

Issued on: July 11, 2003.

**Annette M. Sandberg,**  
*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 393

[Docket No. FMCSA-1997-2213 (Formerly FHWA Docket No. MC-93-34)]

RIN 2126-AA12 (formerly RIN 2125-AD25)

#### Parts and Accessories Necessary for Safe Operation; Sleeper Berths on Motorcoaches; Withdrawal

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

**ACTION:** Notice of withdrawal of proposed rulemaking.

**SUMMARY:** The FMCSA withdraws its January 12, 1994 Advance Notice of Proposed Rulemaking (ANPRM) relating to the use and design of driver sleeper berths used by the motorcoach industry. Due to other regulatory priorities and minimal interest by the industry concerning this issue, no further action was taken by the FMCSA after publication of the ANPRM. At this time FMCSA chooses not to establish potentially design-restrictive regulatory standards for the use of sleeper berths on motorcoaches without authoritative research to guide their development. Accordingly, the January 12, 1994 ANPRM regarding the use and design of motorcoach sleeper berths is withdrawn.

**DATES:** The advance notice of proposed rulemaking published on January 12, 1994, at 59 FR 1706 is withdrawn as of July 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** John Steinhoff, Chief, Commercial Passenger Carrier Safety Division, (202) 366-2174, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On January 12, 1994, the Federal Highway Administration (FHWA) (now FMCSA), issued an ANPRM requesting public comment on the use and design of driver sleeper berths used by the motorcoach industry (59 FR 1706). This action was taken in response to comments received in past years from the motorcoach industry, and ones offered specifically at a motorcoach

industry Zero-Base Review (an initiative in which the agency presumed that no prior regulations existed, and started drafting from a clean slate, or as if we had "zero" regulations). The hearing was held in Miami, Florida, on January 20, 1993. There was some concern among the industry that when the current sleeper berth regulations at 49 CFR 393.76 were promulgated, the differences in design and operation between motorcoaches and trucks may not have been considered by the agency.

The FHWA received nine comments to the docket in response to the ANPRM. The comments varied as to whether the regulations should be amended and whether the agency should prohibit the placement of a sleeper berth in the baggage area (under the passenger compartment) of a motorcoach. The current regulation prohibits placement of the sleeper berth in the cargo compartment. Some commenters believed that specific sleeper berth standards for motorcoaches would improve safety by improving the physical well-being of the driver and by providing an opportunity for a relief driver to get adequate rest.

Due to other regulatory priorities and a minimal interest by the industry concerning this issue, no further action was taken by the FMCSA after these comments were received.

Operationally, the motorcoach industry rarely uses sleeper berths, choosing to transport replacement drivers to rely points for the few non-stop trips that are longer than 500 miles in length. The vast majority of motorcoach trips are broken into segments where less than 10 hours of driving are required. Therefore, FMCSA believes there is no urgent safety need for the agency to initiate regulatory action on this matter.

The FMCSA believes there is presently no research on which to base the development of new, motorcoach-oriented sleeper berth specifications. The current requirement in § 393.76 sets forth the minimum specifications for sleeper berths, and these are far exceeded by the present-day truck manufacturers. While § 393.76 is geared more toward sleeper berth installations in the truck environment, the basic principles set forth for trucks could also be adhered to by motorcoach manufacturers. These principles include: a prohibition from placing the sleeper berth in the cargo compartment (in this case, the luggage compartment), a requirement for an exit from the sleeper berth into the driver's compartment (in this case, the passenger compartment, which also includes the driver's location), and provision for

occupant restraint meeting the spirit of paragraph (h) of § 393.76. When conducting roadside inspections and compliance reviews, FMCSA considers these principles in applying the language of § 393.76 to sleeper berths installed in motorcoaches.

