



This document is scheduled to be published in the Federal Register on 06/12/2012 and available online at <http://federalregister.gov/a/2012-14215>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 396

[Docket No. FMCSA-2011-0046]

RIN 2126-AB34

Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report for Intermodal Equipment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: FMCSA eliminates the requirement for drivers operating intermodal equipment (IME) to submit — and intermodal equipment providers (IEPs) to retain — driver-vehicle inspection reports (DVIRs) when the driver has neither found nor been made aware of any defects in the IME. This responds to a joint petition for rulemaking from the Ocean Carrier Equipment Management Association (OCEMA) and the Institute of International Container Lessors (IICL).

DATES: The final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.].

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to:

- Regulations.gov, <http://www.regulations.gov>, at any time and insert FMCSA-2011-0046 in the “Keyword” box, and then click “Search.”

- Docket Management Facility, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE, Washington, DC. You may view the docket online by visiting the facility between 9 a.m. and 5 p.m. e.t., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations (MC-PSV), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-5370.

SUPPLEMENTARY INFORMATION

I. Executive Summary

The purpose of this rule is to eliminate the reporting requirement for Driver-Vehicle Inspection Reports (DVIR) for intermodal equipment (IME), if the driver has neither found nor has been made aware of any defects in the IME. The rule also eliminates the recordkeeping requirement for intermodal equipment providers (IEPs) to retain DVIRs that do not indicate IME defects. The FMCSA estimates annual time and costs savings of 1.636 million hours and \$54 million dollars. This rule is part of the effort of the U.S. Department of Transportation to implement Executive Order 13563.

II. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's (DOT) Privacy Act system of records notice for the DOT Federal Docket Management System (FDMS) in the Federal Register

published on January 17, 2008 (73 FR 3316) at
<http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

III. Abbreviations

| | |
|-----------|--|
| AAR | Association of American Railroads |
| ATA | American Trucking Associations |
| CMV | Commercial motor vehicle |
| DOT | U.S. Department of Transportation |
| DVIR | Driver-vehicle inspection report |
| EDI | Electronic data interchange |
| FHWA | Federal Highway Administration |
| FMCSRs | Federal Motor Carrier Safety Regulations |
| GIER | Global Intermodal Equipment Registry |
| IANA | Intermodal Association of North America |
| IC | Information collection |
| ICC | Interstate Commerce Commission |
| IEP | Intermodal equipment provider |
| IICL | Institute of International Container Lessors |
| IMCC | Intermodal Motor Carriers Conference |
| IME | Intermodal equipment |
| NPRM | Notice of proposed rulemaking |
| OCEMA | Ocean Carrier Equipment Management Association |
| OOS | Out of service |
| Secretary | Secretary of Transportation |

IV. Legal Basis for the Rulemaking

Although intermodal cargo containers move by ship and/or by rail, the trip generally begins and ends on chassis trailers (on IME) for transportation by highway. These trailers fall under FMCSA's safety jurisdiction. At issue in this final rule is the requirement that drivers complete DVIRs, which note the existence or absence of defects or deficiencies in IME. The final rule eliminates the requirement that drivers complete DVIRs when they have no defects or deficiencies to report.

This final rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act), both of which are broadly

discretionary, and the specific mandates of section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act; a Legacy for Users (SAFETEA-LU)(Pub. L. 109-59, 119 Stat. 1144, at 1729, August 10, 2005, codified at 49 U.S.C. 31151).

The 1935 Act provides that the Secretary of Transportation (Secretary) may prescribe requirements for

- qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier (49 U.S.C. 31502(b)(1)), and
- qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (49 U.S.C. 31502(b)(2)).

This rulemaking is based on the Secretary's authority under both § 31502(b)(1) and (2).

