

List of Subjects in 47 CFR Part 27

Communications common carriers,
Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 27 as follows:

**PART 27—MISCELLANEOUS
WIRELESS COMMUNICATIONS
SERVICES**

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.53 is amended by revising paragraphs (m)(4) and (m)(6) to read as follows:

§ 27.53 Emission Limits.

* * * * *

(m) * * *

(4) For mobile digital stations, the attenuation factor shall be not less than 40 + 10 log (P) dB at the channel edge, 43 + 10 log (P) dB beyond 5 MHz from the channel edges, and 55 + 10 log (P) dB at X MHz from the channel edges, where X is the greater of 6 MHz or the actual emission bandwidth as defined in § 27.53(m)(6). Mobile Satellite Service licensees operating on frequencies below 2495 MHz may also submit a documented interference complaint against BRS licensees operating on channel BRS Channel 1 on the same terms and conditions as adjacent channel BRS or EBS licensees.

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(6) Measurement procedure. Compliance with these rules is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent (or two percent for mobile digital stations) of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (i.e., 1 megahertz). The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are

attenuated at least 26 dB below the transmitter power. With respect to television operations, measurements must be made of the separate visual and aural operating powers at sufficiently frequent intervals to ensure compliance with the rules.

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DEPARTMENT OF TRANSPORTATION

**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: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes to revise a requirement of the Federal Motor Carrier Safety Regulations that applies to intermodal equipment providers and motor carriers operating intermodal equipment. The Agency proposes to delete the requirement for drivers operating intermodal equipment to submit and intermodal equipment providers to retain driver-vehicle inspection reports when the driver has neither found nor been made aware of any defects on the intermodal equipment used. This NPRM responds to a joint petition for rulemaking from the Ocean Carrier Equipment Management Association and the Institute of International Container Lessors.

DATES: Send your comments on or before August 8, 2011.

ADDRESSES: You may submit comments identified by Docket ID Number FMCSA-2011-0046 by any of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.

• **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

• **Hand Delivery or Courier:** West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE.,

between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• **Fax:** 202-493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

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. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2011-0046), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and click on the "Submit a Comment" box, which will then become highlighted in blue. In the "Select Document Type" drop-down menu, select "Proposed Rule," insert "FMCSA-2011-0046" in the "Keyword" box, and click "Search." When the new screen appears, click on "Submit a Comment" in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the

comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to <http://www.regulations.gov> and click on the "Read Comments" box in the upper right-hand side of the screen. Then, in the "Keyword" box insert "FMCSA-2011-0046" and click "Search." Next, click the "Open Docket Folder" in the "Actions" column. Finally, in the "Title" column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone is able to search the electronic form for 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>.

II. Abbreviations

ATA American Trucking Associations
 CMV commercial motor vehicle
 DOT U.S. Department of Transportation
 DVIR driver-vehicle inspection report
 FHWA Federal Highway Administration
 FMCSRs Federal Motor Carrier Safety Regulations
 IANA Intermodal Association of North America
 IEP intermodal equipment provider
 IICL Institute of International Container Lessors
 IME intermodal equipment
 NPRM Notice of Proposed Rulemaking
 OCEMA Ocean Carrier Equipment Management Association
 SAFETEA-LU Safe, Accountable, Flexible, Efficient Transportation Equity Act; A Legacy for Users
 Secretary Secretary of Transportation

III. Legal Basis for the Rulemaking

Although cargo containers move by ship, and often also by rail, their journeys generally begin and end on chassis trailers for transportation by highway to their final destinations.

These trailers, generally referred to as intermodal equipment (IME), fall under FMCSA's safety jurisdiction. At issue in this NPRM is the requirement that drivers complete driver vehicle inspection reports (DVIRs) which note the existence or absence of defects or deficiencies in IME. FMCSA proposes to eliminate the requirement that drivers complete DVIRs when they have no defects or deficiencies to report.

This NPRM 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 (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a (for-hire) motor carrier (49 U.S.C. 31502(b)(1)), and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a (not for-hire) 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 provisions.