At this time, the FMCSA chooses not to develop regulatory standards for the use of sleeper berths on motorcoaches without authoritative research to guide their development. This could result in design restrictive requirements. Rather, the agency intends to work with the motorcoach manufacturers, the motorcoach industry, and safety organizations, such as the Commercial Vehicle Safety Alliance, to explore the development of a voluntary industry standard for motorcoach sleeper berth manufacture and maintenance. The FMCSA intends to work with these organizations to determine how the principles of § 393.76 apply to current and future motorcoach design and operations.

For these reasons, the January 12, 1994 ANPRM is withdrawn.

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**Annette M. Sandberg,**  
*Acting Administrator*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 393

[Docket No. FMCSA-1997-2278 (Formerly Docket No. MC-96-5)]

RIN 2126-AA19 (formerly RIN 2125-AD76)

#### Parts and Accessories Necessary for Safe Operation: Television Receivers and Data Display Units; Withdrawal

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

**ACTION:** Notice of withdrawal of proposed rulemaking.

**SUMMARY:** The FMCSA withdraws its April 3, 1996, Notice of Proposed Rulemaking (NPRM) to rescind restrictions on the locations at which television receivers may be positioned within commercial motor vehicles (CMVs). After reviewing the public comments received in response to the NPRM, the agency no longer considers the restrictions to be obsolete and redundant. The agency believes that it is necessary to retain the rule to prohibit unsafe driver behavior, and that doing so is not likely to discourage the use of

Intelligent Transportation Systems (ITS)-related technologies such as collision-avoidance and traveler information systems which could be used to improve safety and efficiency, or other communications systems that employ display screens.

**DATES:** The notice of proposed rulemaking published on April 3, 1996, at 61 FR 14733 is withdrawn as of July 24, 2003.

**FOR FURTHER INFORMATION CONTACT:** Larry Minor, Chief, Vehicle and Roadside Operations Division, (202) 366-8842, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 3, 1996, the Federal Highway Administration (FHWA) (now FMCSA) published an NPRM (61 FR 14733) to rescind 49 CFR 393.88. That regulation requires motor carriers to place television viewers or screens in the rear of the back of the driver's seat, if such viewer or screen is in the same compartment as the driver. Section 393.88 also requires the carrier to place the viewer or screen in a location that is not visible to the driver, while he/she is driving the CMV, with the operating controls for the television receiver also located in the back of the driver's seat so that the driver cannot operate them without leaving his/her seat.

As part of the President's Regulatory Reinvention Initiative, the agency reviewed § 393.88 and made a preliminary determination that the rule was obsolete and redundant. The agency stated that its approach differed from that of the former Interstate Commerce Commission (ICC). When the rule was originally adopted in 1951, the ICC believed that the absence of a Federal requirement would tempt people to install television receivers in commercial motor vehicles so that drivers could watch them while driving. This concern has not been borne out. The agency indicated that motor carriers recognize the inherent safety risks of allowing drivers to watch television while driving. In addition, the agency stated that the behavior that § 393.88 is intended to address, driver inattentiveness, is effectively covered by State laws and regulations.

With regard to the issue of whether the rule could potentially discourage the use of ITS-related technologies, the agency explained that some of the systems in question permit the use of in-vehicle display screens, which provide drivers with real-time map displays of

areas of traffic congestion, construction, and accidents. Some satellite communications systems enable motor carriers to track CMVs en route to a destination, and to transmit written messages to drivers that appear on video terminals in the cab. Also, some collision-avoidance or warning systems display video images of traffic around the CMV.

The agency described how it relied on regulatory guidance to clarify the applicability of § 393.88, and intended the rescission to eliminate the potential need for a case-by-case interpretation on the various configurations of in-cab video display systems. The agency was concerned that such an interpretation or regulatory guidance process would become a de facto design approval program.

