

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Parts 386, 390, 392, and 396**

[Docket No. FMCSA–2005–23315]

RIN 2126–AB25

**Requirements for Intermodal Equipment Providers and for Motor Carriers and Drivers Operating Intermodal Equipment****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Final rule; technical amendments, response to petitions for reconsideration, and; partial extension of deadline.

**SUMMARY:** FMCSA amends its December 17, 2008, final rule implementing section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The 2008 final rule makes intermodal equipment providers (IEPs) subject to certain Federal Motor Carrier Safety Regulations (FMCSRs), and establishes shared safety responsibility among IEPs, motor carriers, and drivers. These amendments create a fifth marking option for identifying the IEP responsible for the inspection, repair, and maintenance of items of intermodal equipment (IME) in response to a petition for reconsideration from the Intermodal Association of North America (IANA); clarify regulatory text and correct an inadvertent error in response to a petition for reconsideration from the Ocean Carrier Equipment Management Association (OCEMA); and extend the deadline for IEPs, motor carriers, and drivers operating IME to comply with certain provisions pertaining to driver-vehicle inspections in response to a petition filed by OCEMA.

**DATES:** *Effective Date:* The amendments in this final rule become effective December 29, 2009.

*Implementation Date:* IEPs must establish systematic inspection, repair, and maintenance programs, recordkeeping systems and identify its operations by submitting Form MCS–150C by December 17, 2009, except for the requirements of Sections 396.9(d), 396.11(a)(2), 396.12(a), 396.12(c), and 396.12(d), which they must comply with by June 30, 2010. IEPs must mark their intermodal chassis with its legal name or a single trade name and a USDOT identification number by December 17, 2010.

**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) 366–4325.

**SUPPLEMENTARY INFORMATION:** *Public Access to the Docket:* You may view, print, and download this final rule and all related documents and background material on-line at <http://www.regulations.gov>, using the Docket ID Number FMCSA–2005–23315. These documents can also be examined and copied for a fee at the U.S. Department of Transportation, Docket Operations, West Building–Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Background**

FMCSA received petitions for reconsideration, filed timely, from IANA and OCEMA. IANA requested that FMCSA reconsider the final rule's requirements for marking of IME. OCEMA requested that FMCSA reconsider several other items in the final rule. OCEMA also requested a delay in the implementation requirements for specific documentation-related items in Part 396 of the final rule. A discussion of each item, followed by the Agency's assessment and decision, follows.

**Legal Basis**

The legal basis of the December 17, 2008 final rule (73 FR 76794) is also applicable to this final rule.

**Marking of Intermodal Equipment**

On December 21, 2006 (71 FR 76795), FMCSA published a notice of proposed rulemaking (NPRM) in response to Congressional direction in section 4118 of SAFETEA–LU. It proposed, among other things, to require display of the USDOT Number, or other unique identifier, issued by FMCSA, on each intermodal container chassis offered for transportation in interstate commerce.

On May 21, 2007, IANA and other parties (American Association of Port Authorities (AAPA), Association of American Railroads (AAR), the Institute of International Container Lessors (IICL), OCEMA, the National Association of Waterfront Employers (NAWE), and the United States Maritime Alliance, Ltd. (USMX), collectively known as the Consensus Group) submitted supplemental comments to the docket for the NPRM. IANA and its co-signatories presented a

different solution to the challenge of identifying the responsible IEP for individual items of IME. The Consensus Group supported use of the 10-character alphanumeric identifier currently in use to mark IME, and recommended the establishment of a Web-based equipment registry that IANA would administer by recording and maintaining the identifying information for IEPs and their equipment. This registry would take the form of an online database that would be accessible to Federal, State, and local enforcement authorities, as well as industry participants, on a real-time basis.

In its comments to the NPRM, dated March 21, 2007, OCEMA stated that “the Intermodal Association of North America already maintains a substantial database of intermodal truckers and equipment providers. As an association already providing various facilitation services to intermodal stakeholders, this may be an appropriate task for IANA to undertake. Additionally, OCEMA is in the process of developing a software system for its CCM<sup>1</sup> chassis pool program that could be modified to include a chassis identification module. The CCM system is expected to be implemented by the beginning of 2008.”

