

- a. By removing “247.271–4” and adding in its place “247.271–3”; and
- b. By removing the parenthetical “(see 247.271–2(b))”.

**252.247–7014 and 252.247–7016 through 252.247–7020 [Amended]**

- 26. Sections 252.247–7014 and 252.247–7016 through 252.247–7020 are amended in the introductory text by removing “247.271–4” and adding in its place “247.271–3”.

[FR Doc. 2010–20439 Filed 8–19–10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 390

[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; partial extension of compliance date.

**SUMMARY:** The FMCSA extends until June 30, 2011, the June 30, 2010, compliance date of its December 29, 2009, final rule concerning the inspection, repair, and maintenance of intermodal equipment (IME), specifically with respect to the requirement for drivers and motor carriers to prepare a driver-vehicle inspection report (DVIR) on an item of IME even if no damage, defects, or deficiencies are discovered by, or reported to, the driver. This action is being taken to provide the Agency with sufficient time to address, through a notice-and-comment rulemaking proceeding, an issue raised in a petition for rulemaking submitted on March 31, 2010, by the Ocean Carrier Equipment Management Association (OCEMA) and the Institute of International Container Lessors (IICL) (also referred to as “the petitioners”). The requirements for intermodal equipment providers (IEPs) to have in place inspection, repair and maintenance programs, and a process for receiving and taking appropriate action in response to DVIRs on which damage, defects, or deficiencies are reported, remain in effect.

**DATES:** *Compliance Date:* As of August 20, 2010, the compliance date for the requirement in § 390.42(b) for drivers

and motor carriers to prepare a DVIR on an item of IME if no damage, defects, or deficiencies are discovered by, or reported to, the driver, is extended until June 30, 2011.

**ADDRESSES:**

- *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.

**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:**

#### Legal Basis

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

#### Background

On December 17, 2008, FMCSA published a final rule adopting regulations to implement section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, 1729, August 10, 2005). The regulations require IEPs to register and file with FMCSA an Intermodal Equipment Provider Identification Report (Form MCS–150C); establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each intermodal chassis; maintain documentation of their maintenance program; and provide a means to effectively respond 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 U.S. Department of Transportation (USDOT) identification number. These regulations, for the first time, made IEPs subject to the Federal Motor Carrier Safety Regulations (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. Improved maintenance is expected to result in fewer chassis being placed out-of-service and fewer breakdowns involving intermodal chassis, thus improving the Nation’s intermodal transportation system. Because inadequately maintained intermodal chassis create risks for crashes, the regulations help ensure that commercial motor vehicle (CMV) operations are safer.

On December 29, 2009, FMCSA amended the December 2008 final rule to: (1) Create an additional marking option for identifying the IEP responsible for the inspection, repair, and maintenance of items of IME in response to a petition for reconsideration from the Intermodal Association of North America (IANA); (2) clarify regulatory text and correct an inadvertent error in response to a petition for reconsideration from OCEMA; and (3) 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 (74 FR 68703).

#### OCEMA/IICL Petition

On March 31, 2010, OCEMA and IICL submitted a joint petition to FMCSA requesting the repeal of the provision in § 390.42(b) of the FMCSRs that requires motor carriers to prepare and transmit a DVIR to the IEP at the time the IME is returned to the IEP even when no damage, defects, or deficiencies are noted (hereafter referred to as a “no-defect DVIR”). The petitioners contend that requiring the preparation and transmittal of these no-defect DVIRs imposes an undue burden on drivers, motor carriers, IEPs, and intermodal facilities nationwide. The petitioners estimate that a no-defect DVIR requirement will necessitate the completion, transmission, review, and retention of over 38 million unnecessary reports annually. In fact, the petitioners believe that the added administrative burdens of the requirement to file no-defect DVIRs actually could undermine the goal of safe IME. A copy of the petition has been placed in the docket referenced at the beginning of this notice.

The petitioners presented four arguments against the DVIR element of the current rule:

- SAFETEA–LU only requires DVIRs for known damage or defects. Congress could have added a requirement to file no-defect DVIRs but did not do so. As such, the regulatory imposition of no-defect DVIRs is not required by law and

is likely inconsistent with congressional intent.

- Submission of no-defect DVIRs can add to congestion and delay at intermodal facilities. A no-defect DVIR does not add in any meaningful way to the safety of IME and therefore does not justify such congestion and delay.

