

proposed to be implemented in a similar manner. Specifically, the new 10 U.S.C. 2320(f) requirement is proposed for insertion as new DFARS 207.106(S–70)(2)(ii), with existing paragraphs (ii)–(iv) renumbered accordingly.

Second, new 10 U.S.C. 2320(f) requires that, to the maximum extent practicable, programs for major weapon systems or subsystems thereof shall use specially negotiated licenses for technical data to support DoD's strategy for sustainment of the systems or subsystems. While the current DFARS coverage does not include a preference for specially negotiated licenses, the DFARS authorizes the use of SNLR for all types of technical data and computer software, both noncommercial and commercial. The current DFARS enables the parties to enter into special licenses only by voluntary mutual agreement, and reinforces that any rights granted to the Government must be enumerated in an agreement that is incorporated into the contract. The DFARS currently identifies the minimum license rights that the Government is authorized to accept. For example, DFARS 227.7103–5, Government rights, specifies that, when negotiating specific license rights for technical data, the Government may not accept less than limited rights.

The proposed approach for implementing the new statutory preference for SNLR is to incorporate an appropriate statement of preference into the existing DFARS sections and clauses that already authorize and address, but do not currently express a preference for, SNLR. This implementation requires consideration of how a “preference” for SNLR can be integrated appropriately into the current regulatory structure that allows for SNLR on the basis of voluntary, mutual agreement. The proposed approach expresses a preference for use of SNLR “whenever doing so will more equitably address the parties’ interests than the standard license rights” provided in the applicable clause or allocation of rights. However, to ensure that SNLR are not merely authorized and encouraged, but are required to be considered, the approach also includes an affirmative requirement that, to the maximum extent practicable, the parties must enter into good faith negotiations whenever *either party* desires a special license. Thus, it is only in the case when neither party desires a special license agreement (e.g., because neither party anticipates doing so would more equitably address the parties’ relative interests), that the parties are not required to negotiate.

The proposed approach also maintains the existing DFARS coverage, which reinforces that neither party can be forced to relinquish its standard license rights. Additionally, the proposed approach retains the DFARS statement of mandatory minimum license rights, as applicable (e.g., currently there is no required minimum license for commercial computer software or commercial computer software documentation). The approach includes the requirement from 10 U.S.C. 2320(f) that the special license must support the program’s strategy for sustainment of the major weapon system or subsystem being purchased. The proposed approach also states that DoD may still challenge the basis for a contractor’s assertions upon which a special license is based. DoD may challenge a contractor’s assertions pursuant to DFARS 252.227–7019, Validation of Asserted Restrictions–Computer Software, and 252.227–7037, Validation of Restrictive Markings on Technical Data, as applicable. Finally, the approach also seeks to standardize the nomenclature for such negotiated licenses using variations of the term “special” (e.g., special license, specially negotiated license rights), rather than the term “specifically,” which is used inconsistently in the current DFARS.

This proposed implementation resulted in revisions to the existing DFARS coverage regarding SNLR for all forms of technical data and computer software, as follows:

(1) For commercial technical data, at 227.7102–2(b) and the associated clause at 252.227–7015(c).

(2) For noncommercial technical data, at 227.7103–5, and –5(d), and the associated clause at 252.227–7013(b)(4).

(3) For commercial computer software, at 227.7202–3(b) (for which there is no associated clause).

(4) For noncommercial computer software, at 227.7203–5, and –5(d), and the associated clause at 252.227–7014(b)(4).

(5) For the Small Business Innovation Research (SBIR) Program, at new 227.7104(d), and associated clause at 252.227–7018(b)(5).

Note that in the case of the SBIR Program, the proposed revisions limit the preference and authorization to negotiate special license agreements to be only after contract award, in accordance with section 8, paragraph 6, of the SBIR Program and Small Business Technology Transfer Program Policy Directive, published in the **Federal Register** on April 2, 2019, (84 FR 12794), and which became effective on May 2, 2019.