On January 2, 2008, IANA *et al.* requested that FMCSA consider initiating a pilot program to evaluate an alternative approach to meet the IME marking requirements of 49 CFR 390.21. IANA suggested that use of its proposed Global Intermodal Equipment Registry (GIER), a centralized, Web-based IME database, would enable IEPs and motor carrier safety enforcement personnel to identify the responsible IEP without a need to physically mark each item of IME, as proposed in the NPRM. IANA stated that the GIER would identify each intermodal chassis by its existing unique alphanumeric identifier (ID), which consists of four letters followed by six numbers. It would also include the USDOT number of the IEP responsible for the intermodal equipment on a given day and at any given time, so this information could be accurately recorded on roadside inspection records. The database would be accessible to Federal, State, and local enforcement authorities, as well as, industry participants, on a real time basis. The Agency denied IANA's initial request because there were no rules in effect that could preclude them from testing the GIER concept. Therefore, a pilot program, as provided under 49 CFR part 381, was not necessary.

<sup>1</sup> CCM LLC was formed in 2005 to develop and own chassis pools. It is an affiliate of the Ocean Carrier Equipment Management Association, Inc.

In addition, many commenters to the NPRM expressed concerns with the proposed marking requirements, citing the large population of IME (over 850,000 units in service) and the IME turnover in some IEP's operations (for example, a Virginia port experiences turnover amounting to several hundred chassis each month).

FMCSA determined that it would be reasonable and appropriate to offer additional regulatory alternatives that would meet the statutory requirements to (1) identify IEPs responsible for inspection and maintenance, and (2) to match IME to an IEP through a unique identifying number. For this reason, the final rule of December 17, 2008 (73 FR 76794) offered four options for the IEP to identify its IME: (1) A label or other method of marking; (2) identification of the IME on the interchange agreement, if that document includes additional information to identify the specific item of IME; (3) marking the IME with a USDOT number in the same manner required under § 390.21, except the marking would only be required on the curb side of the equipment; or (4) identification of the IEP on trailer documentation carried in a weatherproof compartment attached to the item of IME. In order to provide IEPs sufficient time to inventory their equipment and implement procedures to identify their IME, the final rule allows IEPs two years from the publication date of the final rule (that is, until December 17, 2010) to comply with this requirement.

Although FMCSA did not accept the proposal outlined by IANA and its co-applicants in their NPRM comments, it acknowledged the logistical challenges IEPs will collectively face in accounting for and marking their 800,000-plus chassis. The final rule stated that, during the implementation period, IANA and its partners may continue their efforts to demonstrate the feasibility of their system for future consideration by the Agency (73 FR at 76801). While FMCSA stated in the final rule that the Administrator had denied IANA's request to initiate a pilot program, the Agency asked IANA to communicate with it in the future concerning its progress in developing the GIER. In the preamble to the final rule, the Agency said it would consider allowing the GIER if its use could serve as an additional alternative method of complying with the provisions of 49 CFR 390.21 (73 FR at 76810).

On January 16, 2009, IANA petitioned FMCSA to reconsider the same provisions of 49 CFR 390.21 that formed the basis of its earlier petition. Two other parties that co-signed the 2008

petition, the Intermodal Carriers Conference of the American Trucking Associations and the Commercial Vehicle Safety Alliance (CVSA), submitted letters supporting IANA's request. For the most part, the technical elements of the January 2009 petition for reconsideration are essentially the same as those contained in the January 2008 request to initiate a pilot program.

#### Agency's Assessment and Decision

For the reasons set forth below, FMCSA amends § 390.21 to include a fifth option for marking/identifying IME. The Agency has determined that the use of publicly-accessible identification systems which, under the conditions prescribed below, utilize existing, unique alpha-numeric control numbers associated with items of IME to match IME to the responsible IEP at any given time (1) meet the marking/identification requirements outlined in the statute and (2) will be at least as effective as the current requirements of § 390.21 of the FMCSRs.

