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[FR Doc. 2010-23534 Filed 9-20-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Part 393****[Docket No. FMCSA-2010-0186]****RIN-2126-AB27****Parts and Accessories Necessary for Safe Operation: Antilock Brake Systems****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Direct final rule; request for comments.

SUMMARY: The FMCSA makes permanent the existing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that trailers with antilock brake systems (ABS) be equipped with an external malfunction indicator lamp. The existing indicator lamp requirement was originally scheduled to sunset on March 1, 2009, but the National Highway Traffic Safety Administration (NHTSA) published a final rule on August 25, 2009, that made permanent the requirement in the Federal Motor Vehicle Safety Standards (FMVSSs) that manufacturers equip trailers with ABS and an external antilock malfunction indicator lamp. As the requirement for an exterior ABS malfunction indicator lamp on trailers of the FMCSRs cross-references the requirements of the FMVSSs, this direct final rule makes the FMCSRs consistent with the August 2009 NHTSA final rule.

DATES: This rule is effective November 22, 2010, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via <http://www.regulations.gov> on or before October 21, 2010 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by October 21, 2010, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number FMCSA-2010-0186 using any one of the following methods:

- (1) *Federal eRulemaking Portal:*
<http://www.regulations.gov>.
(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Huntley, Chief, Vehicle and Roadside Operations Division (MC-PSV), Office of Bus and Truck Standards and Operations, phone (202) 366-4325, e-mail michael.huntley@dot.gov.

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2010-0186), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand

delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b).

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "FMCSA-2010-0186" in the "Keyword" box. Click "Search," then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "FMCSA 2010-0186" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Abbreviations

ABS Anti-lock Braking Systems
CMV Commercial Motor Vehicle
CVSA Commercial Vehicle Safety Alliance

DFR *Direct Final Rule*
 FMCSA *Federal Motor Carrier Safety Administration*
 FMCSR *Federal Motor Carrier Safety Regulation*
 FMVSS *Federal Motor Vehicle Safety Standard*
 FR *Federal Register*
 FHWA *Federal Highway Administration*
 NHTSA *National Highway Traffic Safety Administration*
 NPRM *Notice of Proposed Rulemaking*

III. Regulatory Information

We are publishing this direct final rule under 49 CFR 389.11 and 389.39 because we believe the rule is a routine, non-controversial amendment to 49 CFR 393. The rule would ensure consistency between 49 CFR Part 393 and NHTSA's 49 CFR 571.121. The FMCSA does not expect adverse comments. If no adverse comments or notices of intent to submit an adverse comment are received by October 21, 2010, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we receive any adverse comments or notices of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comments were received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of any adverse comments, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

IV. Background

NHTSA published a final rule requiring ABS on truck tractors, other air-braked heavy vehicles including trailers, and hydraulic-braked trucks in the **Federal Register** (on March 10, 1995

60 FR 13216). As amended by that final rule, FMVSS No. 121, *Air Brake Systems*, required two separate in-cab ABS malfunction indicator lamps for each truck tractor, one for the tractor's ABS (effective March 1, 1997) and the other for the trailer's ABS (effective March 1, 2001). The final rule also required air-braked trailers to be equipped with an externally mounted ABS malfunction lamp (effective March 1, 1998) so that the driver of a non-ABS equipped tractor or an ABS-equipped tractor manufactured prior to March 1, 2001, towing an ABS-equipped trailer would be alerted in the event of a malfunction in the trailer ABS.

