DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

49 CFR Part 390

Federal Motor Carrier Safety Regulations; Regulatory Guidance Concerning Crashes Involving Vehicles Striking Attenuator Trucks Deployed At Construction Sites

AGENCY: Federal Motor Carrier Safety Administration

ACTION: Regulatory guidance.

SUMMARY: FMCSA provides regulatory guidance concerning crashes involving motor vehicles striking the rear of attenuator trucks deployed at construction sites and whether such crashes meet the definition of “accident” under 49 CFR 390.5 for the motor carrier that controls the attenuator truck. Attenuator trucks are highway safety vehicles equipped with an impact attenuating crash cushion intended to reduce the risks of injuries and fatalities resulting from crashes in construction work zones. The guidance explains that such crashes in which motorists strike the attenuator trucks while they are deployed at construction work zones are not covered by the definition of accident and such occurrences will not be considered by FMCSA under its Compliance, Safety, Accountability Safety Measurement System (SMS) scores, or Safety Fitness Determination for the motor carrier that controls the attenuator truck. This guidance will provide the motor carrier industry and Federal, State, and local law enforcement officials with uniform information for use in determining whether certain crashes involving
attenuator vehicles must be recorded on the motor carrier's accident register and considered in the Agency’s safety oversight programs.

DATES: This guidance is effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations; 1200 New Jersey Ave. SE., Washington, DC 20590, Telephone 202-366-4325, E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Secretary of Transportation has statutory authority to set minimum standards for commercial motor vehicle safety. These minimum standards must ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs 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. (49 U.S.C. 31136(a)(1) – (5), as amended). The Secretary also has broad power in carrying out motor carrier safety statutes and regulations to "prescribe recordkeeping and reporting requirements" and to "perform other acts the Secretary considers appropriate." (49 U.S.C. 31133(a)(8) and (10)).
The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

This document provides regulatory guidance to the public with respect to the definition of “accident” in 49 CFR 390.5 of the Federal Motor Carrier Safety Regulations (FMCSRs), and the recording of accidents as required under 49 CFR 390.15. All interested parties may access the guidance in this document through the FMCSA’s Internet site at http://www.fmcsa.dot.gov.

BACKGROUND

The regulatory guidance in this regulatory guidance responds to questions concerning the definition of “accident” in 49 CFR 390.5: Are crashes in which motorists strike the rear of attenuator trucks deployed at construction sites considered recordable accidents?

Section 390.5 defines “accident” as an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in a fatality; bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle. It excludes occurrences involving only boarding and alighting from a stationary motor vehicle or involving only the loading or unloading of cargo.
FMCSA acknowledges the potential impact on motor carriers' Safety Measurement
System (SMS) scores that could result from States uploading reports about crashes
involving attenuator trucks deployed at construction sites into the Agency's Motor Carrier
Management Information System (MCMIS). Because these vehicles are deployed to
prevent certain crashes through the use of flashing lights and to reduce the severity of
crashes through the use of truck-mounted impact attenuators or crash cushions when
motorists do not take appropriate action to avoid the obstacles in the construction zone, it
is expected that these vehicles will be struck from time to time while the attenuators are
deployed. Such events that occur in a construction zone, either stationary or moving,
should not count against the safety performance record of the motor carrier responsible for
the operation of the attenuator truck.

FMCSA’s DECISION

In consideration of the above, FMCSA has determined that the current regulatory
guidance should be revised to make clear that crashes involving motorists striking
attenuator trucks are not considered accidents, as defined under 49 CFR 390.5. The
Agency issues the following guidance to 49 CFR 390.5 to read as follows:

PART 390--FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL
Regulatory Guidance for 49 CFR 390.5
Definition of “Accident”

Question: Are crashes involving motorists striking attenuator trucks while the
impact attenuators or crash cushions are deployed included within the definition of
“accident” with regard to the motor carrier responsible for the operation of the attenuator
truck?
**Guidance:** No. Attenuator trucks are highway safety vehicles equipped with an impact attenuating crash cushion intended to reduce the risks of injuries and fatalities resulting from crashes in construction work zones. Because these vehicles are deployed at construction work zones to prevent certain crashes through the use of flashing lights and to reduce the severity of crashes when motorists do not take appropriate action to avoid personnel and objects in the construction zone, it is expected that these vehicles will be struck from time to time while the impact attenuators or crash cushions are deployed. Therefore, such events are not considered accidents and the recordkeeping requirements of 49 CFR 390.15, Assistance in investigations and special studies, are not applicable with regard to the motor carrier responsible for the operation of the attenuator truck. If however, a commercial motor vehicle, as defined in 49 CFR 390.5, strikes an attenuator truck, this event would be considered an accident for the motor carrier responsible for the operation of the vehicle that hits the attenuator truck.

**PROCEDURES**

Starting on the effective date of this regulatory guidance, any crash meeting the above criteria may be removed from a carrier’s record of crashes. To do so the carrier operating the attenuator vehicle should file a Request for Data Review (RDR) using the DataQ system at [https://www.dataqs.fmcsa.dot.gov](https://www.dataqs.fmcsa.dot.gov), as a no reportable crash, and provide sufficient evidence to establish the crash in question took place between a vehicle and their attenuator vehicle deployed in a constructions zone. After the effective date of this regulatory guidance, the affected motor carrier may file a RDR to remove crashes related to this regulatory guidance from their carrier record for the previous 24 months.
Issued on: March 18, 2015.

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T.F. Scott Darling, III,  
Acting Administrator.  
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