The December 2008 final rule requires IME to be marked/identified so it can be matched to the IEP that is responsible for its systematic inspection, repair, and maintenance. Because IME tends to change hands quite often, it will be costly for many IEPs to apply a permanent marking (stenciled or applied identification code) to the equipment. It is also unlikely that such marking would effectively identify the appropriate party for those scenarios in which the change of hands occurs faster than the vehicle marking could be completed. Also, as commenters noted, there is a large population of IME subject to these requirements. According to IANA, tracking the responsible IEPs through the use of its identification system will (1) save IEPs time and the costs of physically marking IME, and (2) provide FMCSA and its State partners an alternative way to "match" IME to the IEP. The Agency agrees.

Importantly, while IANA's development of the GIER provided the impetus for this regulatory amendment, FMCSA emphasizes that the fifth marking option established by today's rulemaking is not limited specifically to the GIER.

To ensure that the IEP responsible for the inspection, repair, and maintenance of any item of IME can be definitively identified through an identification system permitted under the fifth option, the Agency requires that the following conditions be satisfied:

1. The identification system must utilize a unique alpha-numeric control number associated with each item of

IME to match the IME to the responsible IEP at any given time. The identification system shall use at least one of the following:

- a. Standard Carrier Alpha Code (SCAC) plus 6 trailing digits;
- b. License plate number and State of license;
- c. Vehicle Identification Number (VIN)

2. The identification system shall be publicly-available, and offer read-only access for inquiries on individual items of IME without requiring advance user registration, a password, or a usage fee. The identification system must be accessible through:

- a. Real-time internet access via a public web portal; and
- b. Toll-free telephonic access

IEPs' interest in maintaining the accuracy of their IME inventory is likely to serve as an incentive for them to maintain the accuracy and currency of the information contained in an identification system. Furthermore, FMCSA will benefit from permitting the alternative identification system by having accurate and current information on IEPs responsible for IME at a given point in time, allowing the Agency to identify patterns of noncompliance rapidly. State partners' interest in this fifth option is indicated by CVSA's status as co-petitioner.

#### Operating Condition of Intermodal Equipment

##### Background

In its 2006 NPRM, FMCSA proposed language for a new § 390.40 concerning IEPs' responsibilities under the FMCSRs. Proposed § 390.40(h) (71 FR at 76828) reads as follows:

"At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, 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. The repairs or replacement must be made in a timely manner after being notified by a driver of such damage, defects, or deficiencies".

Many of the commenters to the rulemaking indicated that the phrase "timely manner" was vague, impractical, and possibly unenforceable.

As discussed in the 2008 final rule (73 FR at 76800), FMCSA considered several potential revisions to this regulatory text. The first was to replace the word "timely" with a fixed period of time. FMCSA rejected that option because it could result in an overemphasis on the time element of the IME interchange process compared to the quality and completeness of repairs.

A second alternative considered was to remove the word “timely.” However, the Agency believed this could be viewed as allowing a continuation of the status quo—some IEPs would continue their practice of tendering equipment in need of repairs and requiring drivers to decide between operating faulty equipment, with the attendant risk of fines or roadside breakdowns, and the certainty of delay if they requested repairs or a different chassis.

In the final rule, FMCSA removed the term “timely” from the regulatory text, but also added a new provision to § 390.40(d), *Ensure that intermodal equipment intended for interchange with motor carriers is in safe and proper operating condition.*

This revision was intended to serve two purposes. First, it reemphasized the language of 49 U.S.C. 31151(a)(1): “\* \* \* equipment used to transport intermodal containers is safe and systematically maintained.” Second, it acknowledged that a subjective requirement (“timely”) was not necessarily in the best interests of the tendering or receiving party (73 FR at 76800).

On January 16, 2009, OCEMA filed a petition for reconsideration of the final rule. A copy of the petition is in the docket referenced at the beginning of this notice. OCEMA asserts that § 390.40(d) of the new regulation adds a non-statutory duty for IEPs to “ensure” the operating condition of IME prior to interchange.

OCEMA is concerned that the word “ensure” in paragraph (d) places a greater level of responsibility on IEPs than the SAFETEA-LU provisions intended. OCEMA believes the use of this term is inconsistent with the “shared responsibility” approach, delineating specific obligations for each stakeholder (IEP, motor carrier, driver), that was part of the legislation.