The 1984 Act authorizes the Secretary to regulate drivers, motor carriers, and vehicle equipment. Codified at 49 U.S.C. 31136(a), section 206(a) of the 1984 Act requires the Secretary to publish regulations on motor vehicle safety. Specifically, the Act sets forth minimum safety standards to ensure that: (1) commercial motor vehicles (CMVs) are maintained, equipped, loaded, and operated safely (49 U.S.C. 31136(a)(1)); (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely (49 U.S.C. 31136(a)(2)); (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely (49 U.S.C. 31136(a)(3)); and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)(4)). Section 211 of the 1984 Act also grants the Secretary 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)).

This rule implements, in part, the Administrator's delegated authority under Section 206(a)(1) of the 1984 Act to ensure that CMVs are maintained, equipped, loaded and operated safely and also exercises the broad recordkeeping and implementation authority under Section 211. The other subsections of Section 206(a) do not apply because this final rule only addresses CMV equipment.

Section 4118 of SAFETEA-LU, entitled "Roadability," requires the Secretary to issue regulations "to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained." Codified at 49 U.S.C. 31151(a)(3), it specifies a minimum of 14 items to be included in those regulations. It also authorizes Departmental employees designated by the Secretary to inspect IME and make copies of related maintenance and repair records (49 U.S.C. 31151(b)). Any IME that fails to comply with applicable Federal safety regulations may be placed out of service (OOS) by Departmental or other Federal, State, or government officials designated by the Secretary until the necessary repairs have been made (49 U.S.C. 31151(c)). Also included is a provision preempting inconsistent State, local, or tribal requirements that relate to CMV safety, but providing that preemption of a State periodic chassis inspection requirement that was in effect on January 1, 2005 may be waived upon application by the State if the Secretary finds the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce (49 U.S.C. 31151(d) and (e)).

FMCSA published a final rule on December 17, 2008 (73 FR 76794), implementing the SAFETEA-LU requirements. That rule requires IEPs to register and file with FMCSA an IEP Identification Report (Form MCS-150C); establish a systematic inspection, repair, and maintenance program in order to provide IME that is in safe and

proper operating condition; maintain documentation of their maintenance program; and provide a means to respond effectively to driver and motor carrier reports about intermodal chassis mechanical defects and deficiencies. The regulations also require IEPs to mark each intermodal chassis offered for transportation in interstate commerce with a DOT identification number. For the first time, these regulations made IEPs subject to the FMCSRs, and called for shared safety responsibility among IEPs, motor carriers, and drivers. Additionally, FMCSA adopted inspection requirements for motor carriers and drivers operating IME.

V. Background

Section 4118 of SAFETEA-LU amended 49 U.S.C. chapter 311 to require that the Secretary establish a program ensuring that IME used to transport intermodal containers is safe and systematically maintained (49 U.S.C. 31151). Among other things, the statute called for the Secretary to mandate “a process by which a driver or motor carrier transporting intermodal equipment is required to report to the intermodal equipment provider or the providers’ designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider's designated agent” (49 U.S.C. 31151(a)(3)(L)). FMCSA’s December 17, 2008 rule (73 FR 76794) satisfied this requirement.

The 2008 rule included a new § 390.42, which prescribed the responsibilities of drivers and motor carriers when operating IME. Section 390.42(b) required the driver or motor carrier to report any damage to or deficiencies in certain IME parts and accessories at the time the equipment is returned to the IEP.

Importantly, FMCSA did not propose any changes to § 396.11(b), “Report content,” which requires — for both non-IME and IME — that “If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate.” This requirement to prepare a DVIR, even in the absence of equipment defects or deficiencies (hereafter a “no-defect DVIR”), has been in the safety regulations since 1952 (17 FR 4422, 4452, May 15, 1952).¹ In the 2008 final rule, the Agency added language in the new § 390.42(b) and § 396.12(b)(4) to clarify that “if no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate.” This was done to make the new rules for IEPs consistent with § 396.11(b).

