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## DEPARTMENT OF TRANSPORTATION

4910-EX-P

### Federal Motor Carrier Safety Administration

### 49 CFR Parts 393 and 396 and Appendix G to Subchapter B of Chapter III

[Docket No. FMCSA-2015-0176]

RIN 2126-AB81

### Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; General Amendments

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

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) in response to several petitions for rulemaking from the Commercial Vehicle Safety Alliance (CVSA) and the American Trucking Associations (ATA), and two safety recommendations from the National Transportation Safety Board (NTSB). Specifically, the Agency adds a definition of “major tread groove” and an illustration to indicate the location of tread wear indicators or wear bars on a tire signifying a major tread groove; revises the rear license plate lamp requirement to eliminate the requirement for an operable rear license plate lamp on vehicles when there is no rear license plate present; amends the regulations regarding tires to prohibit the operation of a vehicle with speed-restricted tires at speeds that exceed the rated limit of the tire; provides specific requirements regarding when violations or defects noted on an inspection report must be corrected; amends two appendixes to the FMCSRs to include provisions for the inspection of antilock braking systems (ABS) and automatic brake adjusters, speed-restricted tires, and motorcoach passenger seat mounting anchorages; amends the periodic inspection rules to eliminate the option for a motor carrier to satisfy the annual inspection requirement through a

violation-free roadside inspection; and amends the inspector qualification requirements as a result of the amendments to the periodic inspection rules. In addition, the Agency eliminates introductory regulatory text from an appendix to the FMCSRs because the discussion of the differences between the North American Standard Inspection out-of-service criteria and FMCSA's periodic inspection criteria is unnecessary.

**DATES:** The rule is effective [Insert date of publication in the FEDERAL REGISTER.].

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Huntley, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, telephone: 202-366-5370; michael.huntley@dot.gov.

If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Rulemaking Documents**

**A. Availability of Rulemaking Documents**

For access to docket FMCSA-2015-0176 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**B. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT accepts comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

## **II. Executive Summary**

FMCSA is responsible for regulations to ensure that all commercial motor vehicles (CMVs) are systematically inspected, repaired, and maintained and that all parts and accessories necessary for the safe operation of CMVs are in safe and proper operating condition at all times. In response to several petitions for rulemaking from CVSA and ATA and two safety recommendations from the NTSB, FMCSA amends various provisions in parts 393 and 396 of the FMCSRs. The amendments generally do not involve the establishment of new or more stringent requirements, but instead clarify existing requirements to increase consistency of enforcement activities, and therefore the economic impact of these changes is negligible.

Specifically, the Agency (1) adds a definition of “major tread groove” in § 393.5 and an illustration in § 393.75 to indicate the location of tread wear indicators or wear bars on a tire signifying a major tread groove; (2) revises the rear license plate lamp requirement to eliminate the requirement in Table 1 of § 393.11 for vehicles to have an operable rear license plate lamp when there is no rear license plate present; (3) amends the regulations regarding tires to prohibit the operation of a vehicle with speed-restricted tires at speeds that exceed the rated limit of the tire; (4) clarifies § 396.9 regarding when violations or defects noted on a roadside inspection report need to be corrected; (5) amends Appendix G to the FMCSRs, “Minimum Periodic Inspection Standards,” to include provisions for the inspection of ABS and automatic brake adjusters, speed-restricted tires, and motorcoach passenger seat mounting anchorages; (6)

amends § 396.17(f) and removes § 396.23(a) to eliminate the option for a motor carrier to meet the periodic inspection requirements through roadside inspections; and (7) amends § 396.19(b) regarding inspector qualifications as a result of the amendments to § 396.17(f) described above. In addition, the Agency eliminates as unnecessary a portion of Appendix G to the FMCSRs that describes the differences between the out-of-service criteria and FMCSA's annual inspection requirement. Elsewhere in today's issue of the **Federal Register**, FMCSA amends certain regulatory guidance to ensure consistency between the FMCSRs, as amended by this final rule, and the published guidance.

### **III. Legal Basis for the Rulemaking**

This rulemaking is based on the authority of the Motor Carrier Act of 1935 [1935 Act] and the Motor Carrier Safety Act of 1984 [1984 Act].

The 1935 Act, as amended, provides that “[t]he Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a private motor carrier, when needed to promote safety of operation” (49 U.S.C. 31502(b)).

This final rule amends the FMCSRs in response to several petitions for rulemaking. The adoption and enforcement of such rules is specifically authorized by the 1935 Act. This rulemaking rests squarely on that authority.

The 1984 Act provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to “prescribe regulations on commercial motor vehicle safety.” The regulations shall prescribe minimum safety standards for CMVs. At a minimum, the regulations shall 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 vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) drivers are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a vehicle in violation of a regulation promulgated under 49 U.S.C. 31136 or 49 U.S.C. chapters 51 or 313 (49 U.S.C. 31136(a)).

This final rule concerns (1) parts and accessories necessary for the safe operation of CMVs, and (2) the inspection, repair, and maintenance of CMVs. It is based primarily on section 31136(a)(1) and (2), and secondarily on section 31136(a)(4). This rulemaking ensures that CMVs are maintained, equipped, loaded, and operated safely by requiring certain vehicle components, systems, and equipment to meet minimum standards such that the mechanical condition of the vehicle is not likely to cause a crash or breakdown. Section 31136(a)(3) is not applicable because this rulemaking does not deal with driver qualification standards. Because the amendments are primarily technical changes that clarify existing requirements and improve enforcement consistency, FMCSA believes they will be welcomed by motor carriers and drivers alike and that coercion to violate them will not be an issue.

Before prescribing any such regulations, FMCSA must consider the “costs and benefits” of any proposal (49 U.S.C. 31136(c)(2)(A) and 31502(d)). As discussed in greater detail in the “Regulatory Analyses” section, FMCSA determined that this final rule is not a significant regulatory action. The economic impact is negligible because the amendments generally do not involve the adoption of new or more stringent requirements, but rather the clarification of

existing requirements. As such, the costs of the final rule do not approach the \$100 million annual threshold for economic significance.

#### **IV. Background**

On October 7, 2015, FMCSA published a notice of proposed rulemaking (NPRM) in the Federal Register titled Parts and Accessories Necessary for Safe Operation; Inspection, Repair, and Maintenance; General Amendments (80 FR 60592). FMCSA received 16 comments on the NPRM.