Furthermore, OCEMA believes that the use of the word “ensure,” commonly construed as “to secure or guarantee,” would have the effect of requiring IEPs to perform constant, virtually daily inspections of IME. In contrast, OCEMA points out that the regulatory analysis for the final rule requires IEPs to conduct inspections and preventive maintenance at more regularly scheduled intervals, but sets no explicit requirements for the number of inspections per chassis under a systematic inspection, repair, and maintenance program.

OCEMA suggests that FMCSA delete § 390.40(d) and revise § 390.1 to read as follows, with its proposed text revisions underlined:

This part establishes general applicability, definitions, general requirements and information as they pertain to persons subject to this chapter. *Requirements relating to the interchange, operation, inspection, or maintenance and repair of intermodal equipment are intended to ensure that intermodal equipment used to transport intermodal containers is safe and systematically maintained.*

#### Agency’s Assessment and Decision

FMCSA believes OCEMA’s proposed amendment is appropriate. However, there is a simpler solution. FMCSA has decided to revise § 390.40(d) to read: “Provide intermodal equipment intended for interchange that is in safe and proper operating condition.” This revision responds to the petitioner’s request by removing the problematic word “ensure” while continuing to stress the requirement to provide IME in safe and proper operating condition.

#### Section 390.5, Definition of “Intermodal Equipment Provider”

OCEMA requests that FMCSA confirm (1) that there will be only one IEP for a particular piece of equipment, which is the party that identifies itself as such to FMCSA as required under the final rule, and (2) that the IEP can be either the interchanging party or a party having contractual responsibility for the systematic inspection, maintenance and repair of the equipment. OCEMA believes this can be achieved by providing guidance through additional comments to the supplementary information to the final rule, rather than requiring a change to the text of the rule itself.

#### Agency’s Assessment and Decision

OCEMA’s understanding is correct. The statutory definition of “intermodal equipment provider” is clear: “\* \* \* any person that interchanges intermodal equipment with a motor carrier \* \* \* or has a contractual responsibility for the maintenance of the intermodal equipment.” [emphasis added] (49 U.S.C. 31151(f)(3)).

FMCSA has posted new Frequently Asked Questions to the IEP area of its web site to clarify this point. The web address is: [www.fmcsa.dot.gov/iep](http://www.fmcsa.dot.gov/iep)

#### Sanction for Failure To Pay Civil Penalties or Abide by Payment Plan

Section 386.83(a)(1) reads as follows:

General rule. A CMV owner or operator, or intermodal equipment provider that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA’s final agency order, *is prohibited from operating in interstate commerce*

starting on the next (i.e., the 91st) day [emphasis added].

OCEMA requested FMCSA to confirm that any restrictions on an IEP’s operations in interstate commerce would be limited to the IEP’s tendering of intermodal equipment, and would not affect the IEP’s other interstate transportation operations. OCEMA believes this can be achieved by additional guidance in the supplementary information to the final rule, rather than requiring a change to the text of the rule itself.

#### Agency’s Assessment and Decision

FMCSA agrees with OCEMA’s reading of § 386.83(a)(1). The scope of the prohibition against an IEP is limited to the tendering of IME. These technical amendments revise the text of § 386.83(a)(1) to clarify this.

#### Section 392.7 Equipment, Inspection, and Use; § 396.11 Driver Vehicle Inspection Report(s)

FMCSA made limited revisions to § 392.7 and § 396.11 in the final rule. This was done to provide new regulatory language consistent with the legislative direction and also to maintain the integrity of the existing regulatory text. The new text at § 392.7(b) applies to the pre-trip inspections of IME, and the new text of § 396.11 to post-trip inspections.

Although OCEMA acknowledges that IME components that drivers are required to inspect are clearly described in the final rule, it questions why the lists are different for the pre- and post-trip inspections. In order to maximize the effectiveness and impact on equipment safety resulting from driver pre-trip inspections, OCEMA recommends the Agency adopt a pre-trip inspection list which mirrors the post-trip inspection list.

#### Agency’s Assessment and Decision:

FMCSA believes OCEMA’s request is reasonable, and that it could aid both drivers and IMEs in performing and reporting the results of pre-trip and post-trip inspections. The Agency revises the text of § 392.7(b) to make it more consistent with § 396.11 and also revises the order of the items in § 396.11 so they conform to that of § 392.7(b).