### *C. Seeking Public Comment on Additional Topics*

In addition to seeking public comment on the substance of the draft DFARS revisions, DoD is also seeking information regarding any corresponding change in the burden, including associated costs or savings, resulting from contractors and subcontractors complying with the draft revised DFARS implementation. More specifically, DoD is seeking information regarding any anticipated increase or decrease in such burden and costs relative to the burden and costs associated with complying with the current DFARS implementing language.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **IV. Executive Order 13771**

This Advance Notice of Proposed Rulemaking is not subject to E.O. 13771.

### **List of Subjects in 48 CFR Parts 207, 212, 215, 227, and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

[FR Doc. 2019–24585 Filed 11–8–19; 8:45 am]

**BILLING CODE 5001–06–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Part 396**

[Docket No. FMCSA–2019–0075]

RIN 2126–AC29

### **Passenger Carrier No-Defect Driver Vehicle Inspection Reports**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FMCSA proposes to rescind the requirement that drivers of passenger-carrying commercial motor vehicles (CMVs) operating in interstate commerce, submit, and motor carriers retain, driver-vehicle inspection reports (DVIRs) when the driver has neither found nor been made aware of any vehicle defects or deficiencies (no-defect DVIRs). This proposed rule would remove an information collection burden without adversely impacting safety.

**DATES:** You must submit comments on or before January 13, 2020. Comments sent to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) on the collection of information must be received by OMB on or before January 13, 2020.

**ADDRESSES:** You may submit comments identified by docket number FMCSA–2019–0075 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Operations (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” heading under the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments, including information collection comments for OIRA at OMB.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division, Office of Carrier, Driver & Vehicle Safety Standards, at Federal Motor Carrier Safety Administration 1200 New Jersey Avenue SE, Washington, DC 20590–0001; [Michael.Huntley@dot.gov](mailto:Michael.Huntley@dot.gov), (202) 366–4325. If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:****I. Public Participation and Request For Comments***A. Submitting Comments*

If you submit a comment, please include the docket number for this notice of proposed rulemaking (NPRM) (FMCSA–2019–0075), indicate the

specific section of this document to which your 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 email 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/#/docketDetail;D=FMCSA-2019-0075>, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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. FMCSA may issue a final rule at any time after the close of the comment period.

**Confidential Business Information**

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington DC 20590. Any comments that FMCSA receives which are not specifically designated as CBI

will be placed in the public docket for this rulemaking.

*B. Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov/#/docketDetail;D=FMCSA-2019-0075> and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*C. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at <https://www.transportation.gov/privacy>.

*D. Waiver of Advance Notice of Proposed Rulemaking*

Under 49 U.S.C. 31136(g)(1), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or conduct a negotiated rulemaking if a proposed rule is likely to lead to the promulgation of a major rule.<sup>1</sup> As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

*E. Comments on the Collection of Information*

If you have comments on the collection of information discussed in this NPRM, you must also send those comments to the Office of Information and Regulatory Affairs at OMB. To ensure that your comments are received on time, the preferred methods of submission are by email to [oira\\_submissions@omb.eop.gov](mailto:oira_submissions@omb.eop.gov) (include docket number “FMCSA–2019–0075” and “Attention: Desk Officer for

<sup>1</sup> A “major rule” means any rule that the Administrator of OIRA at OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

FMCSA, DOT” in the subject line of the email) or fax at 202–395–6566. An alternative, though slower, method is by United States mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, FMCSA, DOT. Although comments can be received up to the close of the comment period, comments will be most useful if received by OIRA within 30 days of publication of this NPRM.

## II. Executive Summary

### *Purpose of the Regulatory Action*

As part of the Agency’s ongoing effort to review existing regulations to evaluate their continued necessity and effectiveness, FMCSA proposes rescinding the requirement that drivers of passenger-carrying CMVs operating in interstate commerce, submit, and motor carriers retain, DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies. This proposed rule would remove an information collection burden without impacting safety adversely.

