99–661, as codified at 10 U.S.C. 2323. Section 2323 of title 10 expired on September 30, 2009. However, prior to the implementation of the interim rule, the implementing regulations for this law still appeared in the DFARS. Implementation of this rule was needed to preclude the risk that DoD contracting officers would inadvertently issue a solicitation or execute a contract based on an acquisition strategy that is no longer authorized.

No public comments were submitted in response to the initial regulatory flexibility analysis, or in response to the interim rule, which was published in the **Federal Register** on October 14, 2014. Therefore, there were no issues to assess, and no changes to the rule were necessary.

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This expectation is based on the following information and analysis:

The DoD Small Disadvantaged Business (SDB) program has not been in effect since fiscal year (FY) 2008. This rule does not change the fundamental procurement policies that DoD has used to achieve strong SDB participation or to encourage the involvement of historically Black colleges and universities and minority institutions in defense-related research, development, testing, and evaluation efforts. The following rationale is provided:

10 U.S.C. 2323 was the underlying statutory authority for DoD's small disadvantaged business (SDB) program. DoD's SDB program was intended to supplement and complement the Federal-wide SDB program authorized under the Small Business Act. It provided for the institution of a specific goal within the mandatory 5 percent SDB goal for the award of prime contracts and subcontracts to historically Black colleges and universities, minority institutions, and Hispanic-serving institutions. Section 2323 of Title 10 served as the basis for a number of unique acquisition techniques used by DoD to help it achieve these goals, such as the price evaluation adjustment for SDBs in competitive procurements and the set-aside for historically Black colleges and universities and minority institutions. It was also the basis for the special 95 percent customary progress payment rate for SDBs.

Now that the law has expired, these special techniques can no longer be used. However, the impact of this change is mitigated by a number of factors. Preeminent among those factors is DoD's obligation to meet or exceed the expectations of the Small Business Act regarding SDBs, and to provide assistance for defense-related research, development, testing, and evaluation activities to historically Black colleges and universities and minority institutions.

Section 15(g) of the Small Business Act, Public Law 85–536, as amended, (15 U.S.C. 644(g)), requires all Federal agencies to make every attempt to achieve the annual Government-wide goal for participation by SDBs. The statutory SDB goal is not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. DoD must comply with this law, and it has. The Department has met or exceeded the 5 percent SDB goal since FY 2001.

DoD contracting officers can employ monetary incentives in solicitations and contracts, when inclusion of such incentives is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, women-owned small businesses, as well as small disadvantaged businesses. In addition, while the 95 percent progress payment rate is no longer allowable, SDBs, because they are small businesses, are still eligible to receive the 90 percent progress payment rate. Finally, the extent of participation of all small businesses, including small disadvantaged businesses, in performance of the contract is addressed during source selection for negotiated DoD acquisitions that are required to have subcontracting plans. The past performance of offerors in complying with subcontracting goals with all small businesses, including SDBs, is also evaluated in DoD acquisitions.

The capability and expertise that HBCUs and MIs bring to numerous DoD-funded research and development programs are valued commodities. DoD must explore new areas of science, mathematics, and engineering in order to develop the alternative technologies needed to fulfill its national security mission. HBCUs and MIs will continue to support DoD in these endeavors through their involvement in various research and development programs. This rule does not impose new reporting, recordkeeping or other compliance requirements.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 205, 206, 215, 219, 226, 232, 235, 252, and Appendix I to Chapter 2

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 205, 206, 215, 219, 226, 232, 235, 252, and Appendix I to Chapter 2, which was published at 79 FR 61579 on October 14, 2014, is adopted as a final rule without change.

[FR Doc. 2015–06757 Filed 3–25–15; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

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

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Regulatory guidance.

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

the motor carrier's accident register and considered in the Agency's safety oversight programs.

DATES: This guidance is effective May 26, 2015.

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

SUPPLEMENTARY INFORMATION:

Legal Basis

The Secretary of Transportation has statutory authority to set minimum standards for commercial motor vehicle safety. These minimum standards must ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation. (49 U.S.C. 31136(a)(1)–(5), as amended). The Secretary also has broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate.'' (49 U.S.C. 31133(a)(8) and (10)).

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(f) to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. chapter 311, subchapters I and III, relating to commercial motor vehicle programs and safety regulation.

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

Background

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

Section 390.5 defines ''accident'' as an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in a fatality; bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle. It excludes occurrences involving only boarding and alighting from a stationary motor vehicle or involving only the loading or unloading of cargo.

FMCSA acknowledges the potential impact on motor carriers' Safety Measurement System (SMS) scores that could result from States uploading reports about crashes involving attenuator trucks deployed at construction sites into the Agency's Motor Carrier Management Information System (MCMIS). Because these vehicles are deployed to prevent certain crashes through the use of flashing lights and to reduce the severity of crashes through the use of truck-mounted impact attenuators or crash cushions when motorists do not take appropriate action to avoid the obstacles in the construction zone, it is expected that these vehicles will be struck from time to time while the attenuators are deployed. Such events that occur in a construction zone, either stationary or moving, should not count against the safety performance record of the motor carrier responsible for the operation of the attenuator truck.

FMCSA's Decision

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

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

Regulatory Guidance for 49 CFR 390.5 Definition of ''Accident''

Question: Are crashes involving motorists striking attenuator trucks while the impact attenuators or crash cushions are deployed included within the definition of ''accident'' with regard to the motor carrier responsible for the operation of the attenuator truck?

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

Procedures

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

Issued on: March 18, 2015.

T.F. Scott Darling, III,

Acting Administrator.

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