The Agency also revises the text of § 396.11(a) to clarify its application to commercial motor vehicles other than intermodal equipment.

Finally, FMCSA clarifies its intent and corrects an error in the text of § 396.12(d) concerning the driver’s pre-trip assessment. The last paragraph of the discussion of § 392.7 in the preamble of the final rule (73 FR 76804) reads as follows:

“Responding to commenters who expressed concern about (1) the documentation of IME defects and (2) how citations of equipment violations are assigned (to the IEP or to the motor carrier), the first is a matter to be addressed during the driver’s pre-trip assessment of the IME. Drivers must document the results of their pre-trip assessment, and the IEP must have a process to receive that document and determine how to resolve deficiencies that are noted. Drivers operating CMVs currently must submit a driver vehicle inspection report to the motor carrier at the completion of each day’s work on each vehicle operated. The new provision in 49 U.S.C. 31151(a)(3)(L) calls for an analogous process: IEPs must establish a process by which drivers or motor carriers transporting their IME may report to the IEP or the IEP’s designated agent any defects or deficiencies the driver or motor carrier are aware of at the time the IME is returned to the IEP’s facility.”

FMCSA clarifies that drivers must advise the IEP of the results of their pre-trip assessment, and the IEP must have a process to determine how to resolve the deficiencies that the driver reports. There is no explicit requirement for documentation of the *pre-trip* assessment. Neither the underlying statute, nor the rule itself, requires a written pre-trip inspection report. The regulation gives the IEP the choice of providing FMCSR-compliant IME; repairing defects or deficiencies the driver brings to the IEP’s attention; or providing the driver with a different piece of IME. The outcome would be the same in each case: the IME tendered for operation in interstate commerce should not have any defects or deficiencies that would make it non-compliant with the FMCSRs.

FMCSA recognizes that IEPs and motor carriers may voluntarily choose to use a written or electronic pretrip inspection form. Provided the content of the form does not conflict with the FMCSRs, FMCSA has no objections to use of such forms. However, the Agency emphasizes that there is no requirement for written documentation of driver pre-trip assessments.

### Partial Extension of Compliance Date Background

On October 27, 2009, OCEMA requested that the FMCSA extend the December 17, 2009 deadline for complying with specific elements of part 396 of the IME safety rule until June 30, 2010.

1. § 396.9(d)—Requirements for drivers to deliver Driver Vehicle Examination Reports (DVERs) to IEP, corrective actions, and recordkeeping requirements.

2. § 396.11(a)(2) and § 396.12(a)—Every intermodal equipment provider

must have a process to receive driver reports of defects or deficiencies in the intermodal equipment operated.

3. § 396.12(c)—Corrective action

4. § 396.12(d)—Retention period for Driver Vehicle Inspection Reports (DVIRs).

A copy of the petition for rulemaking is in the docket referenced at the beginning of this notice.

OCEMA believes that IEPs’ processes and systems required by the December 2008 regulations, relating to pre-trip inspection, periodic maintenance, systematic maintenance, and recordkeeping, should be substantially in place by the December 17, 2009 compliance date. However, requirements in sections 396.9, 396.11, and 396.12, relating to the DVIR and the DVER physically cannot be implemented at the over 1,000 facilities where interchanges take place nationwide by that date.

OCEMA states that it was an active participant in all phases of the rulemaking process and was a key stakeholder in the negotiations that led to the compromise roadability legislation that was enacted in SAFETEA-LU. The Petitioner estimates that its member IEPs own or have under long term lease over 50% of all intermodal chassis operated in the United States (approximately 450,000 units). An OCEMA affiliate, CCM, has organized regional chassis pools at numerous locations in the U.S. The pools will serve as the IEPs for over 100,000 chassis. As such, Petitioners have a significant interest in the rule at issue in this proceeding.

OCEMA provides several reasons for requesting an extension of the compliance date for the provisions of the December 2008 rule that form the subject of its petition:

- The Regulations inadvertently create a gap by requiring IEPs to have in place a process to receive Driver Vehicle Inspection Reports (DVIRs), including identification of the IEP, by December 17, 2009, while not requiring marking of the IEP on the equipment until December 17, 2010.