### *Benefits and Costs*

The proposed rule would affect all passenger carriers currently subject to 49 CFR 396.11. Current regulations require drivers employed by passenger carriers—except drivers for private (nonbusiness) passenger carriers, driveaway-towaway operations, or those operating only one CMV—to report on the DVIR any vehicle defects in need of repair noted or discovered during a driving day. Drivers must submit this report to the employing passenger carrier so that repairs can be made. Regulations currently require drivers of passenger-carrying CMVs to file the DVIR even if there are no vehicle defects to report. Motor carriers are required to maintain the original DVIR, the certification of repairs, and the certification of the driver’s review for 3 months from the date the written report was prepared. The proposed rule would eliminate the need for a driver to file, and a motor carrier to maintain, a no-defect DVIR.

The Agency estimates that passenger-carrying CMV drivers spend approximately 2.4 million hours each year completing no-defect DVIRs, and that the proposed rule would result in a cost savings of \$74 million per year. There is no discernible safety benefit to this burden.

If finalized, the proposed rulemaking would result in reduced government-imposed costs, and therefore would be a deregulatory action under Executive

Order (E.O.) 13771, “Reducing Regulation and Controlling Regulatory Costs” (issued January 30, 2017, and published February 3, 2017, at 82 FR 9339). The present value of the cost savings, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, would be \$1 billion. On an annualized basis, these cost savings would be \$71 million.

## III. Legal Basis for the Rulemaking

This proposed rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) (49 U.S.C. 31502(b)) and the Motor Carrier Safety Act of 1984 (1984 Act) (49 U.S.C. 31136(a)), both of which are broadly discretionary.

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

- Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier (§ 31502(b)(1)), and
- Qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (§ 31502(b)(2)).

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

The 1984 Act authorizes the Secretary to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a) requires the Secretary to publish regulations on CMV safety. Specifically, the Act sets forth minimum safety standards to ensure that: (1) 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 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 818, July 6, 2012] enacted a fifth requirement, *i.e.*, to ensure that “(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title” (49 U.S.C. 31136(a)(5)). The 1984 Act grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to

“prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate” (49 U.S.C. 31133(a)(8) and (10)).

This proposed rule implements, in part, the Administrator’s authority under § 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The NPRM is also based on the broad recordkeeping and implementation authority of § 31133(a)(8) and (10). This proposed rule addresses only CMV equipment and reporting requirements. It does not address the question whether drivers’ responsibilities affect their ability to operate CMVs safely (49 U.S.C. 31136(a)(2)). The provisions of the 1984 Act dealing with the physical condition of drivers (§ 31136(a)(3)–(4)) do not apply. Finally, as to ensuring that operators of CMVs are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a CMV in violation of a regulation, the rule would eliminate only the requirement for drivers of passenger-carrying CMVs to prepare reports when there are no defects or deficiencies; it would keep in place the rule requiring reports when there are defects or deficiencies, as well as the requirement for motor carriers to take appropriate action on receipt of the report when problems with the vehicle are noted. Because the rule would remove a regulatory burden criticized by both drivers and motor carriers (and irrelevant to passenger brokers or tour groups), there is virtually no possibility that the driver of a passenger-carrying CMV would be coerced to violate the rule itself. A passenger carrier may require a driver to continue filing no-defect DVIRs even in the absence of a regulatory requirement, but that would be a condition of employment to perform duties not required by a safety regulation, and would therefore not constitute coercion to violate a safety regulation.