**Discussion of Comments**

The FMCSA received six comments in response to the NPRM. The commenters were: Advocates for Highway and Auto Safety (Advocates), the American Trucking Association (ATA), Federal Express Corporation (Federal Express), the Flxible Corporation (Flxible), Lancer Insurance Company (Lancer), and the Truck Manufacturers Association (TMA). Advocates, Lancer, and Federal Express generally opposed the agency's proposal, while ATA, Flxible, and TMA supported the removal of the current rule, primarily because of the potential for discouraging certain technologies. ATA suggested a revision of the rule to address the overall issue of devices that may distract a driver's attention from the roadway.

Advocates does not believe that State laws are an appropriate substitute for a Federal regulation applicable to interstate motor carriers. Advocates contends that an explicit Federal requirement is needed because it would be difficult to prove that a driver viewing a television screen caused an accident. Lancer also expressed concern about the proposed removal of § 393.88. Lancer indicated that the intercity bus industry, particularly charter and tour operators, already provide on-board video programming to passengers. Typically, the equipment used is a VCR located behind the driver's seat. None of the monitors are positioned so that the driver can view the images. The current restriction ensures that drivers do not divide their attention between driving and operating the video programming. Lacer agrees with the agency's efforts to be flexible in the use of ITS-related technology, but argues that there are potential safety problems with systems that would have drivers split their

attention between driving and reading computer-generated messages.

Federal Express believes that rescinding § 393.88 could result in numerous States adopting different requirements. Federal Express recommends that the agency propose a new regulation that allows for new technologies, but prohibits devices that decrease the safety of operation of the commercial motor vehicles on which they used.

TMA and Flxible support the removal of § 393.88. TMA indicated that although the benefits provided by certain ITS-related technologies are not fully quantifiable because their cost-effectiveness and acceptance by drivers have not been documented, the usage of such devices should not be restricted by an outdated, obsolete regulation. Flxible explained that closed-circuit video surveillance equipment is sometimes installed on transit buses as a crime-fighting tool. The driver is able to observe passenger activity at all times, with the most advanced systems allowing the driver to lock-in on potential problem situations for continuous monitoring.

The ATA also support removal of § 393.88, but encourages government and the private sector (ITS America, Society of Automotive Engineers, equipment manufacturers, and motor carriers to work together to study the issue of driver workload, and develop new rules, if necessary, to respond to any safety issues identified by such research.

**FMCSA Response to Comments**

After reviewing the comments submitted in response to the NPRM, the FMCSA agrees with the commenters concerned with not having an explicit prohibition against positioning television receiver screens in a location that enables drivers to see the screen. Although the agency continues to believe that current State laws or regulations could be used to cite drivers who watch television while operating a commercial motor vehicle, we acknowledge that it is much easier for enforcement personnel to enforce an explicit prohibition rather than an agency's interpretation of the applicability of a general law or regulation concerning driver distraction of inattention. The FMCSA believes a more effective strategy for ensuring highway safety is to retain § 393.88 in its current form, at this time.

In response to commenters that support a rulemaking to respond to safety concerns about equipment and devices, other than television receivers, that may distract drivers' attention from

driving tasks, the agency does not believe it is necessary to take such action at this time. Currently, the safety benefits of such a rulemaking cannot be quantified, and there is no practicable means of estimating the potential costs in the event that such a rulemaking would necessitate equipment manufacturers to design systems now being sold. The agency will, however, certainly work with the private sector if specific safety problems are identified that they require Federal rules to effectively address the issue.

The FMCSA continues to consider § 393.88 to be applicable only to television receivers, and believes that the rule should not be construed as being applicable to any other device or technology unless such technology is capable of receiving a television broadcast signal. The agency believes that § 393.3 provides adequate guidance concerning other technology in that it prohibits equipment and accessories that decrease the safety of operation of the CMV on which it is used. The agency will continue to provide general regulatory guidance, as necessary, to clarify the applicability of § 393.3 to devices other than television receivers, while ensuring to the greatest extent practicable, that the regulatory guidance process does not become a de facto design approval or product endorsement process.