- The in-gate procedures and communication technologies are so varied at marine terminals, rail facilities, container yards, and other inland locations that any effort to implement the subject requirements without the ready availability of IEP information will lead to congestion and gate delays, while undermining existing systems for handling inbound defects.

- Failure to extend the compliance date will place much of the intermodal industry in the position of having to choose between non-compliance with

regulatory requirements and discontinued operations.

- OCEMA is building an open architecture paperless DVIR Receipt System (DRS) that, when implemented, will significantly facilitate the ability of all segments of the industry to comply with DVIR requirements. Design of the DRS is expected to be complete on or around the compliance date. However, OCEMA members will still need to work with the over 1,000 facilities at which chassis are interchanged to complete deployment, including establishment of communication links and gate procedures.

- A key component of the DRS is interface with the GIER system currently under development by IANA. The GIER database will provide a mechanism for matching the IEP to the IME. However, as of the date of OCEMA’s request, the GIER is not yet available.

### Agency’s Assessment and Decision

FMCSA has carefully reviewed OCEMA’s petition for an extension of the compliance date. The Agency acknowledges the need for considerable planning and coordinating among IEPs, motor carriers, and the operators of terminals and other intermodal facilities that are necessary so that the vehicle safety oversight activities contemplated by Congress in the SAFETEA-LU provision, as well as by FMCSA in the implementing regulation, can move forward. The large number of intermodal facilities, and the significant variations in their operating practices, make the implementation of the enhanced IME safety oversight activities a challenging task.

Although OCEMA and its member organizations have made considerable progress since the final rule was published nearly a year ago, they have also noted the challenges they continue to face. The Agency believes they have made a compelling argument for extending the compliance date for these specific elements of the new regulations as they apply to IME. The Agency also agrees that a six-month extension of the compliance date for these elements would enable IEPs and the terminal operators they work with sufficient time to complete any necessary adjustments to their IME operational procedures.

FMCSA also agrees with OCEMA’s assertion that, even with a delayed compliance date for the requested sections of the FMCSRs, IEPs’ operations will continue to be subject to all the inspection, repair, and maintenance requirements essential to ensuring safety and compliance with the December 17, 2008 final rule. By the December 17, 2009 implementation

date, IEPs will have identified themselves to the FMCSA and obtained USDOT numbers. They will also have in place a process to repair or replace defective equipment prior to its departure from terminal, in response to notification by drivers after their pre-trip inspection. IEPs will have in place systematic inspection, maintenance and repair programs, periodic inspection procedures, and their associated recordkeeping systems.

The Agency acknowledges OCEMA's point, that, considering that the DVIR and DVER requirements cannot be fully implemented at this point in time, safety cannot be said to be sacrificed by delaying enforcement of such requirements. In addition, OCEMA states that existing systems for receipt of driver damage or defect information will continue to be used. The Agency takes note of this, and anticipates a smooth transition between existing and new systems during the next few months.

Accordingly, FMCSA grants the petition to extend the effective date portions of Sections 396.9, 396.11, and 396.12 of the FMCSRs as they apply to IEPs and the IME they are responsible for maintaining.

## Rulemaking Analyses and Notices

### *Administrative Procedure Act*

If an agency determines that the prior notice and opportunity for public comment on a rule normally required by the Administrative Procedure Act are impracticable, unnecessary, or contrary to the public interest (the so-called "good cause" finding), it may publish the rule without such notice. (See 5 U.S.C. 553(b).)

The amendments made by this final rule accomplish three purposes. They provide an additional option for IEPs to identify their IME for FMCSA and State enforcement personnel. The Agency believes that this method will allow IEPs to meet the marking/identification requirements in a manner that will be comparable to or as effective as the current requirements of § 390.21 of the FMCSRs.

The amendments also make minor changes to improve clarity and consistency and correct an inadvertent error. Although the amended list of items in the pre-trip inspection checklist at § 392.7(b) is more substantial, it simply reflects the requirements of the current post-trip inspection checklist and therefore does not impose requirements unfamiliar to drivers.