## IV. Background

In response to a joint petition for rulemaking submitted by the Ocean Carrier Equipment Management Association and the Institute of International Container Lessors, FMCSA published a final rule on June 12, 2012 (77 FR 34846), eliminating the requirement for drivers operating intermodal equipment (IME) to submit—and intermodal equipment providers to retain—DVIRs when the driver has neither found nor been made aware of any defects in the IME. The Agency estimated that approximately 95 percent of DVIRs for IME do not identify

defects and concluded that requiring DVIRs to be filed only on the roughly 5 percent of IME with defects would focus attention on the IME that needs it—rather than the 95 percent with no defects. FMCSA emphasized that the rule did not change a driver's obligation to assess the condition of IME at the end of a workday to determine whether the IME has defects or deficiencies that could affect operational safety. Although FMCSA removed the requirement for a driver to complete a DVIR if no defects or deficiencies had been discovered by or reported, the driver must still inspect the IME to make this determination and prepare a DVIR if defects or deficiencies are discovered or reported. The Agency stated that it did not believe that implementation of the rule would lead to an increase in safety risk because there are multiple opportunities for IME to be inspected for potential safety defects. FMCSA estimated the time and cost savings associated with the rule due to reduced paperwork burdens to be 1.636 million hours and \$54 million dollars annually.

Subsequently, and in response to Executive Order 13563, "Improving Regulation and Regulatory Review" (issued January 18, 2011, and published January 21, 2011, at 76 FR 3821), FMCSA published an NPRM on August 7, 2013 (78 FR 48125) that proposed extending the same relief regarding no-defect DVIRs to all interstate motor carriers subject to part 396 of the FMCSRs, except operators of passenger-carrying CMVs. FMCSA published a final rule on December 18, 2014 (79 FR 75437), adopting the changes proposed in the NPRM. As with the June 2012 final rule regarding no-defect DVIRs for IME, FMCSA concluded that the no-defect DVIR requirements impose a substantial time and paperwork burden on the trucking industry with no discernible safety benefit. FMCSA estimated that non-passenger-carrying CMV drivers spend approximately 46.7 million hours each year completing no-defect DVIRs, and estimated that the monetized value of this time was \$1.7 billion per year.

## V. Discussion of Proposed Rulemaking

The Agency proposes to rescind, for operators of passenger-carrying CMVs, the requirement in 49 CFR 396.11(a)(2) that CMV drivers submit, and motor carriers retain, DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies.

Drivers and motor carriers have long been required to share the safety responsibility for operating CMVs and for assessing the condition of CMVs and

documenting deficiencies and repairs. Section 392.7(a) states that "No commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order . . ." Section 393.1(b)(1) provides that "[e]very motor carrier and its employee must be knowledgeable of and comply with the requirements and specifications of this part," and § 393.1(c) states that "No motor carrier may operate a commercial motor vehicle, or cause or permit such vehicle to be operated, unless it is equipped in accordance with the requirements and specifications of this part." Section 396.3(a)(1) requires that "[p]arts and accessories shall be in safe and proper operating condition at all times." Section 396.11(a) states that every motor carrier must "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," covering a specific list of parts and accessories. Section 396.11(c) states that "Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of a vehicle."

FMCSA emphasizes that the Agency is not foregoing the fundamental requirements of part 393, Parts and Accessories Necessary for Safe Operation, nor is it proposing to change any other element of the inspection, repair, and maintenance requirements of part 396. Drivers will still be required to perform pre-trip evaluations of equipment condition and complete DVIRs if any defects or deficiencies are discovered or reported during the day's operations. Motor carriers will still be required to have systematic inspection, repair, and maintenance (including preventative maintenance) programs and maintain records to prove measures are being taken to reduce to the extent practicable, the risk of mechanical problems occurring while the vehicle is in operation. In addition, motor carriers will still be required to review DVIRs that list defects or deficiencies and take appropriate action before the vehicle is dispatched again. The Agency will retain the requirement that carriers complete periodic or annual inspections and maintain documentation for the individuals who perform periodic inspections and individuals responsible for performing brake-related inspection, repair, and maintenance tasks. Furthermore, these CMVs will remain subject to roadside inspections.