#### **V. Summary of the NPRM**

FMCSA proposed to amend § 393.5 to define “major tread groove” as “The space between two adjacent tread ribs or lugs on a tire that contains a tread wear indicator or wear bar. (In most cases, the locations of tread wear indicators are designated on the upper sidewall/shoulder of the tire on original tread tires.)” In addition, FMCSA proposed adding an illustration to § 393.75 to indicate the location of tread wear indicators or wear bars signifying a major tread groove. FMCSA agreed that uniformity and consistency in enforcement and maintenance is critical. By including a definition of “major tread groove” in § 393.5 – a term that is currently included in the regulatory text of § 393.75(b) and (c), but not specifically defined – and a corresponding illustration in § 393.75, the Agency expects increased consistency in the application and citation of § 393.75 during roadside inspections.

FMCSA proposed to amend Footnote 11 to Table 1 of § 393.11 to indicate that “No rear license plate lamp is required on truck tractors registered in States that do not require tractors to display a rear license plate.” As noted in both the National Highway Traffic Safety Administration’s (NHTSA) Federal Motor Vehicle Safety Standard (FMVSS) No. 108 and the FMCSRs, the only function of the rear license plate lamp is to illuminate the rear license plate.

FMCSA agreed with ATA that if a truck tractor is not required to display a rear license plate, then there is no corresponding safety need for a functioning rear license plate light.

FMCSA proposed to amend Appendix G to include a review of ABS and automatic brake adjusters and brake adjustment indicators to maintain consistency between part 393 and Appendix G. FMCSA agreed that the failure of a motor carrier to properly maintain an important safety technology such as ABS should result in the vehicle failing the periodic inspection. Although CVSA did not mention automatic brake adjusters and brake adjustment indicators in its petition to amend Appendix G, FMCSA proposed changes in Appendix G relating to these brake components to ensure that vehicles may not pass the periodic inspection without this important safety equipment.

To clarify the intent of § 396.9(d)(2), FMCSA proposed to amend that section by including a specific cross reference to § 396.11(a)(3). Section 396.11(a)(3) makes it clear that all defects and deficiencies discovered by or reported to a driver – including those identified during a roadside inspection conducted under the authority of § 396.9 – must be corrected (or a certification must be provided stating that repair is unnecessary) before a vehicle is operated each day. However, the Agency agreed that the language of § 396.9(d)(2) is not as explicit as it could be, and could lead to uncertainty and/or inconsistency in both the enforcement community and the motor carrier industry regarding when violations and defects noted on roadside inspection reports need to be corrected.

FMCSA proposed to amend § 396.17(f) to remove the words “roadside or” from the current regulatory text. The proposed amendment would eliminate any uncertainties and make clear that a roadside inspection is not equivalent to the periodic/annual inspection required under § 396.17. FMCSA does not believe it is appropriate to continue to allow carriers relief from this

responsibility by using a roadside inspection conducted by enforcement officials to meet the periodic inspection requirement. Motor carriers will now be responsible for ensuring the completion of a periodic inspection irrespective of whether a roadside inspection is performed, and amending the regulations will require them to do so at least once every 12 months, irrespective of whether a roadside inspection is performed during that period.

In light of the proposed amendments to § 396.17(f), and to further decrease the possibility of confusion regarding differing requirements of the roadside inspection program and the periodic/annual inspection program, FMCSA proposed to delete the section at the end of Appendix G titled “*Comparison of Appendix G, and the new North American Uniform Driver-Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria)...*”

Consistent with the proposed amendments to § 396.17, FMCSA also proposed to amend § 396.19(b) by deleting language regarding a “random roadside inspection program.”

FMCSA proposed to add language to section 10 of Appendix G that would prohibit the use of speed-restricted tires on CMVs subject to the FMCSRs unless the use of such tires is specifically designated by the motor carrier. FMCSA agreed that speed-restricted tires should not be used on CMVs operating on highways in excess of 55 mph for extended periods of time.

FMCSA proposed to add a new section to Appendix G that would require an examination of motorcoach seats during the conduct of a periodic inspection in accordance with § 396.17 to ensure that they are securely attached to the vehicle structure. However, given the wide range of seat anchorage designs, coupled with the lack of testing requirements specifically for seat anchorage strength in the FMVSSs, it is not practicable for FMCSA to develop a detailed methodology for the inspection of motorcoach passenger seat mounting anchorages.

## **VI. Comment Response**

In response to the NPRM, the Agency received 16 comments from two motor carriers (Capitol Bus Lines and Southern Company), eight organizations (the Advocates for Highway and Auto Safety (Advocates), the American Bus Association (ABA), ATA, CVSA, the National Automobile Dealers Association (NADA), the Owner-Operator Independent Drivers Association (OOIDA)), the Rubber Manufacturers Association (RMA), and the Transportation Safety Equipment Institute (TSEI), and six individuals (Steve Bixler, Jim Bramm, Richard Crawford, Richard Pingel, Robert Spoon, and Miles Verhoef).

### **Discussion of Issues**

#### **Section 393.5, Definition of “Major tread groove.”**

Comments: RMA supported adding a definition for “major tread groove,” but recommended that “major tread groove” be defined as “the full depth space between two adjacent tread ribs or lugs on a tire that repeats along the circumference and/or at an angle across the tread area and contains a tread wear indicator. (In most cases, the locations of tread wear indicators are designated on the upper sidewall or shoulder of the tire on original tread tires.)” In addition, RMA noted that new tire tread designs feature tread grooves that are “hidden” on a new tire, but that appear and deepen and/or widen as the tire tread wears. RMA states that in most cases, the locations of tread wear indicators are designated on the tire’s upper sidewall/shoulder, but that those markings are voluntary and not required by the Federal Motor Vehicle Safety Standards (FMVSS).

FMCSA Response: FMCSA believes that the definition proposed in the NPRM is sufficiently clear. The language provided by RMA added complexity without clarifying the language proposed by FMCSA. While the preamble to the NPRM stated that an illustration

would be added to § 393.75 to indicate the location of tread wear indicators or wear bars on a tire signifying a major tread groove, and FMCSA included a proposed illustration in the preamble, the illustration inadvertently was not included in the proposed regulatory changes. FMCSA did not receive any comments regarding the illustration, and adds it to § 393.75 as discussed in the NPRM. We anticipate that inclusion of the illustration will further enhance clarity of the regulatory language.