On October 27, 2009, OCEMA petitioned FMCSA for a partial extension of the compliance date for §§ 396.9(d), 396.11(a)(2), 396.12(a), 396.12(c), and 396.12(d). These provisions include the process for delivering the DVIR and acting on defects or deficiencies reported. FMCSA granted the petition. In a final rule published on December 29, 2009, FMCSA extended the compliance date for these provisions from December 17, 2009, to June 30, 2010 (74 FR 68703).

On March 31, 2010, OCEMA and IICL jointly filed a petition for rulemaking to rescind the part of §390.42(b) that required drivers to file no-defect DVIRs with IEPs on IME they are returning. OCEMA and IICL requested that FMCSA delete the sentence “if

¹The driver’s responsibility to report vehicle defects has always been part of the Federal safety regulations for CMVs. Part 6, Rule 6.6, of the Motor Carrier Safety Regulations issued by the Interstate Commerce Commission (ICC) in 1939 called for every driver to submit a written report at the end of his day’s work or tour of duty to inform his employer of any vehicle defect or deficiency he discovered that would likely affect the safety of operation of that vehicle (4 FR 2294, 2305, June 7, 1939). The ICC recommended, but did not require, that motor carriers use a Driver’s Trip Report. The report included the driver’s name, vehicle number, date, a list of 20 items for inspection, and a space for the driver and mechanic to note defects.

no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate.”

FMCSA granted the petition for rulemaking on July 30, 2010. Because FMCSA had previously extended the compliance date to June 30, 2010, (74 FR 68703), FMCSA published a final rule on August 20, 2010 that extended the compliance date for § 390.42(b) to June 30, 2011 (75 FR 51419). On May 20, 2011, FMCSA published a notice further extending the compliance date, to June 30, 2012 (76 FR 29169).

The petitioners presented four arguments supporting their request:

1. SAFETEA-LU requires DVIRs only for known damage or defects. Congress could have added a requirement to file no-defect DVIRs but did not do so.

2. There is significant risk that a large volume of no-defect DVIRs could overwhelm the small proportion (4 percent) of DVIRs that contain damage or defects.

3. Data transmission, processing, and storage requirements for no-defect DVIRs could add significant unnecessary costs to intermodal operations without providing offsetting benefits.

4. Submission of no-defect DVIRs contributes to driver productivity losses in the form of congestion and delay at intermodal facilities.

The Agency published an NPRM on June 7, 2011 (75 FR 32906) proposing changes to §§ 390.42(b), 396.11(b), and 396.12(b)(4) that would eliminate the requirement to file no-defect DVIRs.

VI. Discussion of Public Comments

NPRM Issues

In addition to seeking general comments on the NPRM:

1. FMCSA sought comment on the Petitioners' and FMCSA's estimates of the costs and time burden associated with no-defect DVIRs. The Petitioners estimated a time burden of 3 minutes, whereas the FMCSA's information collection (IC) request statement referenced in the 2008 final rule estimated a burden of 2 minutes 35 seconds.

2. FMCSA sought comment on the Petitioners' statement that IEPs incur a \$0.02 transaction cost to retrieve the USDOT number through an electronic database, which Petitioners asserted is necessary for IME identification and completion of no-defect DVIR processing. FMCSA asked for clarification of the Petitioner's statement, because the Agency's December 29, 2009, technical amendment (74 FR 68703), mandated that no fee would be charged to outside users.

3. Finally, FMCSA asked the following questions about how DVIRs are handled:

1.1. Please explain in detail the procedures for filing and maintaining DVIRs from the time they are completed through the end of their retention periods. Are defect DVIRs kept separate from no-defect DVIRs, sent to maintenance staff, and then acted on? Do you have special procedures in place for the no-defect DVIRs? If so, please describe them.

1.2. Do you have examples of specific incidents in which handling of a large volume of no-defect DVIRs has interfered with handling of defect DVIRs? If so, please describe how these additional documents affected the repairing of defects.

1.3. Some DVIRs are completed electronically. Are the electronic DVIRs automatically or manually separated into defect and no-defect categories? Do you have an estimate of the percentage of forms filled out on paper and electronically? If so, please provide detailed information on the data and methodology used for that estimate.