In excluding passenger-carrying CMVs from the December 2014 final

rule, FMCSA noted that (1) a passenger carrier crash is a low-probability but high-consequence event in terms of potential deaths and injuries, so vehicle maintenance is paramount, (2) motorcoach drivers often need to interact with their passengers at the beginning and end of their workday, and often during the trip as well, which may impact the driver's ability to properly document defects and deficiencies in the mechanical condition of the vehicle, and (3) because they are carrying the most valuable cargo, motor carriers of passengers must exercise heightened diligence over their operations, including CMV maintenance.

FMCSA has reviewed available data spanning several years regarding vehicle out-of-service rates for both trucks and passenger-carrying vehicles, including data before and after implementation of the December 2014 final rule. FMCSA's Motor Carrier Management Information System (MCMIS) data show that the vehicle out-of-service rate for trucks is consistently about 21 percent annually—both before and after implementation of the December 2014 final rule. While the Agency received several public comments during development of the December 2014 rule expressing concern that eliminating the requirement for no-defect DVIRs would result in (1) a reduced level of safety and maintenance and (2) a higher percentage of vehicle violations and out-of-service orders, the data show that the vehicle out-of-service rate for trucks has remained nearly constant before and after implementation of the rule.

The MCMIS data also show that the vehicle out-of-service rate for passenger-carrying vehicles is approximately 6.6 percent annually—consistently less than one-third of the corresponding vehicle out-of-service rate for trucks. From this data, motor carriers of passengers—because of the nature of their operations and sensitive cargo that they transport—have established and implemented comprehensive inspection, repair and maintenance programs that help ensure that their vehicles are in safe and proper operating condition at a rate that far exceeds that of other CMVs. As noted above, implementation of the December 2014 rule eliminating the requirement for no-defect DVIRs for trucks has not resulted in a reduced level of maintenance and safety or a higher percentage of vehicle violations and out-of-service violations. Given that passenger-carrying vehicles have a significantly lower vehicle out-of-service rate generally, the Agency does not believe that extending to them the same relief from the preparation and

retention of no-defect DVIRs will result in any degradation in safety. Further, FMCSA emphasizes that it is not proposing to prohibit motor carriers of passengers from requiring their drivers to prepare no-defect DVIRs if they wish, but is only proposing to eliminate the current requirement for a no-defect DVIR.

V. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VI. Section-by-Section Analysis

FMCSA proposes amending 49 CFR part 396 by deleting a portion of the last sentence in § 396.11(a)(2) that reads “The driver of a passenger-carrying CMV subject to this regulation must prepare a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver.” FMCSA would revise the sentence to read “Drivers are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver.”

VII. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6, Dec. 18, 2018) and does not require an assessment of potential costs and benefits under section 6(a)(4) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Baseline for the Analysis

Under § 396.11, interstate passenger carriers [except private (nonbusiness) carriers, driveaway-towaway operations, or those operating only one CMV] must require their drivers to prepare a DVIR at the completion of work each day for each vehicle operated that covers at a minimum:

- Service brakes including trailer brake connections
- Parking brake
- Steering mechanism
- Lighting devices and reflectors
- Tires
- Horn
- Windshield wipers
- Rear vision mirrors
- Coupling devices
- Wheels and rims
- Emergency equipment.

The report must list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation or result in mechanical breakdown. The driver must prepare and submit the report even if no defect or deficiency is identified and the carrier must retain the report for three months from the date the written report was prepared.

Passenger carriers use various means of compliance with this requirement including paper DVIRs and associated processes for tracking and filing (e.g., separating DVIRs that identify defects from those that do not; maintaining separate files of each) and electronic systems for completing a DVIR and retaining the record.<sup>2</sup>

FMCSA does not have information on the ratio of electronic versus paper-based DVIR processes used by passenger carriers. Regardless of the means of compliance, the burden associated with the existing requirement to complete no-defect DVIRs is estimated at 155 seconds per report in the most recent approved supporting statement for Information Collection Request (ICR), OMB control number 2126–0003.