**Table 1 to § 393.11, License Plate Lights.**

Comments: Jim Bramm, CVSA, and NADA recommended that the exception for vehicles not required to have a rear license plate light be extended to apply to all types of CMVs, and not be limited to truck tractors as proposed in the NPRM. Mr. Bramm stated “Our company’s corporate office is located in Wisconsin and the majority of our commercial motor vehicles are registered in this state. When registering a vehicle for an apportioned plate you have the ability in this state to not only register truck tractors but other types of commercial vehicles such as dump trucks and pickup trucks. Wisconsin law states only 1 plate will be issued for apportioned registered vehicles and that plate is to be affixed to the front. Therefore I believe the wording should remain as petitioned by the ATA so that the regulation would apply to any commercial vehicle not just truck tractors.”

OOIDA stated “...state inspectors do not have the authority to write up violations of rules that their state has not adopted. Therefore, inspectors from states that do not require rear license plates (or illumination) do not have the authority to find violations for failing to illuminate a license plate. Nor may such enforcement officials use their observation of lack of a license plate (or illumination) as probable cause to stop a truck for inspection. They only have the authority to use probable cause that there is a violation of their own state law.” In addition, OOIDA noted

that FMCSA “should consider what role the requirement for a license plate light plays in highway safety. The requirements for conspicuity systems clearly address night time visibility in a manner which far exceeds a license plate light. The role of a license plate light in vehicle safety should be explained and justified by FMCSA or dropped from the requirements.”

FMCSA Response: FMVSS No. 108, “Lamps, reflective devices, and associated equipment” (incorporated by reference in section 393.11 of the FMCSRs), specifies comprehensive requirements to enhance the conspicuity of all motor vehicles, including CMVs, on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility. While NHTSA has required license plate lamps on all vehicles since 1968, license plate lamps are not intended to enhance safety in a manner similar to the other required lamps and conspicuity treatments, and eliminating the requirement for a rear license plate lamp when no license plate is required will not reduce safety to the motoring public.

FMCSA agrees with the commenters that any regulatory changes to the requirements for license plate lamps should apply to all CMVs, and not just truck tractors as proposed in the NPRM. However, if adopted, the proposed regulatory changes would have required roadside enforcement officials in each State to know the license plate display requirements of every other State. FMCSA believes that enforcement of the license plate lamp requirement can be simplified – without compromising safety – by requiring an operable rear license plate lamp only when there is a license plate present at the time of inspection. FMCSA believes that this approach will simplify enforcement and avoid enforcement confusion and inconsistency that would likely result from the State-by-State approach outlined in the NPRM. FMCSA does not expect drivers and/or motor carriers to remove license plates to avoid citations in the event that a rear license

plate lamp is missing or inoperative, and if they do, they will be subject to the more severe penalties associated with not displaying a license plate when required by law.

In response to OOIDA's concerns about the authority of an inspector to enforce regulations adopted by another State that the inspector's state has not similarly adopted, FMCSA notes that under the Motor Carrier Safety Assistance Program (MCSAP), each State is required to adopt regulations that are compatible with the FMCSRs within 3 years as a condition of receiving Federal grant funding. As such, each State will be required to adopt a regulation consistent with today's final rule requiring an operable rear license plate lamp only when there is a rear license plate present, eliminating the possibility of inconsistent State regulations.

#### **Appendix G to the FMCSRs – ABS.**

Comments: CVSA supports the proposed language adding ABS to Appendix G but recommended a number of additions, corrections, and clarifications. First, CVSA states that the effective date for ABS regarding hydraulic-braked vehicles should be September 1, 1999, and not March 1, 1999, as stated in the NPRM. CVSA notes that while NHTSA originally proposed a March 1, 1999, compliance date, NHTSA later granted a petition extending the deadline to September 1, 1999. Second, CVSA recommends the addition of a second footnote to clarify that certain power units have two ABS malfunction indicators – one for the power unit and one for the towed unit(s) – and that both need to be fully functional. Third, CVSA notes that ABS powered by a backup power source (i.e., the backup power from the brake lamp circuit) is not compliant with FMVSS No. 121. As such, CVSA recommends that subparagraph (2) of the proposed Appendix G requirements for ABS be amended to specifically state “ABS malfunction indicator that does not illuminate when power is first applied to the ABS controller (ECU) *during initial power up.*” Fourth, CVSA recommends adding two subparagraphs under the

proposed ABS requirements in Appendix G to address FMVSS No. 121 requirements that (1) a power unit manufactured with ABS supply continuous power to the trailer, and (2) the stoplight switch power the trailer ABS system if the continuous power from the towing vehicle is interrupted.

CVSA agrees with FMCSA's proposal to add requirements for automatic brake adjusters to Appendix G, but noted that FMCSA failed to include proposed regulatory text for automatic brake adjusters in the NPRM. In its comments, CVSA (1) provided suggested language for inclusion in Appendix G, and (2) recommended use of the term "self-adjusting brake adjusters" as opposed to "automatic brake adjusters."

CVSA and Southern Company opposed the need to include requirements for brake adjustment indicators in Appendix G. CVSA states "...the requirement is not necessary or practical. If all brakes are in proper adjustment during the inspection, the indicators (pushrod markings) will not be visible and checking for their presence would require disassembly of or a major adjustment/readjustment of the brakes, which is not advisable. To our knowledge, the likelihood of finding a vehicle without pushrod markings is extremely low." Southern Company states that "Over the last 20 years the industry has adopted automatic slack adjusters, alleviating the concerns which lead to the brake adjustment indicators," and "This technology [brake adjustment indicators] has proven to be ineffective. After a very short time frame, the tape or plastic wears off and is no longer visible," and "Manufacturers no longer install the brake adjustment indicator."

**FMCSA Response:** CVSA is correct in noting that NHTSA had extended the compliance date for ABS on hydraulic-braked vehicles from March 1, 1999, to September 1, 1999, but that action was limited to an extension of the malfunction indicator lamp requirement in S5.3.3(b) of

FMVSS No. 105 (64 FR 9446, February 26, 1999) – and not for the general requirement to equip hydraulic-braked vehicles with ABS. As such, all hydraulic-braked vehicles were still expected to be equipped with ABS effective March 1, 1999. As subparagraphs (1) – (3) under the ABS section in Appendix G refer specifically to the malfunction indicator, FMCSA amends footnote (1) to that section to reflect the September 1, 1999, compliance date for hydraulic-braked vehicles. In addition, FMCSA clarifies that footnote (1) applies only to subparagraphs (1) – (3) of the ABS section, and not to subparagraph (4) which addresses “other missing or inoperative ABS components.” Further, FMCSA agrees with CVSA’s other largely editorial recommended changes to the ABS section in Appendix G and adopts those changes as suggested.