On March 10, 1995, the Federal Highway Administration (FHWA) published a notice of intent to initiate a rulemaking concerning requirements of ABS on commercial motor vehicles (CMV) operating in interstate commerce (60 FR 13306). On July 12, 1996, FHWA published a notice of proposed rulemaking (NPRM) that proposed requiring motor carriers to maintain the ABS on CMVs manufactured on or after the effective date of the NHTSA requirements (61 FR 36691). The FHWA subsequently published a final rule on May 4, 1998, amending the FMCSRs to require that air-braked truck tractors manufactured on or after March 1, 1997, and air-braked single-unit trucks, buses, trailers, and converter dollies manufactured on or after March 1, 1998, be equipped with ABS that meet the requirements of FMVSS No. 121 (63 FR 24454). In addition, FHWA required motor carriers to maintain the ABS on these vehicles. Specifically with respect to the exterior ABS malfunction warning lamp for trailers, the amendments to section 393.55(e) of the FMCSRs incorporated by reference—without modification—the requirements of S5.2.3.3 of FMVSS No. 121.

The requirement for the trailer-mounted ABS malfunction indicator lamp was originally scheduled to expire on March 1, 2009. NHTSA established this sunset date based on the assumption that after this eight-year period, many of the pre-2001 tractors that did not have the dedicated trailer ABS malfunction indicator lamp would no longer be in long-haul service. NHTSA based its decision on the belief that the typical tractor life was five to seven years and therefore decided on an eight-year period for the external ABS malfunction indicator lamp requirement. NHTSA further stated its belief that there would be no need for a redundant ABS malfunction lamp mounted on the trailer after the vast majority of tractors were equipped with

an in-cab ABS malfunction indicator lamp for the trailer.

Before the trailer-mounted ABS malfunction indicator lamp requirement expired, NHTSA received two petitions from the Commercial Vehicle Safety Alliance (CVSA). CVSA is an international not-for-profit organization comprised of Federal, State, provincial, territorial, and local motor carrier safety officials and industry representatives from the United States, Canada, and Mexico. On October 22, 2007, CVSA petitioned NHTSA to make the trailer-mounted external antilock malfunction indicator lamp permanent instead of allowing it to expire. CVSA included in its petition suggested regulatory text along with its rationale for why the extension should be permanent.

The CVSA rationale included four points. The first point was many pre-2001 tractors were still expected to be in use when the malfunction indicator lamp requirement was set to expire (at the time, March 1, 2009). These tractors do not have the in-cab trailer ABS malfunction indicator lamp that was believed to render the external lamp redundant. Second, CVSA argued that for double and triple trailer applications, it would not be possible to determine, from an in-cab lamp alone, which trailer ABS is malfunctioning without external lamps. Third, CVSA stated that many trailer repair shops rely on the external lamp to quickly diagnose the operational status of the trailer's ABS without having to couple a post-2001 tractor to the trailer. With an external indicator lamp, a tractor of any age can be used, making inspection significantly easier. Fourth, the petition argued that without the external lamp, the signal from the in-cab lamp may be confusing, as it may indicate either a malfunctioning in-cab bulb, a functioning pre-1998 trailer (with no ABS), a problem with the communication circuit between the trailer and tractor, or a malfunctioning ABS. The external lamp helps to diagnose the situation.

On October 15, 2008, CVSA again petitioned NHTSA to amend FMVSS No. 121, by requesting that the agency issue a stay of the sunset date of March 1, 2009 for the external ABS malfunction indicator lamp. CVSA stated that a stay would prevent a time gap in the regulation, while NHTSA continued to evaluate CVSA's 2007 petition. CVSA stated that the vehicle inspection process has already been complicated by the ABS and ABS malfunction indicator lamp requirements, and a time gap would further complicate the inspection

process and cause additional confusion for drivers and maintenance personnel.

On March 3, 2009, NHTSA concurrently published an interim final rule extending the sunset date for the requirement by six months, to September 1, 2009 (74 FR 9173), and an NPRM to extend the requirement to March 1, 2011 (74 FR 9202). In the NPRM, NHTSA explained that it expected to be able to fully analyze and address the issues raised by the CVSA petitions prior to March 1, 2011. NHTSA also indicated that if it was able to fully resolve the outstanding issues it could make the requirement permanent in a final rule based on the NPRM.