The supporting statement estimated that there are 247,496 passenger-carrying CMVs in operation and subject to the current DVIR requirements. As such, the no-defect DVIR rule imposes a substantial time and paperwork burden on passenger carriers with no discernible safety benefit.

Costs

In 2014, the Agency estimated cost savings associated with eliminating the requirement for no-defect DVIRs for property carrying CMVs. As that rule is analogous to the proposed rule, this analysis follows the same approach. The Agency’s 2018 approved supporting

statement for ICR 2126–0003 states that there are 247,496 passenger-carrying CMVs for which DVIRs must be prepared, submitted, and reviewed. Consistent with the methodology of the supporting statement and the 2014 analysis, the Agency assumes that each of these vehicles is used 65 percent of the year, and that 95 percent of DVIRs are no-defect DVIRs for which it estimated a burden of 155 seconds. Therefore, the Agency estimated a paperwork burden of 2,401,747 hours [247,496 vehicles × (0.65 × 365) × 0.95 × 155 = 8,646,288,229 seconds or 2,401,747 hours]. Using a labor rate of \$31 per hour,<sup>3</sup> the Agency estimates a potential cost savings of \$74 million per year. Because some carriers might choose to continue to require their drivers to submit no-defect DVIRs, the actual cost savings could be less than the potential. The Agency, however, assumes that a rational agent would seek to reduce costs, and that all carriers subject to the proposed rule would cease to require no-defect DVIRs. Therefore, the proposed rule would result in cost savings of \$74 million per year (Table 1). The Agency welcomes input on the degree to which carriers subject to the proposed rule would retain no-defect reporting.

TABLE 1—CALCULATION OF ANNUAL COST SAVINGS

Variable	Value
Number of CMVs .....	247,496
Frequency of daily usage .....	65%
Frequency of no-defect DVIRs .....	95%
Time to complete a no-defect DVIR (seconds) .....	155
Total time saved (hours) .....	2,401,747
Wage rate (per hour) <sup>1</sup> .....	\$31
Total savings .....	\$73,665,012

<sup>1</sup> Source: Bureau of Labor Statistics (BLS). 2019. May 2018 National Industry-Specific Occupational Employment and Wage Estimates. <https://www.bls.gov/bls/blswage.htm>. Based on occupational code 53–3021, Bus Drivers, Transit and Intercity. The wage rate is scaled up to reflect an estimate of the total labor costs; wages and salaries accounted for 70.0% of total employee cost for private industry workers in December 2018 (BLS, 2019; <https://www.bls.gov/news.release/pdf/ecec.pdf>).

Benefits

The potential for the proposed rule to result in benefits relates to the change in crash risk, if any, that would result

<sup>3</sup> This wage is specific to bus drivers. Note that this rate differs from that used in the approved supporting statement which reflected the wage for a business operations specialist in the truck transportation industry.

<sup>2</sup> J.J. Keller provides a sample paper report available at [https://www.jjkellertraining.com/Samples/28146\\_JJK\\_Motor\\_Coach\\_Vehicle\\_Inspections\\_DEMO/story\\_content/external\\_files/DVIR.pdf](https://www.jjkellertraining.com/Samples/28146_JJK_Motor_Coach_Vehicle_Inspections_DEMO/story_content/external_files/DVIR.pdf). A wide variety of vendors supply electronic DVIR systems, such as <https://www.teletcracnavman.com/our-solutions/compliance/dvir>, <https://www.verizonconnect.com/resources/article/electronic-inspection-form-dvir/>, and <https://fleetrevolution.com/fleetrevolution-bus-dvir>.

from allowing a defect-based DVIR approach. The Agency has no information to suggest that preparation, submission, and review of no-defect DVIRs produces a greater level of safety than that of a defect-based approach. Further, no degradation in safety attributable to the 2014 elimination of the no-defect DVIR requirement for trucks has been observed. Both the baseline approach and the defect-based approach ensure that vehicles are inspected so that defects are noted and addressed. Therefore, the proposed rule would be expected to maintain the same level of safety. The Agency, however, seeks comment on the safety impact of the proposed rule and notes that commenters to the analogous rule for trucks had varied opinions regarding whether no-defect DVIRs are of value with respect to safety (see Docket No. FMCSA–2012–0036).