Automatic brake adjusters automatically maintain proper brake adjustment, thus eliminating the need for frequent inspection and manual adjustment of the brakes. CVSA correctly notes that while FMCSA discussed the intent to include requirements for automatic brake adjusters in Appendix G in the preamble to the NPRM, the Agency did not provide corresponding proposed regulatory text in the NPRM. The omission of proposed regulatory text in the NPRM was inadvertent. The language recommended by CVSA in its comments is accurate and complete, and properly complements the requirements for automatic brake adjusters in FMVSS Nos. 105 and 121 that need to be included in Appendix G. FMCSA amends Appendix G to include requirements for automatic brake adjusters as suggested. With respect to CVSA’s recommendation to use the term “self-adjusting brake adjusters” as opposed to “automatic brake adjusters,” FMCSA retains the terminology “automatic brake adjusters” to maintain consistency with existing regulatory language in both the FMVSSs and the FMCSRs.

FMCSA discussed its intent to add requirements in Appendix G for brake adjustment indicators in the preamble to the NPRM, but did not provide corresponding proposed regulatory

text. Brake adjustment indicators can improve brake adjustment by increasing the convenience of checking brake adjusters and their proper functioning. A brake adjustment indicator can reduce the time needed to assess brake adjustment status by providing a visible indication of pushrod stroke as opposed to physically measuring the push rod length before and during brake application.

While brake adjustment indicators can simplify brake inspection, CVSA is correct in noting that if brakes are in proper adjustment during an inspection, the indicators will not be visible. In this case, an inspector would have to either disassemble the brake (unhook the clevis from the slack adjuster and pull out the pushrod), or back the brakes off until they are out of adjustment to confirm that the indicators are present. Further, although both the FMVSSs and the FMCSRs require brake adjustment indicators, FMCSA understands that virtually all evaluations of brake adjustment – both during roadside inspections and periodic inspections – are made by physically measuring pushrod length before and during brake application, and that very few inspections rely solely on brake adjustment indicators. Based on the above, FMCSA has not included any specific requirements for brake adjustment indicators in Appendix G.

**Section 396.9, Inspection of motor vehicles and intermodal equipment in operation.**

**Comments:** FMCSA did not receive any comments on§ 396.9(d)(2) and amends as proposed.

FMCSA also requested comments regarding whether the current 15-day requirement in § 396.9(d)(3) for motor carriers to certify that all violations have been corrected by completing and returning the roadside inspection form to the issuing agency remains appropriate, or whether a different time period should be considered. CVSA, OOIDA, and Advocates stated that the 15-day requirement is appropriate. ABA and Capitol Bus Lines noted that, in limited

circumstances, the 15-day requirement may not be sufficient when replacement parts are not readily available to conduct repairs, either because the parts need to be ordered from a different country or because the replacement parts are no longer available for older buses.

**FMCSA Response:** FMCSA believes that, in most cases, repairs can be made and certification of those repairs can be sent within the current 15-day time period specified in the FMCSRs. In instances where a motor carrier can demonstrate that extenuating circumstances (such as those described in the ABA and Capitol Bus Lines comments) preclude repairs from being completed and certified within the 15-day time period specified, FMCSA will address those circumstances on a case-by-case basis. However, FMCSA does not believe that the 15-day requirement in § 396.9(d)(3) for motor carriers to certify that all violations have been corrected by completing and returning the roadside inspection form to the issuing agency needs to be amended at this time.

#### **Section 396.17, Periodic Inspection.**

CVSA agreed with the proposed changes, but also recommended additional changes to § 396.17 to make it clear that inspections conducted by FMCSA inspectors, investigators, and safety auditors are not equivalent to required periodic inspections. Capitol Bus Lines and ABA commented that, while several States permit motor carriers to self-certify the conduct and completion of the annual inspections required under § 396.17, other States that have implemented mandatory annual inspection programs refuse to accept the “self-certified” annual inspections conducted by the motor carrier as “legitimate annual inspections.” ATA commented that “The basis for . . . this rule change appears to be . . . a change in agency philosophy rather than . . . data or factual evidence. ATA has great difficulty supporting a national policy change

of this magnitude without factual evidence showing an enhanced safety benefit from this change.”

Four members of OOIDA – Steve Bixler, Richard Pingel, Robert Spoon, and Miles Verhoef – submitted nearly identical comments stating that (1) they “have never seen a copy of how roadside truck inspections are supposed to be conducted;” (2) they “have never seen a copy of CVSA’s out of service criteria;” (3) “If FMCSA were to publish roadside inspection and out-of-service criteria standards and procedures, it would help me know what parts of my equipment FMCSA and CVSA think I should focus on in between my periodic inspections;” and (4) “It is my right under the Constitution to be told the scope of any government search of me or my truck.”

OOIDA stated that, “Where the Notice begins to discuss roadside inspection standards and the Commercial Vehicle Safety Alliance’s out-of-service criteria however, the Notice is woefully deficient in informing the public what exactly these standards are. It appears that CVSA has proposed, and FMCSA consented, to proposals that remove all references to roadside inspections and the content of the out-of-service criteria in the rules. Without making those standards public, FMCSA has not given the public an adequate opportunity to comment on its proposal. If there is any imperative upon FMCSA to deal with roadside inspections and the out-of-service criteria differently than it does now, that imperative is to give the regulated public notice of their contents and scope.” OOIDA also asked numerous, more specific questions relating to the general concerns noted above.

**FMCSA Response:** Today, the overwhelming majority of the approximately 3.5 million roadside inspections of CMVs performed annually in the United States are conducted by State personnel using funding provided under the MCSAP.

The scope of a roadside inspection conducted under the North American Standard (NAS) Inspection is quite comprehensive, and covers both (1) critical vehicle inspection items (brake systems; cargo securement; coupling devices; driveline/driveshaft; exhaust systems; frames; fuel systems; lighting devices; steering mechanisms; suspensions; tires; van and open-top trailer bodies; wheels, rims and hubs; windshield wipers; and emergency exits, electrical cables and systems in engine and battery compartments; and seating on passenger-carrying vehicles), and (2) other parts and accessories required under part 393.