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 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." Section 31151(a)(3) of title 49, United States Code, 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 copy 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 governmental 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, but providing that preemption 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 Intermodal Equipment Providers (IEPs) to register and file with FMCSA an Intermodal Equipment Provider 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. These regulations, for the first time, make IEPs subject to the Federal Motor Carrier Safety Regulations (FMCSRs), and call for shared safety responsibility among IEPs, motor carriers, and drivers. Additionally, FMCSA adopted inspection requirements for motor carriers and drivers operating IME.

IV. Background

Section 4118 of SAFETEA-LU [Pub. L. 109-59, August 10, 2005, 119 Stat. 1144, 1729] 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 IME is required to report to the IEP or the providers' designated agent any actual damage or defect in the IME of which the driver or motor carrier is aware at the time the IME is returned to the IEP or the provider's designated agent" (49 U.S.C. 31151(a)(3)(L)).

To satisfy this statutory requirement, FMCSA proposed a rule that for the first time would (1) make IEPs subject to the FMCSRs and (2) call for a shared safety responsibility among IEPs, motor carriers, and drivers (71 FR 76796, December 21, 2006). That proposed rule included a new § 390.44 (changed to § 390.42 in the final rule), which prescribed the responsibilities of drivers and motor carriers when operating IME. Proposed § 390.44(b) required the driver or motor carrier to report any damage or deficiencies in the equipment at the time the equipment is returned to the IEP. These included, at a minimum, the items listed in proposed § 396.11(a)(2), which required that the IEP have a process in place to receive reports of defects or deficiencies in the equipment and which listed the specific components that must be included on the DVIR. Finally, FMCSA proposed a new § 396.12 that required IEPs to establish a procedure to accept reports of defects or deficiencies from motor carriers or drivers, repair the defects that are likely to affect safety, and document the procedure. 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 FMCSA did not receive any comments opposing its decision not to make changes to § 396.11(b).

In the final rule, published December 17, 2008 (73 FR 76794), the Agency added language in the new § 390.42(b) (which had been § 390.44 in the NPRM) 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), which has, for many years, required drivers to prepare no-defect DVIRs.

¹ The 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, motor carriers to 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.

On October 27, 2009, Ocean Carrier Equipment Management Association (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 December 29, 2009, the compliance date for these provisions was extended from December 17, 2009, to June 30, 2010 (74 FR 68703).

V. OCEMA’s and IICL’s Petition

On March 31, 2010, OCEMA and Institute of International Container Lessors (IICL) jointly petitioned FMCSA to rescind the part of § 390.42(b) that concerns a driver’s responsibility to file no-defect DVIRs with IEPs on IME they are returning.² The regulatory text at issue states:

(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. *If no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate.* The report must include, at a minimum, the items in § 396.11(a)(2) of this chapter (emphasis added).

OCEMA and IICL requested that FMCSA delete the sentence in italics.

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

(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. The regulatory imposition of no-defect DVIRs is not required by law and likely is inconsistent with Congressional intent.

(2) There is a significant risk that the volume of no-defect DVIRs, if required, could overwhelm the 4 percent of DVIRs that contain damage or defects. Using a sampling of industry data from 2007–2009, OCEMA estimated that 16.9 percent of chassis operating in the United States are in-gated (return to the IME through the in-gate process) every day. Assuming a fleet of 650,000 active chassis per day, there are 109,850 in-gates per day and 40,095,250 in-gates per year. The petitioners estimated that approximately 96 percent of DVIRs collected do not contain discrepancies,

² Although the petition did not specifically address the analogous requirement in § 396.12(b)(4), this NPRM addresses the issue of “no-defect DVIRs” throughout Parts 390 and 396.

which results in 38,491,440 no-defect DVIRs per year. The risk is that 1,603,810 DVIRs, or 4 percent of the total, that contain defect and damage information will be lost, obscured, or delayed by the sheer magnitude of the remaining 96 percent of no-defect DVIRs.

(3) The petitioners added that “Data transmission, processing, and storage requirements for no-defect DVIRs add significant unnecessary costs to intermodal operations with no apparent offsetting benefits.” They stated:

Each DVIR processed will involve utilizing the GIER [Global Intermodal Equipment Registry] system to retrieve the USDOT number at a transaction cost of \$.02. For an estimated 38,491,440 no-defect DVIRs per year, IEPs would incur over \$769,828.00 in costs to retrieve just that information.