2. Please provide information on the percentage of no-defect DVIRs. Also, please provide a discussion of the methodology for developing this information. (76 FR 32909)

Comments Received

The Agency received comments from five organizations: the Association of American Railroads (AAR), IICL, Intermodal Association of North America (IANA),

Intermodal Motor Carriers Conference (IMCC) of the American Trucking Associations (ATA), and OCEMA. All commenters stated they supported FMCSA's proposed revisions of §§ 390.42(b), 396.11(b), and 396.12(b)(4).

Procedures for Filing and Maintaining DVIRs; Time Burden Estimate for Manual and Electronic Filing

In response to FMCSA's question concerning procedures for filing and maintaining DVIRs, IANA described several types of DVIR collection processes. These processes ranged from manual submission of hard-copy paperwork to unassisted electronic data interchange (EDI) transmissions. IANA added that the different nature of these processes contributes to the variation in time burden and would make an exact assessment difficult. IANA also described the comprehensive electronic "virtual pre-gate" and at-gate procedures, which allow for reporting and processing of DVIRs via a web portal, interactive voice response system, or EDI and transmittals of files in various formats. IANA noted that its program offers IEPs and motor carriers electronic DVIR retention and recordkeeping features that go beyond FMCSA's requirements. IANA stated that, although it does not possess empirical data to validate petitioners' OCEMA and IICL's 3-minute estimate, its discussions with its Motor Carrier Division confirm the validity of this estimate.

OCEMA estimated that the actual time it takes to file a DVIR could vary between 1 and 5 minutes, depending upon the DVIR process, its format, and the driver's familiarity and comfort level with the process. OCEMA stated it believes that 3 minutes is a reasonable estimate, although possibly a low one. OCEMA also stated that the majority of the intermodal industry appears to have adopted either IANA's system,

DVIR.Intermodal.org, or another DVIR system available through Chassis.com. OCEMA added that if a defect or damage is noted on a DVIR, that information is sent to the intermodal facility, the chassis pool manager, and often to the terminal operator, to initiate a corrective action. In some cases, the terminal places a hold on the unit of IME to keep it from leaving the facility until maintenance personnel release it.

IICL stated that its members agreed with FMCSA's analyses.

FMCSA Response: FMCSA believes that IME DVIRs are no more complex than DVIRs for other CMV equipment, and therefore that it has opted to use its estimate of two minutes and thirty-five seconds rather than the 3 minutes mentioned by the petitioners.

Cost of Filing and Maintaining DVIRs

With respect to the cost estimate, IANA and OCEMA clarified that the \$0.02 fee per DVIR is a transaction fee that IEPs and other users incur to offset DVIR processing costs. They emphasize that it is not a Global Intermodal Equipment Registry (GIER) user fee. OCEMA noted that, to its knowledge, direct public web-portal access to the GIER database is free to the public.

FMCSA Response: FMCSA acknowledges IANA's and OCEMA's clarification. This is consistent with the Agency's position that there should not be an outside user fee associated with database access.

Impact on Processing Defect DVIRs Due to Large Volume of No-Defect DVIRs

In response to the request for examples of specific incidents in which handling a large volume of no-defect DVIRs interfered with handling defect DVIRs, OCEMA stated that it was not able to identify specific incidents, but noted that there had been only a

limited time period when defect DVIRs were required. OCEMA added that increased reporting would likely generate more reports containing errors, greatly increase the data flows through operational processes, and increase burdens associated with report storage and retrieval.

IANA stated that its system accepts both defect and no-defect DVIRs and separates them automatically. OCEMA added that Chassis.com also accepts both defect and no-defect DVIRs.

FMCSA Response: The information confirmed the Agency's understanding of many of the processes, as well as providing clarifying details.

