear sablefish fishery from halibut bycatch restrictions to support the new sablefish/halibut IFQ program. Comments on the proposed