- E. Penalty Increases for Prior Violations
- 1. The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty. The general standard for increasing a baseline proposed penalty on the basis of prior violations is as follows:
- a. One prior case—25% increase over the premitigation recommended penalty
- b. Two prior cases—50% increase over the pre-mitigation recommended penalty
- c. Three prior cases—75% increase over the pre-mitigation recommended penalty
- d. Four or more prior cases—100% increase over the pre-mitigation recommended penalty
- 2. A case of prior violations closed more than five years previously normally will not be considered in determining a proposed penalty.

# F. Penalty Increases for Use of Expired Exemptions

Adjustments to the base line figures for use of expired exemptions can be made depending on how much material has been shipped during the period between the expiration date and the renewal date. If the company previously has been found to have operated under an expired exemption, the penalty is normally doubled. If the company has been previously cited for other violations, the penalty generally will be increased by about 25%.

Issued in Washington, DC on February 27, 1995 under authority delegated in 49 CFR part 1.

#### Ana Sol Gutierrez,

Deputy Administrator, Research and Special Programs Administration.

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### **Federal Highway Administration**

## 49 CFR Part 393

[FHWA Docket No. MC-94-28]

Parts and Accessories Necessary for Safe Operation; Glazing and Window Construction; Petition for Waiver To Permit Use of Automatic Vehicle Identification Transponder

**AGENCY:** Federal Highway Administration (FHWA), DOT. **ACTION:** Grant of petition for waiver.

SUMMARY: The FHWA is granting a petition from the Commonwealth of Kentucky, lead State for the ADVANTAGE I–75 Program, and Heavy Vehicle Electronic License Plate, Inc., (HELP) requesting a waiver from the requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to allow mounting of an automatic vehicle identification (AVI) transponder near the upper border at the approximate center of the windshields of commercial motor vehicles.

The FHWA is granting the waiver to permit the use of the transponders in commercial motor vehicles participating in the ADVANTAGE I–75 operational ("beta") test and the HELP corridor programs, subject to the conditions imposed in this notice.

EFFECTIVE DATE: April 5, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 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 October 12, 1994, the FHWA published a notice in the **Federal** Register (59 FR 51540) requesting comments on petitions received from the Commonwealth of Kentucky (Kentucky) and HELP. The petitioners are the lead organizations in multi-State partnerships of public and private sector interests conducting a series of operational tests that fall within the Commercial Vehicle Operations (CVO) element of the Intelligent Transportation System (ITS) Program (formerly known as the Intelligent Vehicle-Highway Systems (IVHS) program). The ADVANTAGE I-75 and HELP programs were created to allow commercial motor vehicles (CMVs) that are equipped with transponders and that comply with safety and administrative requirements to travel any segment of their respective instrumented highways at mainline speeds with minimal stopping at weight/inspection checkpoints.

The AVI device proposed for use in both programs is an electronic transponder designed to send and receive signals from a CMV to ports of entry (POEs) and safety inspection sites. The devices would be used to transmit a variety of information, such as the identity of the motor carrier, the gross weight of the vehicle, and the status of the vehicle's registration and fuel tax payments. The transponder measures 84 mm (3.3 inches) high by 112 mm (4.4 inches) wide by 38 mm (1.5 inches) deep.

In order to function effectively, the transponder must be able to properly transmit and receive signals from roadside receivers installed at States' ports of entry. The physical location of the transponder is a critical factor in its operation because of the potential for internal and external electronic

interference. In addition, the device must be placed in a suitable location to allow drivers to read the instruction displayed on the transponder, i.e., to enter or to bypass the POE. An engineering evaluation performed by one of the ADVANTAGE I–75 electronic equipment contractors determined that a location near the center of the upper border of the windshield best allowed the device to meet both of these requirements.

However, 49 CFR 393.60(c) requires that no motor vehicle be operated with any label, sticker, decalcomania, or other vision-reducing matter covering any portion of its windshield or windows at either side of the driver's compartment, except that stickers required by law may be affixed to the bottom of the windshield, provided that no portion of any label, sticker, decalcomania, or other vision-reducing matter may extend upward more than 114 mm (4.5 inches) from the bottom of the windshield. The requirements of § 393.60, particularly the 114 mm (4.5 inch) limit specified in § 393.60(c), are independent of the physical dimensions of windshields.

Section 206(f) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(e), formerly 49 U.S.C. app. 2505(f)) authorizes waivers of any regulation issued under the authority of that Act upon a determination that the waiver is consistent with the public interest and the safe operation of commercial motor vehicles.

The FHWA proposed to grant the waiver on October 12, 1994. The notice described the agency's review of automotive engineering recommended practices, the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards, and recent research concerning drivers' field of view. It also examined current CMV cab designs related to placement of interior mirrors and sunvisors which occupy approximately the same space proposed for the AVI transponder. Based on 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 CMV. This location is well outside the area recommended for windshield wiper sweep under the Society of Automotive Engineers (SAE) Recommended Practice J198 (Windshield Wiper Systems—Trucks, Buses, and Multipurpose Vehicles) and the area recommended for windshield defrosting under Recommended Practice J342 (Windshield Defrosting Systems Performance Guidelines—Trucks,