Percentages of No-Defect DVIRs

With respect to the percentage of no-defect DVIRs received, IANA stated that it received 98.8 percent no-defect DVIRs for the period December 17, 2009 through July 30, 2010. During the following 2 months, the total number of DVIRs IANA processed declined by 51 percent, with the no-defect DVIR proportion remaining at 98.8 percent. IANA also stated that from August 20, 2010 through June 30, 2011, as a result of FMCSA's extension of the compliance date for no-defect DVIR reporting, no-defect DVIRs were not submitted or processed, and there is no relevant statistical information available on the ratio of no-defect to defect DVIRs.

OCEMA stated that 98 percent of DVIRs received by its subsidiary, Consolidated Chassis Management, identified no defects.

FMCSA Response: FMCSA has received different industry estimates of the percentage of no-defect DVIRs. To ensure a conservative estimate of the reduction in costs and paperwork burdens, FMCSA will continue to use 95 percent as the estimated

proportion of DVIRs that do not identify defects. Filing DVIRs on only the roughly 5 percent of IME with defects will focus attention on the IME that needs it — rather than the 95 percent with no defects. This change in procedure should streamline the process by providing IEPs only that information they need to act on.

Other Comments Received

ATA IMCC contends that a written driver pre-trip report documenting the condition of the IME offered for interchange is necessary for FMCSA to measure compliance with the IME regulations effectively. IMCC believes that a lack of documentation on pre-trip equipment conditions prevents the facility operator or other party responsible for IME maintenance from evaluating its processes and making necessary changes.

FMCSA Response: Although it is outside the scope of this particular rulemaking, the Agency notes that Section 4118 of SAFETEA-LU did include requirements for drivers to conduct an inspection “as part of the Federal requirement in effect on the date of enactment of this Act” – that is, a pre-trip inspection. In its comments to the December 2006 NPRM, ATA and other commenters recommend that FMCSA adopt the industry inspection procedures by requiring the same list of inspection items as set forth in Exhibit A of the Uniform Intermodal Interchange and Facility Access Agreement (UIIA). Even though the Federal requirement that it refers to, codified at 49 CFR 392.7, does not include a requirement for a pre-trip inspection document, the Agency understands that it has been customary for drivers to use that checklist. Although there are differences between the UIIA and the requirements of 49 CFR Part 393, the Agency stated in the preamble to the December 2008 final rule, “To the extent that the contents of

any other inspection checklist are compatible with it, and do not otherwise conflict with FMCSR requirements, IEPs and motor carriers may continue to use them.” (73 FR 76794, at 76803). In addition, the FMCSA does not have any data to suggest that adding such a requirement to the FMCSRs would provide safety benefits.

VII. Discussion of Final Rule

All commenters expressed support for eliminating the requirement to file no-defect DVIRs, which they viewed as an unnecessary administrative burden. AAR noted, “Rarely does an agency have an opportunity to eliminate a paperwork requirement that clearly serves no useful purpose. This is one such occasion. AAR applauds FMCSA for initiating this proceeding.”

The Agency emphasizes that this rule does not change a driver’s obligation to assess the condition of IME at the end of a workday to determine whether the IME has defects or deficiencies that could affect operational safety. Although FMCSA is removing the requirement to complete a DVIR if the driver finds no defects in the IME and none have been reported to the driver, he or she must still inspect the IME to make this determination.

FMCSA also points out that § 390.40(i) requires IEPs to develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection or replace the equipment prior to the driver’s departure. It is in the IEPs’ — and drivers’ — best interests for IME defects to be identified and remedied before the IME is next tendered. If drivers submit DVIRs when they note IME defects or deficiencies, they can be remedied without delaying the next driver who receives the equipment.

This rule does not affect requirements governing the inspection and completion of DVIRs for power units. Drivers also must continue to complete no-defect DVIRs on chassis that are owned or leased by the motor carrier.

Changes to the Code of Federal Regulations

FMCSA makes the changes proposed in the NPRM eliminating the no-defect DVIR filing requirement. FMCSA revises § 390.42(b) by deleting the sentence, “If no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate.” Conforming changes are made in §§ 396.11(b) and 396.12(b)(4).