However, while a roadside inspection conducted under the NAS Inspection is far-reaching, there are certain limitations to roadside procedures that prevent inspectors from properly examining all of the items in Appendix G. These include, but are not necessarily limited to, the following:

- Brake linings and pads and brake drums or rotors: Inspectors cannot remove wheels or dust shields; only visible components can be examined at roadside.
- Hydraulic brakes: Inspectors cannot disassemble components; only visible components can be examined at roadside.
- Fifth wheels, pintle hooks: Combination vehicles are not typically decoupled to view upper and lower fifth wheel assemblies and other coupler assemblies; only visible components can be examined at roadside.
- Tires: Low boy, car hauler, and other low profile or tight clearance vehicles, and dual tire sets have limited access to the entire tire circumference without wheel removal; only visible components can be examined at roadside.
- Wheels and rims: Dual wheel sets may have limited access to inside wheel visibility; only visible components can be examined at roadside.

Because not every element of Appendix G is reviewed/inspected during a roadside inspection conducted under the NAS Inspection, most roadside inspections do not meet the periodic (annual) inspection requirements under § 396.17. For this reason, FMCSA does not believe it is appropriate to continue to allow motor carriers to use roadside inspections conducted by enforcement officials to satisfy the annual inspection requirements in § 396.17(f). Motor carriers or their agents will now be required to complete a periodic inspection of every CMV under its control in accordance with Appendix G at least once every 12 months, irrespective of whether a roadside inspection is performed, unless the vehicle is subject to a mandatory State inspection program in accordance with § 396.23(b)(1) which has been determined to be as effective as the requirements of § 396.17.

Section 396.23, Equivalent to periodic inspection, currently outlines two options that are deemed to be equivalent to the periodic inspections required under § 396.17 – a roadside inspection program of a State or other jurisdiction, or a mandatory State inspection program which has been determined to be as effective as the Federal requirements. FMCSA did not propose any amendments to § 396.23 in the NPRM. However, and given the amendments to § 396.17(f) discussed above, it is also necessary to remove § 396.23(a) to ensure that the FMCSRs are consistent regarding the determination that a roadside inspection will no longer be considered as meeting the periodic inspection requirements of § 396.17.

In response to the specific comments to the October 2015 NPRM:

FMCSA agrees that inspections conducted by FMCSA inspectors, investigators, and safety auditors are not equivalent to required periodic inspections, and corresponding changes have been made to § 396.17, as suggested by CVSA.

In response to the comments from Capitol Bus Lines and ABA, FMCSA notes that if a motor carrier is located in a State that permits motor carriers to self-certify the conduct and completion of the annual inspections required under § 396.17, section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31142) establishes the principle that State inspections meeting federally approved criteria must be recognized by every other State. If, as Capitol Bus Lines and ABA contend, States that have implemented mandatory annual inspection programs refuse to accept the “self-certified” annual inspections conducted by motor carriers in other States as legitimate annual inspections, aggrieved motor carriers are encouraged to contact the FMCSA Division Administrator in their State for assistance. FMCSA notes that States may require additional inspections as a condition of issuing some type of permit or license, but additional inspections cannot be required otherwise.

While ATA argued that FMCSA failed to provide “factual evidence” to show an “enhanced safety benefit” of the proposed change, FMCSA has clearly shown that current roadside inspections conducted under the NAS Inspection do not examine every component listed in Appendix G. As such, roadside inspections conducted using the NAS Inspection procedures cannot be considered as meeting the annual inspection requirements of § 396.17. While FMCSA does not track the number of motor carriers that use a violation-free roadside inspection to meet the periodic inspection requirement or the number of roadside inspections so used, the Agency has reason to believe these numbers are small. Roadside inspections are not “scheduled” inspections, and a motor carrier therefore cannot plan to defer its periodic inspections until roadside inspections are conducted. OOIDA also commented that it “is not aware of any truck owners who have used a roadside inspection to comply with the periodic inspection requirement.” Given that the estimated number of roadside inspections used to meet

the periodic inspection requirement is very small, today's rule will not significantly affect carriers who relied on such inspections in the past, nor will the number of motor carrier inspection personnel and facilities now needed to perform Appendix G periodic inspections be significantly increased. Eliminating the possibility that roadside inspections can be used as equivalent to periodic inspections in the future will only enhance safety.

In response to the comments from OOIDA members Bixler, Pingel, Spoon, and Verhoef, FMCSA reiterates that all parts and accessories specified in part 393, as well as any additional parts and accessories as allowed by § 393.3, are required to be in safe and proper operating condition at all times. As such, any and all components of a CMV are subject to examination during a roadside inspection, regardless of whether those components are included in any inspection procedure or the CVSA Out-of-Service Criteria (OOSC). Importantly, the amendments made in today's rule do not have anything to do with the OOSC, which are simply a set of enforcement tolerances used by inspectors in determining whether violations discovered during an inspection pose such serious safety risks that they must be corrected immediately before the vehicle is allowed to continue. OOIDA's tangential argument that the scope of a search – its characterization of roadside inspections – “must be widely published in advance so that the regulated parties have notice of it” and that the CVSA OOSC do not meet that standard, is misguided. The Federal courts have long recognized that “[t]he CVSA’s OOSC are not themselves *federal* rules subject to our review . . . Rather, the OOSC merely interpret the standards set forth in existing *federal* and state laws and regulations. . . . [T]he *federal* regulations are the binding legal norms and the operation of a commercial vehicle that falls below the regulatory criteria is unlawful.” National Tank Truck Carriers, Inc. v. Federal Highway Administration, 170 F.3d 203, 207-208 (D.C. Cir. 1999) (emphasis in original). The

FMCSRs adopted through notice and comment rulemaking provide motor carriers and drivers the constitutionally required notice of their legal obligations.

Similar to the discussion above, the questions posed by OOIDA regarding roadside inspections, specific inspection procedures, and the CVSA OOSC are outside the scope of this rulemaking. The amendments made by this rule eliminate the possibility that a roadside inspection can be considered equivalent to an annual inspection, for the simple reason that not every element required to be examined during an annual inspection as identified in Appendix G to the FMCSRs is examined during a roadside inspection conducted under the NAS Inspection.

#### **Section 396.19, Inspector Qualifications.**

Comments: FMCSA did not receive any comments on §396.19(b) and amends as proposed.

#### **Speed-restricted tires.**

Comments: In its comments, Southern Company states:

The utility industry uses speed rated tires on their CMVs for on/off road work. Tires with a lug tread pattern design are typically speed rated and used extensively in the following industries; Utility, Municipalities, Refuse, Logging, Livestock, Farming, Construction, and by Carriers which routinely encounter snow.

Based on review of the proposed changes to Appendix G to Subchapter B of Chapter III – Minimum Periodic Inspection Standards, Section 10.Tires, the intent of the FMCSA was to eliminate speed rated tires for motorcoach CMVs.

SOCO recommends that the FMCSA clarify their proposed language on the modification of the current regulations to prohibit the use of speed rated tires specifically on motorcoach CMVs only.

ABA supported FMCSA's intent to address speed-restricted tires in Appendix G, but stated that "absent a requirement for labeling maximum speeds on all tires, it will be difficult for the law enforcement community to easily determine whether tires on a vehicle in use, are

appropriate.” ABA recommended that FMCSA provide additional guidance regarding (1) the intended meaning of “extended periods of time,” (2) how a carrier would designate the appropriate use of speed-restricted tires, and (3) when/where such designation would need to be produced for the purposes of compliance.

RMA supported the proposed amendments to Appendix G. In addition, RMA noted that amendments to (1) FMVSS No. 119 to require all tires to be labeled with a maximum speed rating, and (2) FMVSS No. 120 to include such information on a required label, would “greatly improve the ability of consumers, fleets, tire service personnel, [and] State and Federal inspection personnel to correctly identify appropriate tires for a given vehicle and vehicle operation.”

FMCSA Response: Vehicles should be equipped with tires that have the proper speed rating for the vehicle’s intended use, because operating a vehicle at speeds that exceed the specified tire speed rating could lead to heat build-up in a tire and cause premature or sudden tire failure. This potential safety issue could have significant consequences, especially in passenger carrier operations, and FMCSA believes that regulatory measures are necessary to ensure – to the extent practicable – that speed-restricted tires are properly installed in accordance with a vehicle’s intended use.

Although the October 2003 crash in Tallulah, LA, involved a motorcoach, the NTSB Safety Recommendation was not specific only to motorcoach tires, but advised the Agency to “address a tire’s speed rating to ensure that it is appropriate for a vehicle’s intended use.” As noted above, tires labeled with a specific speed restriction/limit should not be operated at speeds that exceed that specified limit, as doing so could lead to heat build-up and cause premature or sudden tire failure. As such, FMCSA believes that any regulatory requirements regarding speed-

restricted tires should apply to all CMVs, and not to just motorcoaches as suggested by Southern Company.

The NPRM proposed to amend Appendix G to prohibit the use of speed-restricted tires on CMVs unless the use of such tires is specifically designated by the motor carrier. FMCSA believes that amending only the periodic (annual) inspection requirements in Appendix G – without a corresponding amendment to § 393.75, “Tires” – will not fully address the potential safety problem of using speed-restricted tires on vehicles that operate at speeds that exceed the rated limit of the tire as specified by the tire manufacturer. By including requirements relating to the appropriate use of speed-restricted tires in both § 393.75 and Appendix G, potential safety issues associated with the improper use of speed-restricted tires can be identified at any time and not just during periodic inspections conducted once a year. However, and because FMVSS No. 119 currently requires only tires that are speed-restricted to 55 mph or less to be labeled on the sidewall of the tire, it is not practicable to apply requirements to all tires (to include those that are rated for above 55 mph) as inspectors would have no way of easily determining the design maximum speed capability of the tire for the specified maximum load rating and corresponding inflation pressure.

Based on the above, FMCSA adopts new language in § 393.75 to prohibit the use of speed-restricted tires labeled for 55 mph or less in accordance with S6.5(e) of FMVSS No. 119 on vehicles that operate at speeds that exceed the rated limit of the tire. In addition, FMCSA amends Appendix G as proposed in the NPRM to prohibit the use of speed-restricted tires unless specifically designated by the motor carrier. This will require every CMV to be examined for the possible improper use of speed-restricted tires at least once a year.

Given that not all tires are currently required to be marked with a maximum speed rating, FMCSA understands ABA's concerns regarding how a motor carrier will adequately "designate the appropriate use of speed-restricted tires" as proposed in the NPRM. NHTSA estimates that speed-restricted tires comprise less than 2 percent of the heavy truck tires, and, as Southern Company notes, these are typically used on utility, refuse, logging, livestock, farming, construction, and similar vehicles that are more often operated in heavy mixed-use service (on/off road operations in lower speed applications). Inspectors conducting roadside inspections will rarely encounter speed-restricted tires, and can generally expect that regional and long haul trucks and motorcoaches should not be equipped with speed-restricted tires. By including a requirement in Appendix G that prohibits the use of speed-restricted tires on vehicles "unless designated by the motor carrier," motor carrier or other personnel conducting periodic inspections of the limited number of vehicles with speed-restricted tires will be prompted to confirm with the motor carrier that the use of such tires is appropriate for the specific vehicle. FMCSA retains the amendment to Appendix G as proposed in the NPRM.

**Motorcoach seat anchorage strength.**

Comments: Capitol Bus Lines agrees that seat anchor points should be inspected, and believes that "most reputable motorcoach operators check [the anchor points] as part of their 'best practices.'" However, Capitol Bus Lines also noted that "to add this item to Appendix G with no guidance as to the inspection criteria puts an undue burden on carrier maintenance personnel as to the inspection standard. The lack of guidance can also result in different interpretations as to what is acceptable between operator and enforcement personnel. It would seem appropriate that for this item to be included in Appendix G, some minimum guidance must be provided for clarity and for the benefit of both operator and enforcement personnel." ABA

commented that “...an alternative...may be to make a more complimentary change to Appendix G in line with the requirements of § 393.93, and develop a proposal to look for the presence of, and evidence of well maintained, seat belt assemblies at all driver and passenger seating positions, as appropriate.”

FMCSA Response: As noted in the NPRM, the wide range of seat anchorage designs, coupled with the lack of testing requirements specifically for seat anchorage strength in the FMVSSs, makes it impracticable for FMCSA to develop a detailed methodology for the inspection of motorcoach passenger seat mounting anchorages. FMCSA adopts the amendment as proposed in the NPRM.

## **VII. Today’s Final Rule**

Today’s final rule codifies changes to parts 393 and 396 by adding a definition of “major tread groove” and an illustration to show the location of tread wear indicators or wear bars on a tire signifying a major tread groove; revising the rear license plate lamp requirement to eliminate the requirement for an operable rear license plate lamp on vehicles when there is no rear license plate present; prohibiting the operation of a vehicle with speed-restricted tires at speeds that exceed the rated limit of the tire; providing specific requirements regarding when violations or defects noted on an inspection report must be corrected; amending Appendix G to the FMCSRs, “Minimum Periodic Inspection Standards,” to include provisions for the inspection of antilock braking systems (ABS) and automatic brake adjusters, speed-restricted tires, and motorcoach passenger seat mounting anchorages; amending the periodic inspection rules to eliminate the option for a motor carrier to satisfy the periodic inspection requirement through use of a violation-free roadside inspection; and amending the inspector qualification requirements as a

result of the amendments to the periodic inspection rules. In addition, the Agency eliminates introductory regulatory text from Appendix G to the FMCSRs.

## **VIII. Section-by-Section Analysis**

### **A. Part 393 – Parts and Accessories Necessary for Safe Operation**

#### Section 393.5 (Definitions)

FMCSA modifies this section by adding a definition of “major tread groove.”

#### Section 393.11 (Lamps and reflective devices)

FMCSA modifies Footnote 11 to Table 1 of § 393.11 dealing with rear license plates lights.

#### Section 393.75 (Tires)

FMCSA adds a new paragraph (f) dealing with speed-restricted tires and tread wear indicators and an illustration of a tread wear indicator.

### **B. Part 396 – Inspection, Repair and Maintenance**

#### Section 396.9 (Inspection of motor vehicles and intermodal equipment in operation)

FMCSA amends paragraph (d)(2) dealing with correction of violations of defects.

#### Section 396.17 (Periodic inspection)

FMCSA amends paragraph (f) to bar roadside inspections from serving as annual inspections.

#### Section 396.19 (Inspector qualifications)

FMCSA amends paragraph (b) to make it consistent with amended § 396.17.

#### Section 396.23 (Equivalent to periodic inspection)

FMCSA removes § 396.23(a) to make it consistent with § 396.17, and renames the remainder of the section accordingly.

## **Appendix G to Subchapter B of Chapter III (Minimum Periodic Inspection Standards)**

FMCSA amends Appendix G by adding sections 1.1 and 1.m, revising section 10.c, adding section 14, and eliminating introductory regulatory text, as explained in detail above.

### **Amendments to Existing Regulatory Guidance**

Elsewhere in today's issue of the Federal Register, FMCSA amends certain regulatory guidance to ensure consistency between the FMCSRs, as amended by this final rule, and the published guidance.

## **IX. Regulatory Analyses**

### **A. Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) 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 this final rule under that Order.

### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of their regulatory actions on small business and other small entities and to minimize any significant economic impact. The term “small entities” encompasses small businesses and 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.<sup>1</sup>

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Title II, Pub. L. 104-121, 110 Stat. 857, March 29, 1996), this final rule is not expected to have a significant economic impact on a substantial number of small entities because the amendments generally do not involve the adoption of new or more stringent requirements, but, instead, the clarification of existing requirements. Therefore, there is no disproportionate burden to small entities.

Consequently, I certify that the action will not have a significant economic impact on a substantial number of small entities.

### C. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mike Huntley, listed in the **For Further Information Contact** section of the rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the

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<sup>1</sup> Regulatory Flexibility Act (5 U.S.C. 601 et seq.), see National Archives at <http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html>.

Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

**D. Unfunded Mandates Reform Act of 1995**

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, taken together, or by the private sector, of \$155 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2014 levels) or more in any 1 year. This final rule would not result in such an expenditure.

**E. Paperwork Reduction Act**

This final rule calls for no new collection of information and is therefore not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

**F. Executive Order 13132 (Federalism)**

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” FMCSA has determined that this final rule does not have substantial direct effects on or costs to States, nor does it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

**G. Executive Order 12988 (Civil Justice Reform)**

This final 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. Executive Order 13045 (Protection of Children)**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action could not present an environmental or safety risk that would disproportionately affect children.

**I. Executive Order 12630 (Taking of Private Property)**

FMCSA has reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

**J. Privacy Impact Assessment**

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

This rule does not require a PIA because it does not require the collection of personally identifiable information (PII).

**K. Executive Order 12372 (Intergovernmental Review)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**L. Executive Order 13211 (Energy Supply, Distribution, or Use)**

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

**M. Executive Order 13175 (Indian Tribal Governments)**

This rule does not have tribal implications under E.O. 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.

**N. National Technology Transfer and Advancement Act**

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## **O. Environment (National Environmental Policy Act, Clean Air Act, Environmental Justice)**

FMCSA analyzed this final rule for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraphs 6(z)(aa) and 6(z)(bb). The Categorical Exclusion (CE) in paragraph 6(z)(aa) covers regulations requiring motor carriers, their officers, drivers, agents, representatives, and employees directly in control of CMVs to inspect, repair, and provide maintenance for every CMV used on a public road. The CE in paragraph 6(z)(bb) covers regulations concerning vehicle operation safety standards (e.g., regulations requiring: certain motor carriers to use approved equipment which is required to be installed such as an ignition cut-off switch, or carried on board, such as a fire extinguisher, and/or stricter blood alcohol concentration (BAC) standards for drivers, etc.), equipment approval, and/or equipment carriage requirements (e.g., fire extinguishers and flares). The CE determination is available for inspection or copying in the Regulations.gov Web site listed under ADDRESSES.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section

176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA has determined that this rule will have no environmental justice effects, nor would its promulgation have any collective environmental impact.

### **List of Subjects**

#### **49 CFR Part 393**

Highway safety, Motor carriers, Motor vehicle safety

#### **49 CFR Part 396**

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements

For the reasons stated above, FMCSA amends 49 CFR chapter III, subchapter B, as follows:

### **PART 393--PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION**

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

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.87.

2. Amend § 393.5 to add a definition for "Major tread groove" in alphabetical order to read as follows:

## **§ 393.5 Definitions.**

\* \* \* \*

*Major tread groove* is the space between two adjacent tread ribs or lugs on a tire that contains a tread wear indicator or wear bar. (In most cases, the locations of tread wear indicators are designated on the upper sidewall/shoulder of the tire on original tread tires.)