(4) The petitioners claimed that submission of no-defect DVIRs contributes to driver productivity losses in the form of congestion and delay at intermodal facilities. The petitioners assumed that truck drivers take 3 minutes to fill out a report, which results in 1,924,572 driver hours lost per year. They added:

IEPs will incur costs associated with storage of electronic or paper copies and the reproduction of same for FMCSA personnel. Assuming truck drivers take 3 minutes per report, this would mean almost 2 million driver-hours spent on a largely meaningless exercise.

FMCSA granted the petition on July 30, 2010. The Agency Order granting the petition has been placed in the docket.

Because FMCSA did not have sufficient time to address the petition through a notice-and-comment rulemaking prior to the compliance date of June 30, 2010, it published a final rule on August 20, 2010 that extended the compliance date for § 390.42(b) to June 30, 2011 (75 FR 51419).

VI. Agency Analysis of the Petition and Discussion of Proposed Rule

The Agency agrees with the petitioners that the existing requirement for motor carriers to prepare no-defect DVIRs goes beyond the specific requirements of 49 U.S.C. 31151(a)(3)(L). In its 2008 final rule, FMCSA, for the first time, subjected IEPs to the FMCSRs, and called for shared safety responsibility among IEPs, motor carriers, and drivers regarding processes for assessing the condition of IME and documenting deficiencies and repairs. Section 390.40(d) requires an IEP to “provide intermodal equipment that is in safe and proper operating condition.” At facilities at which the IEP makes IME available for interchange, § 390.40(i) requires that 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. 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.

Accordingly, FMCSA is proposing to eliminate the language of §§ 390.42(b) and 396.12(b)(4) that expressly requires motor carriers to prepare and transmit a no-defect DVIR to the IEP upon returning the IME. For consistency, the Agency is also proposing minor amendments to § 396.11(b) to clarify that no-defect DVIRs do not need to be prepared for items of IME.

This proposed 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 the safety of its operation. Although FMCSA proposes to remove the requirement to complete a DVIR if the driver has found 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. This proposed change also does not affect requirements governing the inspection and completion of DVIRs for power units.

Although FMCSA is proposing to make the change requested by the petitioners, it still seeks comments from all interested parties on certain aspects of the DVIR process. First, there are differences between the Petitioners' and FMCSA's previously published cost and time burden estimates associated with no-defect DVIRs. The Information Collection Request (ICR) statement referenced in the 2008 final rule³ estimated the time spent for a driver to prepare a written inspection report and provide a copy to his/her employing motor carrier as approximately 2 minutes 30 seconds on average. Additionally, 5 seconds were estimated for a driver to review and acknowledge the last vehicle inspection report that had noted no vehicle defects. This results in a total burden of 2 minutes 35 seconds when no defect was found, less than the 3 minute burden presented in the petition. Neither the 2008 final rule nor the petition evaluated the time

burden of handling DVIR paperwork by motor carriers and IEP staff.

Second, the petitioners also stated that a \$.02 transaction cost is incurred by the IEP to retrieve the USDOT number through an electronic database, which is necessary for IME identification and completion of no-defect DVIR processing. However, the Agency published a technical amendment on December 29, 2009 (74 FR 68703), which introduced a fifth option for IME identification: use of an electronic database system. The Agency required that several conditions be satisfied, specifically, that the system not require a user-fee:

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: real-time internet access via public web portal; and toll-free telephonic access (emphasis added)

Because the Agency cannot validate the cost and time burden associated with no-defect DVIRs, the Agency is requesting that commenters to this rulemaking provide their analysis of the DVIR process. FMCSA requests comments from all interested parties on these questions:

1. DVIR Handling

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 are 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.

Proposed Changes

This proposed rule would revise §§ 390.42(b), 396.11(b), and 396.12(b)(4) to delete the sentence, "If no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate." This proposed rule also makes an editorial change. The language that was originally under § 396.11(b) has been split, for clarity, into three subparagraphs: § 396.11(b)(1), (2), and (3), respectively. New text, as described, is contained in § 396.11(b)(2).

VII. Regulatory Analyses

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

FMCSA has determined that this action does not meet the criteria for a "significant regulatory action." either as specified in Executive Order 12866 as supplemented by Executive Order 13563 issued by the President on January 18, 2011 (76 FR 3821) or within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). If this rule becomes final, the industry would not be expected to experience new costs.