This rule does not change the IEPs’ obligation under § 390.40(c) to systematically inspect, repair, and maintain -- or cause to be systematically inspected, repaired and maintained -- all IME intended for interchange with a motor carrier. Nor does it alter the IEPs’ responsibility under § 390.40(d) to provide IME intended for interchange that is in safe and proper operating condition.

This rule includes editorial changes to § 396.11(a) and (b). The content from § 396.11(a), (b), and (d) has been re-organized for clarity and includes a revised paragraph § 396.11(a). Paragraph (b) has been rewritten, for clarity, into four subparagraphs: §396.11(b)(1), (2), (3), and (4). Also for clarity and to conform to contemporary regulatory citation style, the individual items listed in § 396.11(a)(1) and (b)(1) are given paragraph designations. The Agency also revises the authority citations for 49 CFR parts 390 and 396 to correct statutory references and eliminate references that are either erroneous or unnecessary.

VIII. Regulatory Analyses

Executive Orders 13563 and 12866 (Regulatory Planning and Review) and DOT

Regulatory Policies and Procedures

FMCSA has determined that this action meets the criteria for a “significant regulatory action” as specified in Executive Order 12866, as supplemented by Executive Order 13563 issued by the President on January 18, 2011 (76 FR 3821) and within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Department expects this rule to generate cost savings in the form of reduced paperwork burdens. Due to other existing inspection requirements, the Department does not believe that this rule will result in reduced safety.

The rule removes the requirement for drivers to submit DVIRs when they do not have IME defects or deficiencies to report. The only impact of this rule is to alleviate a portion of the paperwork burden for CMV drivers, which in monetary terms does not warrant a full regulatory analysis.

Approximately 40 million items of IME are in-gated each year. Of those, approximately 95 percent of DVIRs do not note defects. Therefore, for each of these 38 million units of no-defect IME ($40 \text{ million} \times .95 = 38 \text{ million}$), a DVIR would not have to be completed. Filling out a no-defect DVIR is estimated to take 2.5 minutes and reviewing and signing a DVIR is estimated to take 5 seconds when no defects are noted. for a total of 2 minutes and 35 seconds in time savings if these reports are not required when no-defects are noted. This amounts to a time savings of 1.636 million hours annually ($38 \text{ million units} \times 155 \text{ seconds per IME} / 3600 \text{ seconds/hour}$). As this burden falls on drivers, the value of this time can be monetized using the prevailing wage for truck drivers. We use the median annual wage for BLS occupation category 53-3032 Heavy and Tractor-Trailer Truck Drivers from the May 2011 Occupational Employment

and Wages report, the most recent available. The median wage for truck drivers from this report is \$18.24 per hour, which we inflate by 52 percent to account for fringe benefits and 27 percent to account for overhead. This produces a total loaded hourly time value of \$33, rounded to the nearest dollar (the exact amount is \$32.65). The estimated costs savings is \$1.42 per transaction (155 seconds x \$33 per hour / 3600 seconds per hour = \$1.42). The total savings annually amount to \$54 (38 million units of IME x \$1.42 per eliminated report = \$54 million rounded to the nearest \$100,000).

FMCSA emphasizes that this rule does not change two related requirements concerning IME safety. It does not change a driver's obligation to assess the condition of IME at the end of a workday to determine whether the IME has defects or deficiencies that could affect operational safety. In addition, § 390.40(i) requires IEPs to develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection or replace the equipment prior to the driver's departure. Because there are multiple opportunities for IME to be inspected for potential safety defects, the Agency does not believe that the implementation of this rule would lead to an increase in safety risk.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires Federal agencies to determine whether rules could have a significant economic impact on a substantial number of small entities. This rule will grant regulatory relief to IEPs, which include 108 entities consisting of steamship lines, railroads, and chassis pool operators. In its 2008 final rule, the Agency confirmed that all IEPs are either foreign-owned or otherwise do not meet the criteria for small business designation as defined by the Small Business

Administration (73 FR 76816, December 17, 2008). Consequently, I certify that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, et seq.), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$143.1 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA determined that this rulemaking does not pose an environmental risk to health or safety that may affect children disproportionately.