#### FMCSA Decision

In consideration of the comments and for the reasons given above, the FMCSA will retain § 393.88. The agency no longer believes that the regulation could discourage the use of certain technologies intended to improve the safety or efficiency of motor carrier operations, at least to the extent that action must be taken at this time. Furthermore, the safety benefits of retaining the rule, while admittedly undocumented, outweigh the potential safety risks that would result from motor carriers or drivers concluding that there are no regulatory obstacles to the watching of television while a CMV is being operated on public roads.

For these reasons, the NPRM of April 3, 1996 (61 FR 14733), is withdrawn.

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**Annette M. Sandberg,**

*Acting Administrator.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 395 and 396

[Docket No. FMCSA-98-3414]

RIN 2126-AA36

#### Withdrawal of Advance Notice of Proposed Rulemaking; Out-of-Service Criteria

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

**ACTION:** Withdrawal of advance notice of proposed rulemaking (ANPRM).

**SUMMARY:** The FMCSA withdraws the ANPRM published in the **Federal Register** of July 20, 1998, concerning the use of the North American Uniform Out-of-Service Criteria (the Criteria). FMCSA has determined that including the Criteria in the Federal Motor Carrier Safety Regulations (FMCSRs), either through codification of each criterion or through incorporation-by-reference of a specific edition of the Criteria, would not provide any discernible safety benefits to the public or resolve issues raised by parties seeking such action. Adoption of the Criteria into the FMCSRs would only have the effect of regulating FMCSA enforcement actions during roadside inspections. However, it would not necessarily preclude the States from continuing to use the uniform international tolerances. Accordingly, this rulemaking proceeding has been terminated.

**FOR FURTHER INFORMATION CONTACT:** Larry Minor, Chief of the Vehicle and Roadside Operations Division (MC-PSV), (202) 366-4009, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**ADDRESSES:** The electronic file of this document is available from the DOT public docket at <http://dms.dot.gov>, docket number FMCSA-98-3414. It is also available from FMCSA's Web site at <http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings>; or the **Federal Register** Web site at <http://www.gpoaccess.gov>. If you do not have access to the Internet, you may request a copy of this document from the Docket Management System, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the title and docket number of the document.

**SUPPLEMENTARY INFORMATION:**

## Background

On July 20, 1998 (63 FR 38791), the Federal Highway Administration (FHWA) published an ANPRM requesting public comment concerning the use of the Criteria. During roadside inspections, Federal, State and local enforcement officials use the Criteria as a guide in determining whether a commercial motor vehicle (CMV) or driver should be placed out of service. The Criteria provides a list of violations of the safety regulations that are so unsafe that they must be corrected before operations can resume. Correction of other less severe violations may be deferred to a later date, but generally no later than 15 days from the date the violations were discovered (49 CFR 396.9(d)(3)).

Currently, the Criteria is published by the Commercial Vehicle Safety Alliance (CVSA), an association of Federal, State and Provincial official responsible for the administration and enforcement of motor carrier safety laws and regulations in the United States, Canada, and Mexico. Each year the CVSA reviews the Criteria through a committee process involving representatives from Federal, State, and Provincial governments and the motor carrier industry representatives, and adopts changes as necessary to reflect up-to-date information concerning the potential safety impacts of specific violations of motor carrier laws and regulations.

## Discussion of Comments

Thirty comments were received in response to the ANPRM. These came from 12 States and Provinces, associations representing State and Provincial enforcement and motor vehicle administrators, associations representing various segments of the trucking industry, safety advocates, unions representing drivers, trucking companies, and individual citizens.

Most of the commenters expressed concern about incorporating the Criteria into the FMCSRs through codification of each criterion, or including the Criteria as an appendix to the FMCSRs. Generally, the commenters believes that subjecting the Criteria to the Federal rulemaking process would undermine the efforts of the States, Provinces and industry to work together through the CVSA's committee process to review and periodically revise the enforcement tolerances. However, most of the commenters who were opposed to codification of the criteria indicated that they would support incorporation-by-reference of the Criteria provided that such action would not delay, or