*B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)*

This proposed rule would have total costs less than zero, and is therefore an E.O. 13771 deregulatory action.<sup>4</sup> The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2020 (the year the rule goes into effect and cost savings would first be realized), is \$1 billion. On an annualized basis, these cost savings are \$71 million.

For E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016.<sup>5</sup> In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2016, is \$771 million. On an annualized basis, these cost savings are \$54 million.

*C. Regulatory Flexibility Act (Small Entities)*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of a regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit

organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with a population of less than 50,000.<sup>6</sup>

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies try to minimize any adverse effects on these entities. Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), the proposed rule is expected to have a positive economic impact on small entities in the form of cost savings through the elimination 2.4 million paperwork burden hours.

FMCSA invites comment from members of the public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000.

**Initial Regulatory Flexibility Analysis (IRFA)**

*(1) A description of the reason why action by the Agency is being considered.*

FMCSA proposes rescinding the requirement that drivers of passenger-carrying CMVs submit, and motor carriers retain, a DVIR when the driver has neither found nor been made aware of any vehicle defects or deficiencies (no-defect DVIR). This proposed rule would remove a significant information collection burden without adversely impacting safety.

*(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.*

The objective of the NPRM is to eliminate a paperwork burden on passenger-carrying motor carriers currently subject to 49 CFR 396.11. This proposed rule is based on the authority of the 1935 Act and the 1984 Act, both of which are broadly discretionary. The rule implements, to some extent, the Administrator’s authority under § 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The NPRM is also based on the broad recordkeeping and implementation authority of § 31133(a)(8) and (10). The removal of the obligation to prepare and retain no-defect DVIRs would not compromise drivers’ ability to report vehicle problems to the carrier, or relieve carriers of the responsibility to act to correct such problems.

*(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule would apply.*

The Small Business Administration (SBA) has established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS). These size standards generally define small businesses based on the number of employees or annual receipts. For example, the SBA defines a small business in the transit and ground passenger transportation subsectors (NAICS 485) as an entity with annual revenue of less than \$15 million (13 CFR 121.201). The SBA definition of a small business applies to a firm’s highest domestic parent entity and all affiliates as a single entity. The business size is determined based on the primary economic sector of the parent company, which is not necessarily NAICS 485.

FMCSA data indicate a total of 8,189 interstate and intrastate passenger carriers. However, the Agency does not have data on company affiliations, NAICS, and revenues or employees with which to determine how many of these carriers are small entities.

*(4) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to requirements and the type of professional skills necessary for preparation of the report or record.*

The proposed rule eliminates the need for drivers of passenger-carrying CMVs to complete a DVIR on days during which they do not identify any defects. The companies for which these drivers work would also be spared the burden of maintaining no-defect reports. The proposed rule would apply to interstate passenger carriers (except private (nonbusiness) carriers, driveaway-towaway operations, or those operating only one CMV). The skills necessary for drivers to complete the report are knowledge of vehicle operation and maintenance. The skills necessary for motor carrier staff maintaining these records may be administrative as well as those of a safety or regulatory compliance clerk.

*(5) Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.*

This proposed rule does not duplicate, overlap, or conflict with any Federal rules.

*(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize*

<sup>4</sup> Executive Office of the President. Office of Management and Budget. *Memorandum M–17–21. Guidance Implementing Executive Order 13771*. April 5, 2017. Q4 on page 4.

<sup>5</sup> Executive Office of the President. Office of Management and Budget. *Memorandum M–17–21. Guidance Implementing Executive Order 13771*. April 5, 2017. Q25 on page 11.