Executive Order 12630 (Taking of Private Property)

This rulemaking does not effect a taking of private property or otherwise have takings implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

A rulemaking has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on State or local governments. FMCSA analyzed this action in accordance with Executive Order 13132. The rule will not have a substantial direct effect on States or local governments, nor will it limit the policymaking discretion of States. Nothing in this rulemaking will preempt any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires FMCSA to consider the impact of paperwork and other information collection burdens imposed on the public. This rule will result in a reduction of burden hours for the “Inspection, Repair, and Maintenance” information collection (IC) request, OMB control number 2126-0003. In this IC, the burden associated with DVIRs is calculated as a CMV driver activity without regard to the commodity or type of trailer, such as IME, that they are hauling. The current burden estimate was based on 4,679,682 CMVs generating 1,249,168,107 DVIRs per year. Those calculations also estimate that 95 percent of DVIRs do not note defects. The Agency will continue to use this estimate, rather than using the petitioners’ estimate of 96 percent for IME DVIRs. The petitioners estimate that about 40 million

IME in-gates requiring a DVIR occur each year (400,000 units of IME, 100 in-gates per unit of IME per year).

This IC includes all tasks related to inspection, repair, and maintenance, including two distinct driver tasks related to DVIRs: (1) Filling out a DVIR (IC2) and reviewing and signing a DVIR (IC6). Filling out a DVIR (IC2) is estimated to take 2.5 minutes and (2) reviewing and signing a DVIR (IC6) is estimated to take 5 seconds when no defects are noted. As noted above, approximately 40 million of the total 1.25 billion DVIRs completed by the industry are for IME. This rule results in a reduction of 1.583 million hours for IC2 (40 million IEP DVIR \times 95 percent no defect rate \times 150 seconds per DVIR \div 3600 seconds per hour) and 0.053 million hours for IC6 (40 million IEP DVIR \times 95 percent no defect rate \times 5 seconds per DVIR \div 3600 seconds per hour). The currently approved burden estimate for this entire IC is 59,729,888 hours, and the new burden estimate is 58,093,888 hours: a total burden reduction of 1.636 million hours per year. As this burden falls on drivers, the value of this time can be monetized using the prevailing wage for truck drivers. We use the median annual wage for BLS occupation category 53-3032 Heavy and Tractor-Trailer Truck Drivers from the May 2011 Occupational Employment and Wages report, the most recent available. The median wage for truck drivers from this report is \$18.24 per hour, which we inflate by 52 percent to account for fringe benefits and 27 percent to account for overhead. This produces a total loaded hourly time value of \$33, rounded to the nearest dollar (the exact amount is \$32.65). Multiplying this figure by the burden hour reduction estimate of 1.636 million hours produces a monetized time cost savings of \$53,988,000, or roughly \$54 million.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The Categorical Exclusion under paragraph 6(y)(6) relates to “regulations concerning vehicle operation safety standards,” such as the driver-vehicle inspection reports addressed by this rulemaking. A Categorical Exclusion determination is available for inspection or copying in the Regulations.gov Web site listed under ADDRESSES.

FMCSA also analyzed this action under section 176(c) of the Clean Air Act (CAA), as amended (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.

In addition to the NEPA requirements to examine impacts on air quality, the CAA requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. The additional contributions to air emissions are expected to fall within the CAA de minimis standards and are not expected to be subject to the Environmental Protection Agency’s General Conformity Rule (40 CFR parts 51 and 93).

Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it is not a “significant energy action” under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 396

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

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, subchapter B, as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, and 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; secs. 212 and 217, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as transferred by Sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-1744); sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745 and 49 CFR 1.73.

2. Revise §390.42(b) to read as follows:

§ 390.42 What are the responsibilities of drivers and motor carriers operating intermodal equipment?