NHTSA determined in a final rule published on August 25, 2009 (74 FR 42781) that the external lamp provides information that assists maintenance personnel and roadside inspectors, conveys important diagnostic data and supplies functional details critical for multiple trailer operations. NHTSA eliminated the sunset date and made the requirement for the external lamp permanent.

NHTSA concluded that trailer maintenance operations would be more difficult if technicians had to couple a trailer to a post-2001 tractor or use additional specialized equipment in order to diagnose the state of a trailer's ABS, when a standardized trailer-mounted lamp already provides the same information. This inconvenience could diminish the effectiveness of some maintenance operations. Furthermore, the external lamp provides both drivers and roadside inspectors information about multiple trailer combinations that is otherwise unavailable. Without it, the in-cab information can only indicate the existence of a malfunctioning trailer ABS. The external lamp, however, can pinpoint which trailer's ABS is malfunctioning, allowing drivers or inspectors to take the appropriate remedial action.

NHTSA noted that since it was making the requirement permanent because of the benefits the external lamp provides even when coupled with an in-cab trailer ABS indicator present on all tractors built after March 1, 2001, it was unnecessary to address the numbers of pre-2001 tractors that are still in use.

NHTSA noted that in making the existing requirement permanent, it was not implying that this issue could not be readdressed in future rulemaking, if new developments made the requirement unnecessary. In its comments to the March 2009 NPRM, the American Trucking Associations stated that in the future, wireless

transmissions of the vehicle fault messages will be the means of inspection, making external malfunction lamps obsolete. NHTSA noted that it would take appropriate action if future designs and new inspection and maintenance practices eliminated the need for external malfunction lamps. NHTSA found good cause to make its August 25, 2009 rule effective on August 31, one day before the 6-month extension of the requirement for an external malfunction indicator lamp expired. This effective date forestalled a time gap in the regulatory standard but did not result in any new burdens, since trailer manufacturers were already required to install the indicator lamp.

V. Discussion of the Rule

The FMCSA is using a direct final rule to promulgate this requirement because no adverse comments are expected. NHTSA found good cause to make the requirement for a malfunction indicator lamp permanent and FMCSA finds good cause to incorporate the same standard, as it is not expected to be controversial. This rule simply requires trailer operators to maintain in good order the malfunction indicator lamp NHTSA requires manufacturers to install.

VI. Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed the rule.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, 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.

The FMCSA certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Comments submitted in response to this finding will be evaluated under the criteria in the “Regulatory Information” section of this preamble.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism

A rule has implications for federalism under Executive Order 13132. Federalism, if the rule 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 them. We have analyzed this rule under that Order and have determined that it does not have federalism implications.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

G. Civil Justice Reform

This 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. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

I. Indian Tribal Governments

This 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.

J. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

K. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

L. Environment

We have analyzed this rule under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f) and FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1) paragraph 6.bb of Appendix 2, and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A Categorical Exclusion Determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 393

Highway safety, Motor Carriers, Motor vehicle safety.

■ For the reasons set forth in the preamble, FMCSA amends 49 CFR part 393 as follows:

PART 393—[AMENDED]

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

Authority: 49 U.S.C. 322, 31136, 31151 and 31502; sec. 1041(b), Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

■ 2. Amend § 393.55 by revising paragraph (e) to read as follows:

§ 393.55 Antilock brake systems.

* * * * *

(e) *Exterior ABS malfunction indicator lamps for trailers.* Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an ABS malfunction indicator lamp which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3).

Anne S. Ferro,
Administrator.

[FR Doc. 2010–23479 Filed 9–20–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 593

[Docket No. NHTSA–2010–0125]

List of Nonconforming Vehicles Decided To Be Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the list of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is published in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2009, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute

to publish this list annually in the **Federal Register**.

DATES: The revised list of import eligible vehicles is effective on September 21, 2010.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA, (202) 366–3151.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made "on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)]." The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notices of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication