

subject to an enforceable agreement entered into before July 18, 1984, historical cost may not exceed the lowest of the following:

* * * * *

(f) *Gains and losses on disposal of assets*—(1) *General*. Depreciable assets may be disposed of through sale, scrapping, trade-in, exchange, demolition, abandonment, condemnation, fire, theft, or other casualty. If disposal of a depreciable asset, including the sale or scrapping of an asset before December 1, 1997, results in a gain or loss, an adjustment is necessary in the provider's allowable cost. (No gain or loss is recognized on either the sale or the scrapping of an asset that occurs on or after December 1, 1997.) The amount of a gain included in the determination of allowable cost is limited to the amount of depreciation previously included in Medicare allowable costs. The amount of a loss to be included is limited to the undepreciated basis of the asset permitted under the program. The treatment of the gain or loss depends upon the manner of disposition of the asset, as specified in paragraphs (f)(2) through (6) of this section. The gain or loss on the disposition of depreciable assets has no retroactive effect on a proprietary provider's equity capital for years prior to the year of disposition.

(2) *Bona fide sale or scrapping before December 1, 1997*. For the bona fide sale or scrapping of depreciable assets before December 1, 1997, the following apply:

* * * * *

(g) *Establishment of cost basis on purchase of facility as an ongoing operation*.

* * * * *

(4) *Assets acquired by all providers on or after December 1, 1997*. Subject to the provisions of paragraph (b)(1)(i)(A) of this section, the historical cost may not exceed the historical cost of the asset, as recognized under the Medicare program, less depreciation allowed, to the owner of record as of August 5, 1997 (or for an asset not in existence as of August 5, 1997, the first owner of record after August 5, 1997).

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(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 9, 1997.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.

Approved: December 31, 1997.

Donna E. Shalala,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC-97-5; FHWA-97-2364]

RIN 2125-AD40

Parts and Accessories Necessary for Safe Operation; Glazing in Specified Openings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its requirements concerning glazing materials, windshield condition, coloring and tinting of windshields and windows, and obstructions to the driver's field of view for commercial motor vehicles operated in interstate commerce. The revision is intended to remove obsolete regulatory language, establish requirements that are more performance-based than the previous requirements, and respond to requests for waivers to allow the use of windshield-mounted transponders. On April 14, 1997, the FHWA published a notice of proposed rulemaking (NPRM) in which the agency proposed general amendments to part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs), Parts and Accessories Necessary for Safe Operation. The proposed amendments covered a wide range of topics, including the subjects of this rule. Upon review of the docket comments and recent requests for waivers, the agency has decided to issue a final rule on glazing materials, windshields and windows and to publish, at a later date, a final rule on the remaining issues covered in the April 14, 1997, NPRM. As a result of this rulemaking, motor carriers operating under the terms of the March 6, 1995, waiver granted for the ADVANTAGE I-75 and Heavy Vehicle Electronic License Plate, Inc. programs are no longer required to comply with the conditions prescribed by the waiver.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 1988, the FHWA published a final rule on parts and accessories necessary for safe operation (53 FR 49380). The final rule included amendments to the requirements of 49 CFR part 393 for lamps and reflective devices, brake systems, fuel systems, frames and frame assemblies, suspension systems, steering systems, and axle assemblies. This action was taken to implement sections 206 and 210 of the Motor Carrier Safety Act of 1984 (the Act), 49 U.S.C. 31136 and 31142, and to ensure that commercial motor vehicles are equipped with all parts and accessories considered necessary for safe operation. Since the publication of the final rule, the FHWA has received numerous petitions for rulemaking and requests for interpretation of the requirements of part 393 which have raised the need for additional amendments to clarify several provisions of the 1988 final rule. In addition, the National Highway Traffic Safety Administration (NHTSA), the Federal agency responsible for establishing safety standards for the manufacture of motor vehicles and certain motor vehicle equipment, has made several amendments to its Federal Motor Vehicle Safety Standards (FMVSSs) that necessitate amendments to the FMCSRs in order to eliminate inconsistencies between part 393 and the FMVSSs.

On April 14, 1997, the FHWA published a notice of proposed rulemaking (NPRM) to amend part 393 of the FMCSRs (62 FR 18170). The proposed amendments were intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between part 393 and the NHTSA's FMVSSs (49 CFR 571); and codify certain FHWA regulatory guidance concerning the requirements of part 393. The comment period was extended to July 28, 1997, at 62 FR 32066 on June 12, 1997.

As part of the NPRM, the FHWA proposed revising § 393.60, Glazing in specified openings. The agency proposed requiring that glazing material used in windshields, windows and doors of commercial motor vehicles manufactured on or after December 25, 1968, meet the requirements of FMVSS No. 205 in effect on the date of manufacture of the vehicle. The agency also proposed including a requirement that each bus, truck, and truck-tractor be equipped with a windshield.

With regard to coloring or tinting of windshields and side windows, the FHWA proposed revising the requirements to codify regulatory guidance on this topic. Coloring or tinting of windshields and the windows to the immediate right and left of the driver would be allowed provided the parallel luminous transmittance through the colored or tinted glazing is not less than 70 percent of the light at normal incidence in those portions of the windshield or windows which are marked as having a luminous transmittance of at least 70 percent.

The FHWA proposed revising § 393.60(c) concerning restrictions on the use of vision-reducing matter on windshields. The proposed revision was intended to eliminate the need for motor carriers to petition the FHWA for waivers to allow the use of windshield-mounted transponders and similar devices. The preamble to the NPRM stated:

On March 6, 1995, the FHWA granted a petition from the Commonwealth of Kentucky, and Heavy Vehicle Electronic License Plate, Inc. (HELP) requesting a waiver from the requirements of § 393.60(c) to allow mounting of an automatic vehicle identification transponder at the upper border of the windshields of commercial motor vehicles (60 FR 12146). The waiver was necessary because § 393.60(c) prohibits the operation of a commercial motor vehicle with vision-reducing matter covering any portion of the windshield with certain exceptions for decals required by law and affixed to the bottom of the windshield.

In evaluating the requests for waivers to § 393.60(c), the FHWA reviewed automotive engineering recommended practices, the NHTSA's FMVSSs, and recent research concerning driver's field of view. The agency also examined current commercial motor vehicle cab designs related to placement of interior mirrors and sun visors which occupy approximately the same space proposed for the transponder. Based upon the information obtained from this review, the FHWA concluded that a transponder mounted at the approximate center of the top of the windshield would be extremely unlikely to create a situation inconsistent with the safe operation of a commercial motor vehicle. This location is well outside the area recommended for windshield wiper sweep under the SAE recommended practice J198,

Windshield Wiper Systems—Trucks, Buses, and Multipurpose Vehicles, and the area recommended for windshield defrosting under J342, *Windshield Defrosting Systems Performance Guidelines—Trucks, Buses, and Multipurpose Vehicles*. The findings of recent research reports on the subject also suggested that the location of an object, such as a transponder device, near the upper margin of a windshield is unlikely to have any effect on a driver's ability to observe nearby objects, such as pedestrians.

The NPRM indicated the agency would allow the installation of antennas, transponders, and similar devices in the upper margin of windshields for the reasons presented in the notice granting the waiver. These devices could not be placed lower than 152 mm (6 inches) from the upper edge of the windshield, must be outside the area swept by the windshield wipers, and must be outside the driver's sight lines to the road and highway signs or signals. The proposed amendment would codify the March 6, 1995, waiver and help to promote the use of advanced technologies to improve the efficiency and safety of operation of commercial motor vehicles.

On the subject of limitations on the placement of decals and stickers at the bottom of the windshield, the FHWA proposed adopting a performance-based requirement that decals required by law must not obstruct the driver's view of the road or traffic signs.

Discussion of Comments to the NPRM

The FHWA received 35 comments in response to the NPRM. The commenters were: Air Ride Control, Inc.; Amerex Corporation; the American Trucking Associations (ATA) (two submissions to the docket); Burns Consulting Associates; Colorado Department of Public Safety; Commercial Vehicle Safety Alliance (CVSA) (two submissions to the docket); Robert J. Crail, a transportation engineering consultant; W. E. Currie, a consulting engineer; Dana Corporation, Boston Weatherhead Division; Electronic Controls Company; Elf Atochem North America, Inc.; Grote Industries, Inc.; Hüls America, Inc.; Lufkin Trailers; Mark IV Industrial—Dayco Eastman; The Commonwealth of Massachusetts, Department of Public Utilities; National Association of State Fire Marshals; National Association of Trailer Manufacturers; National Automobile Dealers Association; National Automobile Transporters Association; National Propane Gas Association; Oklahoma Highway Patrol; Parker Hannifin Corporation (two submissions to the docket); Rockwell International Corporation (the automotive division of Rockwell is now Meritor Automotive);

Star Headlight and Lantern Company, Inc.; Transportation Safety Equipment Institute; Truck Manufacturers Association; Truck Trailer Manufacturers Association; UBE Industries (America), Inc.; Donald H. Verhoff; and, Wells Cargo, Inc.

The ATA and the CVSA were the only commenters to discuss the proposed revision of § 393.60. The CVSA supported the proposal to allow the use of windshield-mounted transponders and recommended that the revision be expedited.

The ATA opposed the proposed reference to FMVSS No. 205, concerning manufacturing standards for glazing material, and the proposed requirement that all commercial motor vehicles be equipped with windshields. The ATA also expressed concern about the proposed regulatory language concerning prohibitions on obstructions to the drivers field of view. The ATA stated:

[M]otor carriers can not test to assure that a component or system meets the FMVSS. By referencing the American National Standards Institute (ANSI) standard ANS Z26, the FMVSS requires that glazing be tested for, among many other things, chemical resistance. Performing this test requires, as one testing agent, gasoline of a certain Isooctane type and content. It is completely unreasonable to believe that any carrier is ever going to understand what such a fluid is, let alone purchase it for testing glazing.

Carriers can, however, assure that glazing material is marked in accordance with FMVSS 205.S6. This is the type of indication which the manufacturers make to show compliance with the FMVSS. We believe such marking is necessary for all components which the agency believes motor carriers must show were constructed in compliance with the FMVSS.

The ATA also expressed concern about the proposed requirement for windshields.

The ATA believes an exemption is needed for the transportation of vehicles such as "chassis cowl" between truck manufacturers and final stage manufacturers. The incomplete vehicles often have no windshield, windshield wipers or washers, heater-defroster, or speedometer. The ATA indicated the movement of this equipment is typically across town to a "body builders" facility.

With regard to the proposed language concerning prohibitions on obstructions to the driver's field of view, the ATA believes the wording about decals is "too liberal." The ATA stated:

It will once again allow state and federally required material to be affixed to the top, bottom, and sides of a windshield. We recognize that new technology has created the need for transponders and similar equipment. We also understand that CVSA

decals should be affixed to windshields but are not required by law and so need an exemption for such placement. And we can not forget how bad this can get without stringent control.

Many windshields have curved sides which are not swept by the wipers. Under FHWA/OMC's new wording this will become fertile glass for the planting of new stickers. To control the desire to use the windshield as a billboard, we suggest the following:

(2) *Decals and stickers mounted on the windshield.* Commercial Vehicle Safety Alliance (CVSA) inspection decals, and stickers and/or decals required under federal or state laws may be placed at the bottom or sides of the windshield provided such decals or stickers do not extend upward more than 4½ inches (11.5 cm) from the bottom of the windshield and are located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs or signals.

FHWA Response to Comments

The FHWA agrees with the CVSA's recommendation that the revision concerning windshield-mounted transponders and similar devices should be expedited. The agency acknowledges the ATA's concerns about Federal- and State-required decals being applied to inappropriate areas of the windshields of commercial motor vehicles, and has modified the regulatory language accordingly. However, for the reasons discussed below, the FHWA disagrees with the ATA's argument that motor carriers are not able to comply with the requirement to ensure that their commercial motor vehicles are equipped with windshields which meet the requirements of FMVSS No. 205. The agency also disagrees with the ATA's argument about the need for a driveway exemption for the operation of incomplete motor vehicles.

The Use of Windshield-Mounted Transponders on Commercial Motor Vehicles

The FHWA is aware of two Intelligent Transportation Systems (ITS) programs that need regulatory relief from § 393.60(c) to allow the use of windshield-mounted transponders: the International Borders Clearance Program (the Borders Clearance Program), and the Oregon Green Light Electronic Clearance Operational Test Project (Green Light Project). The revised regulation will allow motor carriers participating in the Borders Clearance Program and Green Light Project, as well as carriers participating in future programs intended to improve efficiency and highway safety, to mount automatic vehicle identification (AVI) transponders at the top of the windshield (near the centerline or

middle) of their commercial motor vehicles (CMVs).

The Borders Clearance Program is an element of the FHWA's ITS program that is designed to develop and demonstrate the integration of ITS technology (i.e., electronic pre-clearance, AVI transponders on vehicles, and AVI readers and other state-of-the-art communications and information systems) into an international border clearance system for CMVs operating between the United States, Canada, and Mexico. The Borders Clearance Program will allow the CMVs that meet safety and operational requirements to pass through border crossings with minimal delays. Currently, field operational tests (FOTs) to demonstrate the use of ITS technology are being planned for international border clearance sites on the Northern border (Buffalo, New York, and Detroit, Michigan) and on the Southern border (Otay Mesa, California, and Nogales, Arizona). Also FOTs are being developed for international border crossing sites in El Paso and Laredo, Texas; Blaine, Washington; and Sweetgrass, Montana.

The FOTs are intended to demonstrate an approach for standardizing data/information exchange systems between various U.S. Federal agencies (the Customs Service, the Immigration and Naturalization Service, and the Department of Transportation) with regulatory/enforcement responsibilities in border areas. This program will result in improved efficiency and effectiveness of activities at the border crossings and streamline the processes for ensuring safe CMV operations and verifying the credentials of motor carriers. Other important aspects of these initiatives include: the incorporation of the U.S. Treasury Department's North American Trade Automation Prototype (NATAP) project; examination of methods to make electronic information secure; and on-board processing of CMV safety information.

The FOTs are scheduled for completion by the end of 1999. The next step in the Borders Clearance Program would be to move toward the model deployment phase, focusing on deploying international border crossing systems at high priority sites.

Like the ADVANTAGE I-75 and HELP programs discussed earlier in this document, the Borders Clearance Program is dependent on the use of AVI transponders transmitting and receiving information to and from inspection stations. The transponders that will be used for the Borders Clearance Program are the same size as those used for the

other programs and would be placed at the top of the windshield, near the centerline or middle of the CMV. The reasons for choosing this location are the same as those presented by ADVANTAGE I-75 and HELP programs.

The Green Light Project is part of the State of Oregon's ITS Commercial Vehicle Operations' Program. The project involves the testing of mainline pre-clearance systems featuring state-of-the-art weigh-in-motion and AVI devices compatible with systems in other jurisdictions. In addition, certain sites will be equipped with data collection systems for use in enforcing safety and weight regulations. Other sites will be equipped with safety enhancement technologies, including highway warning systems for weather-related hazards and downhill truck speed information systems.

The Green Light Project is dependent on the use of AVI transponders transmitting and receiving information to and from inspection stations. The transponders that will be used for the Green Light Project are the same size as those used for the programs previously mentioned and would be placed at the top of the windshield, near the centerline or middle of the CMV. The reasons for choosing this location are the same as those presented by the programs previously mentioned.

The FHWA has reviewed the operational needs of the Borders Clearance Program and Green Light Project and the comments received in response to the April 14, 1997, NPRM and has determined that revising § 393.60 to allow the use of windshield-mounted transponders and similar devices will help to promote increased efficiency and safety of motor carrier operations. The agency has reviewed accident reports concerning the transponder-equipped CMVs operating under the terms of the 1995 waiver and has determined that there have been no accidents (as defined in § 390.5) that could be attributed to the mounting of the transponders in the uppermost area of the center of the windshields of those CMVs. Therefore, the real-world experience of the motor carriers operating approximately 10,000 transponder-equipped CMVs indicates that allowing other CMVs to be similarly equipped is consistent with the public interest and the safe operation of CMVs.

Cross-Reference to FMVSS No. 205

The FHWA does not believe the ATA's concerns about cross-referencing FMVSS No. 205 are warranted. The regulatory language proposed did not include a requirement for motor carriers to conduct certification testing of

glazing materials in order to verify that windshields meet the manufacturing standard.

Motor vehicle manufacturers must certify that the vehicles they manufacture for sale and use in the United States meet all applicable Federal Motor Vehicle Safety Standards issued by the NHTSA. In certain cases, the vehicle safety standards require motor vehicle equipment to be marked by the equipment manufacturer to certify that the product meets the applicable safety standard (e.g., retroreflective sheeting for use on trailers manufactured on or after December 1, 1993, are marked with DOT-C2, DOT-C3, or DOT-C4, depending on the width of the tape).

Through cross-references to the FMVSSs, the FHWA places upon motor carriers the responsibility for being knowledgeable about the Federal manufacturing standards that are applicable to heavy trucks, buses, and trailers. Motor carriers have the responsibility of purchasing vehicles and components from manufacturers that are capable of certifying the products they are selling meet the applicable Federal manufacturing standards. If the commercial motor vehicle is damaged during its service life, or components wear out and require replacement, motor carriers are required to have the vehicle properly repaired by knowledgeable and capable maintenance personnel. Maintenance personnel should recognize that there are Federal safety standards and be capable of determining whether the repairs being performed will restore the vehicle to its previous condition.

Looking specifically at the cross-reference to FMVSS No. 205, vehicle manufacturers are responsible for ensuring that original windshields and windows installed in new motor vehicles meet the applicable requirements. With certain exceptions, the glazing material is required to be marked by the glazing manufacturer. Therefore motor carriers need only look for the certification label or tag (required by 49 CFR 567) for the new vehicle, and the certification marking (required by 49 CFR 571.205) on the glazing (i.e., windshields and windows) to determine whether the manufacturers have certified that the vehicle and glazing meet the applicable Federal requirements. If the windshield has to be replaced at a later date, the motor carrier need only ensure the repair facility or supplier of the replacement windshield is knowledgeable about the Federal standards applicable to glazing materials. The FHWA is not aware of

any evidence of fraudulent certification and marking of windshields.

The argument by the ATA that motor carriers would be required to understand, in whole or in part, the test procedures that manufacturers are required to follow, or conduct testing in order to ensure compliance with the cross-referenced standard, is without basis. The FMCSRs have for more than 25 years included cross-references to the FMVSSs (e.g., FMVSS No. 105, concerning hydraulic brake systems, and No. 121 concerning air brake systems) with an apparently clear understanding by the vast majority of the regulated industry that motor carriers are not required to conduct certification testing. Although motor carriers and vehicle manufacturers have requested interpretations on numerous aspects of part 393 of the FMCSRs, the cross-references to the FMVSSs do not appear to have raised a discernible level of confusion or concern. Therefore, the FHWA has retained the cross-reference to FMVSS No. 205.

Requirement for Vehicles To Be Equipped With Windshields

The FHWA does not believe it is necessary to include in the final rule requiring windshields an exemption for driveaway operations. The scenario the ATA described would be considered the operation of a commercial motor vehicle in intrastate commerce. As such it would not be subject to the requirements of part 393 of the FMCSRs.

The FHWA notes that as a condition under the Motor Carrier Safety Assistance Program (MCSAP) States are required to adopt motor carrier safety and hazardous materials transportation rules and regulations identical in nearly all respects to those set forth in Federal laws and regulations. The States are required to apply those rules and regulations to both interstate and intrastate operations. However, the FHWA has provided, in appendix C to 49 CFR part 350, tolerance guidelines for State rules and regulations where Federal regulations do not apply. The tolerance guidelines provide a mechanism for individual States to assess the intrastate movement of incomplete motor vehicles, and determine whether an exemption to the requirement for windshields is appropriate. If State officials believe that an exemption is necessary for the movement of incomplete vehicles, the State may submit the information required by appendix C to the FHWA for consideration.

Discussion of Final Rule

The final rule requires glazing materials used for windshields, windows, and doors on a commercial motor vehicle manufactured on or after December 25, 1968, (the effective date of the NHTSA requirements for glazing) meet the requirements of FMVSS No. 205 in effect on the date of manufacture of the vehicle. Windshields and windows may be replaced with glazing materials that meet the requirements in effect on the date of manufacture, or with glazing materials that meet newer standards, adopted by amendments or revisions of FMVSS No. 205.

Each bus, truck and truck-tractor is required to have a windshield. The windshield must be mounted using the full periphery of the glazing material and be free of discoloration or damage in certain areas. Minor damage, such as cracks that are not intersected by other cracks, would not be considered violations.

The final rule allows tinting of windshields as long as the percentage of light transmitted through the tinted windshield is at least 70 percent of the light at normal incidence in those portions of the windshield or windows which are marked as having a luminous transmittance of at least 70 percent.

Motor carriers are allowed to attach antennas, transponders, and similar devices to windshields provided the devices are not mounted more than 152 mm (6 inches) from the upper edge of the windshield and are located outside the area swept by the windshield wipers. The devices also must be located outside the driver's sight lines to the road and highway signs and signals. As a result of the revision to § 393.60, motor carriers operating under the terms of the waiver granted for the ADVANTAGE I-75 and HELP programs are no longer required to comply with the conditions prescribed by the waiver. The waiver is terminated effective February 9, 1998.

Inspection decals and stickers and/or decals required under Federal or State laws may be placed at the bottom or sides of the windshield. However, the stickers or decals may not extend more than 115 mm (4½ inches) from the bottom of the windshield and must be located outside the area swept by the windshield wipers. The stickers or decals also must be located outside the driver's sight lines to the road and highway signs and signals. The FHWA recognizes that compliance with this provision requires cooperation of the Federal and State agencies that have requirements for stickers/decals to be attached to windshields. However, since

the previous requirements under § 393.60 have identical restrictions on the placement of stickers/decals, the FHWA does not believe that retaining the restrictions will conflict with the current requirements of other Federal or State agencies.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has considered the impacts of this document and has determined that it is neither a significant rulemaking action within the meaning of Executive Order 12866 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation. The rulemaking would revise § 393.60 of the FMCSRs to remove obsolete regulatory language and eliminate the need for processing requests for waivers. The rulemaking also will codify regulatory guidance concerning the requirements of § 393.60. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. The rulemaking would revise § 393.60 of the FMCSRs to remove obsolete regulatory language and eliminate the need for processing requests for waivers. The rulemaking also will codify regulatory guidance concerning the requirements of § 393.60. The revised regulation is not likely to change the operating practices or equipment needs of motor carriers in general, or small motor carriers (private and for-hire) in particular. It is anticipated that the economic impact of this rulemaking will be minimal since it would not require modifications to equipment. Based on this evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highways and roads, Incorporation by reference, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Issued on: December 22, 1997.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, subchapter B, chapter III, as follows:

PART 393—[AMENDED]

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

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.60 is revised to read as follows:

§ 393.60 Glazing in specified openings.

(a) *Glazing material.* Glazing material used in windshields, windows, and doors on a motor vehicle manufactured on or after December 25, 1968, shall at a minimum meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 205 in effect on the date

of manufacture of the motor vehicle. The glazing material shall be marked in accordance with FMVSS No. 205 (49 CFR 571.205, S6).

(b) *Windshields required.* Each bus, truck and truck-tractor shall be equipped with a windshield. Each windshield or portion of a multi-piece windshield shall be mounted using the full periphery of the glazing material.

(c) *Windshield condition.* With the exception of the conditions listed in paragraphs (c)(1), (c)(2), and (c)(3) of this section, each windshield shall be free of discoloration or damage in the area extending upward from the height of the top of the steering wheel (excluding a 51 mm (2 inch) border at the top of the windshield) and extending from a 25 mm (1 inch) border at each side of the windshield or windshield panel. *Exceptions:*

(1) Coloring or tinting which meets the requirements of paragraph (d) of this section;

(2) Any crack that is not intersected by any other cracks;

(3) Any damaged area which can be covered by a disc 19 mm (¾ inch) in diameter if not closer than 76 mm (3 inches) to any other similarly damaged area.

(d) *Coloring or tinting of windshields and windows.* Coloring or tinting of windshields and the windows to the immediate right and left of the driver is allowed, provided the parallel luminous transmittance through the colored or tinted glazing is not less than 70 percent of the light at normal incidence in those portions of the windshield or windows which are marked as having a parallel luminous transmittance of not less than 70 percent. The transmittance restriction does not apply to other windows on the commercial motor vehicle.

(e) *Prohibition on obstructions to the driver's field of view—(1) Devices mounted at the top of the windshield.* Antennas, transponders, and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield. These devices must be located outside the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals.

(2) *Decals and stickers mounted on the windshield.* Commercial Vehicle Safety Alliance (CVSA) inspection decals, and stickers and/or decals required under Federal or State laws may be placed at the bottom or sides of the windshield provided such decals or stickers do not extend more than 115 mm (4½ inches) from the bottom of the windshield and are located outside the area swept by the windshield wipers,

and outside the driver's sight lines to the road and highway signs or signals.

[FR Doc. 98-567 Filed 1-8-98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 970715175-7292-02; I.D. No. 042997B]

RIN 0648-AG58

Designated Critical Habitat; Umpqua River Cutthroat Trout

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: NMFS is designating critical habitat for the Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*). Designated critical habitat includes all river reaches of the Umpqua River accessible to cutthroat trout, including all Umpqua River estuarine areas and tributaries upstream from the Pacific Ocean to the confluence of the North and South Umpqua Rivers; the North Umpqua River, including all tributaries, from its confluence with the mainstem Umpqua River to Soda Springs dam; the South Umpqua River, including all tributaries, from its confluence with the mainstem Umpqua River to its headwaters. Critical habitat includes all waterways below longstanding, naturally impassable barriers (i.e., natural water falls in existence for over several hundred years). Such areas represent the current freshwater and estuarine range of the listed species. The economic and other impacts resulting from this critical habitat designation are expected to be minimal.

NMFS is excluding areas above Soda Springs dam on the North Umpqua River from critical habitat. Available information indicates that habitat above Soda Springs dam is not currently essential for the conservation of this species. NMFS may revise this determination in the future should new information indicate habitat above Soda Springs dam is essential for the conservation of the species.

DATES: This rule is effective February 9, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Jim Lynch, NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR, 97232-2737, telephone (503/230-5422), internet (jim.lynch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1996, NMFS published its determination to list Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) as endangered under the Endangered Species Act (ESA) (61 FR 41514). In its final listing determination, NMFS concluded that all cutthroat trout life history forms (i.e., anadromous, potamodromous, and resident) should be included in the listed Umpqua River cutthroat trout Evolutionarily Significant Unit. This conclusion was based on studies conducted by Oregon Department of Fish and Wildlife (ODFW) and others that indicate these life history forms are not completely reproductively isolated and, therefore, should be considered a single "distinct population segment," under the ESA and NMFS' ESA species policy (61 FR 41516).

Historically, anadromous, potamodromous, and resident cutthroat trout likely existed throughout the Umpqua River basin. The current freshwater distribution of anadromous and potamodromous life forms is thought to be limited primarily to the mainstem, Smith, and North Umpqua Rivers. Resident cutthroat trout appear to remain broadly distributed throughout the Umpqua River basin, including areas of the South Umpqua River thought to support insignificant numbers of anadromous cutthroat trout populations.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. On July 19, 1993, NMFS published a **Federal Register** notice soliciting information and data regarding the present and historic status of the Umpqua River cutthroat trout, as well as information on areas that may qualify as critical habitat (58 FR 38544). At the time of final listing, critical habitat was not determinable, since information necessary to perform the required analyses was not available.

On July 30, 1997, NMFS published a proposed rule designating critical habitat for the listed species (62 FR 40786). In that proposed rule, NMFS solicited public comments and announced public hearings on the

proposed action. This final rule considers new information and comments received in response to the proposed rule.

Use of the term "essential habitat" within this final rule refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary [of Commerce] that such areas are essential for the conservation of the species." (See 16 U.S.C. 1532(5)(A).) The term "conservation," as defined in section 3(3) of the ESA, means, " * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." (See 16 U.S.C. 1532(3).)

In designating critical habitat, NMFS considers the following requirements of the species, space for individual and population growth, and for normal behavior, food, water, air, light, minerals, or other nutritional or physiological requirements, cover or shelter, sites for breeding, reproduction, or rearing of offspring; and, generally, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (See 50 CFR § 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are necessary to the conservation of the species and may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (See 50 CFR § 424.12(b).)

Benefits of Critical Habitat Designation

A designation of critical habitat provides a clear indication to Federal