Finally, the amendments suspend the deadline for compliance with specific provisions of part 396 of the FMCSRs as

they apply to IEPs. However, the Agency believes that, even with a delayed compliance date for those provisions, IEPs' operations will very likely be at a level of safety comparable to, or as effective as, the provisions of the December 17, 2008 final rule. FMCSA believes there is no discernable impact on safety because the substantive requirements that have the greatest impact on safety will go into effect on schedule. These include a process to repair or replace defective equipment prior to its departure from terminal, in response to notification by drivers after their pre-trip inspection, as well as systematic inspection, maintenance and repair programs, periodic inspection procedures, and their associated recordkeeping systems.

For these reasons, FMCSA finds good cause that notice and public comment are unnecessary. Further, the Agency finds good cause under 5 U.S.C. 553(d)(3) to make the amendments effective upon publication. The partial extension of the deadline for compliance with the specified elements of part 396 will remain in effect until June 30, 2010.

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

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. The Office of Management and Budget (OMB) did not review this document. We expect the final rule will have minimal costs; therefore, a full regulatory evaluation is unnecessary.

### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. The rule provides an additional option for IEPs to mark their IME in accordance with the requirements of § 390.21. This change reflects current operational practices of physically marking IME and thus places no new requirements on the regulated industry. The rule also makes several changes to improve clarity and consistency and to correct an inadvertent error. Although the change to make two inspection checklists is more substantial, it reflects current operational practices and thus places no new requirements on the regulated industry. It also provides a partial extension of the compliance date for specific elements of Part 396 as they apply to the operations of IEPs. The

partial extension will promote a smoother and more effective transition towards IEPs' compliance with the December 2008 rule. For these reasons, FMCSA therefore certifies that this action will 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 \$141.3 million 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. We determined that this rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

### *Executive Order 12630 (Taking of Private Property)*

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

### *Executive Order 13132 (Federalism)*

FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. Although the 2008 final rule had Federalism implications, FMCSA determined that it did not create a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rulemaking does not change that determination in any way.

### *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 that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that no new information collection requirements are associated with the technical amendments to this final rule.

National Environmental Policy 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, published 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. FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it has no effect on the environment.

Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We 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 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials, Intermodal equipment provider, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

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

49 CFR Part 392

Highway safety, Intermodal equipment providers, Motor carriers.

49 CFR Part 396

Highway safety, Intermodal equipment providers, Motor carriers, Motor vehicle.

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

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

1. The authority citation for part 386 continues to read as follows:

Authority: 49 U.S.C. 521, 5123, 13301, 13902, 14915, 31132–31133, 31136, 31144, 31151, 31502, 31504; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

2. Amend § 386.83 by revising paragraph (a)(1) to read as follows:

§ 386.83 Sanction for failure to pay civil penalties or abide by payment plan; operation in interstate commerce prohibited.

(a)(1) General rule. (i) A CMV owner or operator that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from operating in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

(ii) An intermodal equipment provider that fails to pay a civil penalty in full within 90 days after the date specified for payment by FMCSA's final agency order, is prohibited from tendering intermodal equipment to motor carriers for operation in interstate commerce starting on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the penalty.

\* \* \* \* \*

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, 229, Pub.

L. 106–159, 113 Stat. 1748, 1767, 1773; and 49 CFR 1.73.

4. Amend § 390.21 by adding paragraph (g)(4)(v) to read as follows:

§ 390.21 Marking of self-propelled CMVs and intermodal equipment.

(g) \* \* \* (4) \* \* \*

(v) The USDOT number of the intermodal equipment provider is maintained in a database that is available via real-time internet and telephonic access. The database must:

(A) Identify the name and USDOT number of the intermodal equipment provider responsible for the intermodal equipment, in response to an inquiry that includes:

- (i) Standard Carrier Alpha Code (SCAC) plus trailing digits, or
(ii) License plate number and State of license, or
(iii) Vehicle Identification Number (VIN) of the item of intermodal equipment.

(B) Offer read-only access for inquiries on individual items of intermodal equipment, without requiring advance user registration, a password, or a usage fee.

5. Revise § 390.40(d) to read as follows:

§ 390.40 What responsibilities do intermodal equipment providers have under the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399)?

\* \* \* \* \*

(d) Provide intermodal equipment intended for interchange that is in safe and proper operating condition.

