

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DATES: The notice of proposed rulemaking published on April 3, 1996, at 61 FR 14733 is withdrawn as of July 24, 2003.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

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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