- An estimated 96 percent of the chassis in-gated at intermodal facilities have no known damage or defect. If no-defect DVIRs are required, there is a significant risk that the 4 percent of DVIRs with damage or defects could be lost in the volume of no-defect DVIRs or result in delays in correcting reported defects at often overburdened marine, rail, and other terminals.

- Data transmission, processing, and storage requirements for no-defect DVIRs add significant, unnecessary costs to intermodal operations with no apparent offsetting benefits.

The petitioners request that § 390.42(b) of the FMCSRs be amended as follows:

(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. If no damage, defects, or deficiencies are discovered by the driver, no report shall be required.

#### FMCSA Analysis of the Petition

The Agency has reviewed the petitioners' request and finds that it has merit. In developing the 2008 final rule, FMCSA determined that the DVIR requirements for IME should be consistent with the long-standing driver- and motor carrier-DVIR requirements in § 396.11 for non-IME. Section 396.11(b) calls for a DVIR to be prepared to indicate not only any defects or deficiencies discovered by or reported to the driver that would affect the safety or operation of the vehicle, but also to indicate if the driver found no defects or deficiencies.

The Agency notes that § 390.40(d) of the FMCSRs requires an IEP to "Provide intermodal equipment that is in safe and proper operating condition." More specifically, § 390.40(i) requires that at facilities at which the IEP makes IME available for interchange, the IEP must (1) develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or (2) replace the equipment. As such, the existing regulations provide a system of checks and balances to ensure that all IME offered for interchange is in safe and

proper operating condition—regardless of whether the motor carrier prepared a DVIR for IME that had no damage, defects, or deficiencies at the time it was returned. The Agency also agrees with the petitioners that the existing requirement for motor carriers to submit no-defect DVIRs goes beyond the specific requirements of 49 U.S.C. 31151(a)(3)(L), and appears likely to provide negligible safety benefits.

The FMCSA also notes that, in addition to the petitioners, two other industry stakeholders, the American Trucking Associations' Intermodal Motor Carriers Conference (ATA-IMCC) and IANA, have written the Agency in support of the petition to eliminate the requirement for no-defect DVIRs. This support, in conjunction with the reasons outlined above, has persuaded the Agency to initiate rulemaking on this issue. Copies of documents submitted by the ATA-IMCC, OCEMA, and IANA have been placed in the docket.

#### Conclusion

After completing its review and analysis of the petition, FMCSA has determined that the petition has merit and that a notice-and-comment rulemaking proceeding should be initiated to provide all interested parties the opportunity to comment on the matter. The Agency plans to issue a notice of proposed rulemaking at a later date to propose eliminating the portion of § 390.42(b) that requires motor carriers to prepare and transmit a DVIR to the IEP upon returning the IME, even when the IME has no known damage, defects, or deficiencies.

#### Partial Extension of Compliance Date

While the Agency is conducting the rulemaking discussed above, FMCSA extends until June 30, 2011, the June 30, 2010, compliance date of the December 2009 final rule, specifically with respect to the requirement in § 390.42(b) for drivers and motor carriers to prepare a DVIR on an item of IME if no damage, defects, or deficiencies are discovered by, or reported to, the driver.

Issued on: August 13, 2010.

**William Bronrott,**  
*Deputy Administrator.*

[FR Doc. 2010-20603 Filed 8-19-10; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 83

[Docket No. FWS-R9-WSR-2010-0009]  
[91400-5110-POLI-7B; 91400-9410-POLI-7B]

RIN 1018-AX00

#### Removing Regulations Implementing the Fish and Wildlife Conservation Act

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are removing our regulations implementing the Fish and Wildlife Conservation Act of 1980. The Act authorized financial and technical assistance to States to design conservation plans and programs to benefit nongame species; however, funds never became available to carry out the Act, and we do not expect funds to become available in the future.

**DATES:** This rule is effective on September 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Joyce Johnson, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703-358-2156.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Service manages or comanages 54 financial assistance programs. Our Wildlife and Sport Fish Restoration Program manages, in whole or in part, 19 of these programs. We implement some of these programs via regulations in title 50 of the Code of Federal Regulations (CFR), particularly in subchapter F "Financial Assistance—Wildlife and Sport Fish Restoration Program," which currently includes parts 80 through 86.

The regulations at part 83 implement the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901-2911). This act authorized the Service to give financial and technical assistance to States and other eligible jurisdictions to design conservation plans and programs to benefit nongame species. The regulations tell the fish and wildlife agencies of the 50 States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa how they can take part in this grant program. However, neither the Fish and Wildlife Conservation Act nor any subsequent legislation established a