* * * * *

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(a)(2) of this chapter.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

3. The authority citation for part 396 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

4. Revise § 396.11(a) and (b) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

(a) Equipment provided by motor carrier. (1) Report required. Every motor carrier shall require its drivers to report, and every driver shall prepare a report in writing at the completion of each day's work on each vehicle operated, except for intermodal equipment tendered by an intermodal equipment provider. The report shall cover at least the following parts and accessories:

- (i) Service brakes including trailer brake connections;
- (ii) Parking brake;
- (iii) Steering mechanism;
- (iv) Lighting devices and reflectors;
- (v) Tires;
- (vi) Horn;
- (vii) Windshield wipers;

- (viii) Rear vision mirrors;
- (ix) Coupling devices;
- (x) Wheels and rims;
- (xi) Emergency equipment;

(2) Report content. The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate. In all instances, the driver shall sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.

(3) Corrective action. (i) Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle.

(ii) Every motor carrier or its agent shall certify on the original driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

(4) Retention period for reports. Every motor carrier shall maintain the original driver vehicle inspection report, the certification of repairs, and the certification of the driver's review for three months from the date the written report was prepared.

(5) Exceptions. The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness), a driveaway-towaway operation, or any motor carrier operating only one commercial motor vehicle.

(b) Equipment provided by intermodal equipment provider. (1) Report required. Every intermodal equipment provider must have a process to receive driver reports of, and each driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the following parts and accessories:

- (i) Brakes;
- (ii) Lighting devices, lamps, markers, and conspicuity marking material;
- (iii) Wheels, rims, lugs, tires;
- (iv) Air line connections, hoses, and couplers;
- (v) King pin upper coupling device;
- (vi) Rails or support frames;
- (vii) Tie down bolsters;
- (viii) Locking pins, clevises, clamps, or hooks;
- (ix) Sliders or sliding frame lock;

(2) Report content. (i) Name of the motor carrier responsible for the operation of the intermodal equipment at the time the damage, defects, or deficiencies were discovered by, or reported to, the driver.

(ii) Motor carrier's USDOT number; intermodal equipment provider's USDOT number, and a unique identifying number for the item of intermodal equipment.

(iii) Date and time the report was submitted.

(iv) All damage, defects, or deficiencies of the intermodal equipment reported to the equipment provider and discovered by, or reported to, the motor carrier or its driver which would

(A) Affect the safety of operation of the intermodal equipment, or

(B) Result in its mechanical breakdown while transported on public roads

(v) The signature of the driver who prepared the report.

(3) Corrective action. (i) Prior to allowing or permitting a motor carrier to transport a piece of intermodal equipment for which a motor carrier or driver has submitted a report about damage, defects or deficiencies, each intermodal equipment provider or its agent must repair the reported damage, defects, or deficiencies that are likely to affect the safety of operation of the vehicle.

(ii) Each intermodal equipment provider or its agent must certify on the original driver's report which lists any damage, defects, or deficiencies of the intermodal equipment that the reported damage, defects, or deficiencies have been repaired, or that repair is unnecessary, before the vehicle is operated again.

(4) Retention period for reports. Each intermodal equipment provider must maintain all documentation required by this section, including the original driver report, the certification of repairs on all intermodal equipment, for a period of three months from the date that a motor carrier or its driver submits the report to the intermodal equipment provider or its agent.

5. Revise § 396.12(b)(4) to read as follows:

§ 396.12 Procedures for intermodal equipment providers to accept reports required by

§ 390.42 (b) of this chapter.

* * * * *

(b) * * *

(4) All damage, defects, or deficiencies of the intermodal equipment must be reported to the equipment provider by the motor carrier or its driver. If no defect or deficiency in the intermodal equipment is discovered by or reported to the driver, no written report is required.

* * * * *

Issued on: June 5, 2012

Anne S. Ferro
Administrator, FMCSA

[FR Doc. 2012-14215 Filed 06/11/2012 at 8:45 am; Publication Date: 06/12/2012]