\* \* \* \*

3. In § 393.11, revise Footnote 11 of Table 1 to read as follows:

## **§ 393.11 Lamps and reflective devices.**

\* \* \* \*

Table 1 of § 393.11—Required Lamps and Reflectors on Commercial Motor Vehicles

\* \* \* \*

Footnote—11 To be illuminated when headlamps are illuminated. No rear license plate lamp is required on vehicles that do display a rear license plate.

\* \* \* \*

4. In § 393.75:

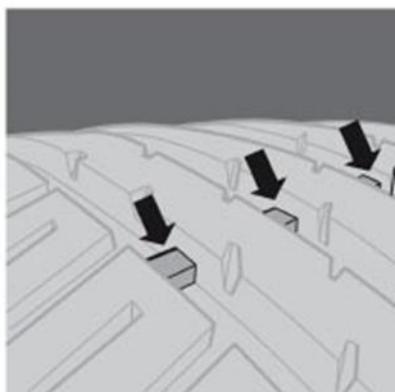
- a. Redesignate paragraphs (f) through (h) as paragraphs (g) through (i) and in redesignated paragraph (g) remove “paragraph (g)” and add in its place “paragraph (h);”
- b. Add a new paragraph (f) and add Figure 23 – “Location of Tread Wear Indicators or Wear Bars Signifying a Major Tread Groove” immediately following new paragraph (f) to read as follows:

## **§ 393.75 Tires.**

\* \* \* \*

(f) No motor vehicle may be operated with speed-restricted tires labeled with a maximum speed of 55 mph or less in accordance with S6.5(e) of FMVSS No. 119 at speeds that exceed the rated limit of the tire.

Figure 23 – “Location of Tread Wear Indicators or Wear Bars Signifying a Major Tread Groove”



\* \* \* \*

## PART 396—INSPECTION, REPAIR, AND MAINTENANCE

5. The authority citation for part 396 continues to read as follows:

**Authority:** 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

6. Revise § 396.9(d)(2) to read as follows:

### § 396.9 Inspection of motor vehicles and intermodal equipment in operation.

\* \* \* \*

(d) \* \* \*

(2) Motor carriers and intermodal equipment providers shall examine the report.

Violations or defects noted thereon shall be corrected in accordance with § 396.11(a)(3). Repairs of items of intermodal equipment placed out-of-service are also to be documented in the maintenance records for such equipment.

\* \* \* \*

7. Revise § 396.17(f) to read as follows:

**§ 396.17 Periodic inspection.**

\* \* \* \*

(f) Vehicles passing periodic inspections performed under the auspices of any State government or equivalent jurisdiction, meeting the minimum standards contained in appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed.

\* \* \* \*

8. Revise § 396.19(b) to read as follows:

**§ 396.19 Inspector qualifications.**

\* \* \* \*

(b) Motor carriers and intermodal equipment providers must retain evidence of that individual's qualifications under this section. They must retain this evidence for the period during which that individual is performing annual motor vehicle inspections for the motor carrier or intermodal equipment provider, and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain documentation of inspector qualifications for those inspections performed as part of a State periodic inspection program.

**§ 396.23 [Amended]**

9. In § 396.23, remove paragraph (a) and redesignate paragraph (b) as paragraph (a) and reserve a new paragraph (b).

10. Amend Appendix G to Subchapter B of Chapter III by:

a. Adding Section 1.1 and footnotes 1 and 2;

b. Adding Section 1.m;  
b. Adding Section 10.c;  
c. Adding Section 14; and  
d. Removing “Comparison of Appendix G, and the New North American Uniform Driver Vehicle Inspection Procedure (North American Commercial Vehicle Critical Safety Inspection Items and Out-Of-Service Criteria),” including the introductory text and paragraphs 1. – 13.

The additions read as follows:

## **Appendix G to Subchapter B of Chapter III – Minimum Periodic Inspection Standards**

\* \* \* \*

### **1. Brake System**

\* \* \* \*

#### *1. Antilock Brake System<sup>1</sup>*

- (1) Missing ABS malfunction indicator components (i.e., bulb, wiring, etc.).
- (2) ABS malfunction indicator that does not illuminate when power is first applied to the ABS controller (ECU) during initial power up.
- (3) ABS malfunction indicator that stays illuminated while power is continuously applied to the ABS controller (ECU).
- (4) ABS malfunction indicator lamp on a trailer or dolly does not cycle when electrical power is applied:
  - (a) Only to the vehicle’s constant ABS power circuit, or
  - (b) Only to the vehicle.<sup>2</sup>

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<sup>1</sup> Power units manufactured after March 1, 2001, have two ABS malfunction indicators, one for the power unit and one for the units that they tow. Both malfunction indicators are required to be fully functional.

<sup>2</sup> This section is applicable to tractors with air brakes built on or after March 1, 1997, and all other vehicles with air brakes built on or after March 1, 1998. This section is also applicable to vehicles over 10,000 lbs. GVWR with hydraulic brakes built on or after March 1, 1999.

(5) With its brakes released and its ignition switch in the normal run position, power unit does not provide continuous electrical power to the ABS on any vehicle it is equipped to tow.

(6) Other missing or inoperative ABS components.

m. Automatic Brake Adjusters

(1) Failure to maintain a brake within the brake stroke limit specified by the vehicle manufacturer.

(2) Any automatic brake adjuster that has been replaced with a manual adjuster.

(3) Damaged, loose, or missing components.

(4) Any brake that is found to be out of adjustment on initial inspection must be evaluated to determine why the automatic brake adjuster is not functioning properly and the problem must be corrected in order for the vehicle to pass the inspection. It is not acceptable to manually adjust automatic brake adjusters without first correcting the underlying problem. For example, there may be other components within the braking system that are distressed or out of specification (i.e., broken welds, loose mounting hardware, cracked brake drums, worn bushings, etc.) that would require immediate attention.

\* \* \* \*

**10. Tires**

\* \* \* \*

c. Installation of speed-restricted tires unless specifically designated by motor carrier.

\* \* \* \*

#### **14. Motorcoach Seats**

- a. Any passenger seat that is not securely fastened to the vehicle structure.
- b. [Reserved]

Issued under the authority of delegation in 49 CFR 1.87. July 14, 2016

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T. F. Scott Darling, III  
Acting Administrator

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