The proposed rule would remove the requirement for drivers to submit DVIRs when they do not have IME defects or deficiencies to report. Because the requirement for identifying IME only came into effect in December 2010, and because information management systems and crash report forms are still in the process of being revised to identify IEPs, the Agency does not have current data on crashes involving IME or subject to the December 2008 rule. Because IEPs continue to be required to provide IME intended for interchange to motor carriers that is in safe and proper operating condition, the Agency does not expect implementation of this rule to result in any change in the number of truck crashes.

Lacking independent data, FMCSA also is unable to estimate the precise aggregate benefits of the proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to determine whether proposed rules could have a significant economic impact on a substantial number of small entities. This proposed rule would grant regulatory relief to IEPs, which consist of 108 entities, including 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

³ See the currently approved supporting statement for Inspection, Repair and Maintenance Information Collection Request (ICR) (OMB control number 2126-0003).

designation as defined by the Small Business Administration (73 FR 76816). Consequently, the Agency certifies that this proposed 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 \$140.8 million (which is the value of \$100 million in 2009 after adjusting for inflation) or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This proposed 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 pose 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 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 them. FMCSA analyzed this proposed action in accordance with Executive Order 13132. The proposal would not have a substantial direct effect on States, nor would it limit the policymaking discretion of States. Nothing in this rulemaking would 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 that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. We determined that no new information collection requirements are associated with this proposed rule. The Agency believes that, if promulgated, this rulemaking would result in a reduction in the information collection burden associated with completing the driver-vehicle inspection report, but cannot quantify the reduction at this time.

National Environmental Policy Act

FMCSA analyzed this NPRM 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 proposed action does not have any effect on the quality of the environment. Therefore, this NPRM 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**.

We also analyzed this proposal 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 also 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 from any of the options 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. 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 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 proposes to amend 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. 508, 13301, 13902, 31132, 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. 212, 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767, 1773; 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 continues to read as follows:

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

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

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(b) *Report content.* (1) The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver that would affect the safety of operation of the vehicle or result in its mechanical breakdown.

(2) For vehicles other than intermodal equipment tendered by intermodal equipment providers, if no defect or deficiency is discovered by or reported to the driver, the written report shall so indicate.

(3) For intermodal equipment tendered by intermodal equipment providers, if no defects or deficiencies are discovered by or reported to the driver, no written report is required.

(4) In all instances where a written driver vehicle inspection report is required, the driver shall sign the report. On two-driver operations, only one driver needs to sign, 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.

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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.

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(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.

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Issued on: May 27, 2011.

Anne S. Ferro,

Administrator, FMCSA.

[FR Doc. 2011-13935 Filed 6-6-11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0007; MO 92210-0-0008 B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Striped Newt as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the striped newt (*Notophthalmus perstriatus*) as threatened under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the striped newt as endangered or threatened is warranted. Currently, however, listing the striped newt is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the striped newt to our candidate species list. We will develop a proposed rule to list the striped newt as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. During any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on June 7, 2011.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R4-ES-2010-0007. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, North Florida Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Dave Hankla, Field Supervisor, North Florida Field Office (see **ADDRESSES**); by telephone at (904) 731-3336; or by facsimile at (904) 731-3045. If you use a telecommunications device for the

deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

On July 14, 2008, we received a petition dated July 10, 2008, from Dr. D. Bruce Means, Ryan C. Means, and Rebecca P.M. Means of the Coastal Plains Institute and Land Conservancy (CPI), requesting that the striped newt (*Notophthalmus perstriatus*) be listed as threatened under the Act. Included in the petition was supporting information regarding the species' taxonomy, biology, historical and current distribution, and present status, as well as a summary of actual and potential threats. We acknowledged the receipt of the petition in a letter to petitioners dated August 15, 2008. In that letter we also stated that we could not address their petition at that time because responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding.

Funding became available to begin processing the petition in early 2010. On March 23, 2010, we published a 90-day finding (75 FR 13720) that the petition presented substantial information indicating that listing the striped newt may be warranted and that we were initiating a status review, for which we would accept public comments until May 24, 2010. This