\* \* \* \* \*

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

6. The authority citation continues to read as follows:

Authority: 49 U.S.C. 13902, 31136, 31151, 31502; and 49 CFR 1.73.

7. Revise § 392.7(b) to read as follows:

§ 392.7 Equipment, inspection and use.

\* \* \* \* \*

(b) Drivers preparing to transport intermodal equipment must make an inspection of the following components, and must be satisfied they are in good working order before the equipment is operated over the road. Drivers who operate the equipment over the road shall be deemed to have confirmed the following components were in good working order when the driver accepted the equipment:

- Service brake components that are readily visible to a driver performing

as thorough a visual inspection as possible without physically going under the vehicle, and trailer brake connections

- Lighting devices, lamps, markers, and conspicuity marking material
- Wheels, rims, lugs, tires
- Air line connections, hoses, and couplers
- King pin upper coupling device
- Rails or support frames
- Tie down bolsters
- Locking pins, clevises, clamps, or hooks
- Sliders or sliding frame lock

#### **PART 396—INSPECTION, REPAIR, AND MAINTENANCE**

■ 8. The authority citation continues to read as follows:

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

■ 9. Revise § 396.11(a)(1) introductory text and (a)(2) to read as follows:

##### **§ 396.11 Driver vehicle inspection report(s).**

(a) *Report Required*—(1) *Motor Carriers*. 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:

\* \* \* \* \*

(2) *Intermodal equipment providers*. Every intermodal equipment provider must have a process to receive driver reports of defects or deficiencies in the intermodal equipment operated. The driver must report on, and the process to receive reports must cover, at least the following parts and accessories:

- Brakes
- Lighting devices, lamps, markers, and conspicuity marking material
- Wheels, rims, lugs, tires
- Air line connections, hoses, and couplers
- King pin upper coupling device
- Rails or support frames
- Tie down bolsters
- Locking pins, clevises, clamps, or hooks
- Sliders or sliding frame lock

\* \* \* \* \*

■ 10. Revise § 396.12(d) to read as follows:

##### **§ 396.12 Procedures for intermodal equipment providers to accept reports required by 390.42(b) of this chapter.**

\* \* \* \* \*

(d) *Retention period for reports*. Each intermodal equipment provider must

maintain all documentation required by this section, including the original driver report and 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.

Issued on: December 18, 2009.

**Anne S. Ferro,**

*Administrator.*

[FR Doc. E9-30654 Filed 12-28-09; 8:45 am]

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#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 635**

**RIN 0648-XT23**

##### **Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

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

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the month of January 2010, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic Tunas General category permitted vessels and Highly Migratory Species Charter/Headboat category permitted vessels (when fishing commercially for BFT).

**DATES:** Effective January 1, 2010, through January 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations

established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP).

The 2010 BFT fishing year, which is managed on a calendar year basis and subject to an annual calendar year quota, begins January 1, 2010. Starting on January 1, 2010, the General category daily retention limit (§ 635.23(a)(2)), is scheduled to revert back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) CFL) or greater per vessel per day/trip. This default retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

Each of the General category time periods (January, June–August, September, October–November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities in years when catch rates are high and quota is available. For the 2009 fishing year, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: Two large medium or giant BFT for January, and three large medium or giant BFT for June through December (73 FR 76972, December 18, 2008; 74 FR 26110, June 1, 2009; and 74 FR 44296, August 28, 2009).

The 2008 ICCAT recommendation regarding Western BFT management resulted in a U.S. quota of 1,034.9 mt for 2009 and 977.4 mt for 2010. Consistent with the allocation scheme established in the Consolidated HMS FMP, the baseline General category share was 475.7 mt for 2009 and is 448.6 mt for 2010, and the baseline January General category subquota was 25.2 mt for 2009 and is 23.8 mt for 2010.

In order to implement the ICCAT recommendation for the 2010 fishing year, NMFS has published proposed quota specifications to set BFT quotas for each of the established domestic fishing categories (74 FR 63095, December 2, 2009). Until the 2010 specifications are finalized (most likely in February 2010), the January General category quota of 25.2 mt remains in effect.

##### **Adjustment of General Category Daily Retention Limits**

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of three per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: the usefulness of information obtained from