<sup>6</sup> Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), see National Archives at <http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html>.

any significant economic impact of the proposed rule on small entities.

The Agency has concluded that there are no significant alternatives to the proposed rule that would eliminate the paperwork burden without requiring additional investment (e.g., in electronic DVIR systems).

#### D. Assistance for Small Entities

Pursuant to section 213 of SBREFA, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

#### E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$165 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any one year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule in this preamble.

#### F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires FMCSA to consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule would result in a reduction of burden hours for the "Inspection, Repair, and Maintenance" ICR, OMB control number 2126-0003. This ICR comprises ten individual information

collections, each corresponding to a different area of the inspection, repair, and maintenance requirements. This proposed rule affects only the ICR section dealing with the Driver Vehicle Inspection Reports for Burden for No-Defect DVIRs for Passenger-Carrying Vehicles.

In 2018, based on data from its Motor Carrier Management Information System (MCMIS) and Licensing and Insurance System (L&I), FMCSA estimated that there are approximately 247,496 passenger-carrying CMVs. Consistent with past analyses of this ICR, the Agency assumed that these CMVs are used on average 65 percent of the year.

FMCSA has divided the DVIR process into two steps. The Agency estimated the first step, filling out a DVIR, to take 2 minutes, 30 seconds. The Agency estimated the second step, reviewing and signing a DVIR, to take 20 seconds when defects are reported and 5 seconds when no defects are reported. When there are no defects to note, there is nothing to review on the DVIR, and the form requires only a signature. The Agency estimates that 5 percent of DVIRs note defects and 95 percent of DVIRs note no defects.

If this proposed rule were to be finalized, the burden associated with no-defect DVIRs for passenger-carrying CMVs would be eliminated. The table below illustrates how this result is calculated.

TABLE 2—DETAIL OF NO-DEFECT DVIR PRA CALCULATIONS

Activity	Number of passenger-carrying CMVs	Utilization rate (of 365 calendar days)	Percent of CMVs affected	Total DVIRs (CMVs × utilization rate × percent of CMVs affected × 365)	Burden per DVIR (seconds)	Total annual hourly burden
No Defect DVIRs, passenger-carrying CMVs.	247,496	65%	95%	152,829	155 .....	2,401,747

If this proposed rule were to be finalized, the annual reduction in hourly burdens associated with elimination of no defect DVIRs for passenger carrying CMVs is estimated to be 2,401,747 (247,496 CMVs × 65% utilization × 365 days × 95% of CMVs × 155 seconds ÷ 3,600 seconds per hour). The monetary value of this annual burden reduction, calculated using an hourly labor cost of \$31, is \$73,665,012 million (2,401,747 hours × \$31, per hour).<sup>7</sup>

<sup>7</sup> 1. Source: Bureau of Labor Statistics (BLS). 2019. May 2018 National Industry-Specific Occupational Employment and Wage Estimates.

#### G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has "substantial direct effects 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." FMCSA

<https://www.bls.gov/bls/blswage.htm>. Based on occupational code 53-3021, Bus Drivers, Transit and Intercity. The wage rate is scaled up to reflect an estimate of the total labor costs; wages and salaries accounted for 70.0% of total employee cost for private industry workers in December 2018 (BLS, 2019; <https://www.bls.gov/news.release/pdf/ecec.pdf>).

determined that this proposal would not have substantial direct costs on or for States nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Impact Statement.

#### H. E.O. 12988 (Civil Justice Reform)

This proposed rule 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.



*I. E.O. 13045 (Protection of Children)*

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing “economically significant” rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. FMCSA determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, FMCSA does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

*J. E.O. 12630 (Taking of Private Property)*

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it would not effect a taking of private property or otherwise have taking implications.

*K. Privacy*

The Consolidated Appropriations Act, 2005, (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The Agency will complete a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA will be submitted to FMCSA’s Privacy Officer for review and preliminary adjudication and to DOT’s Privacy Officer for review and final adjudication.

*L. E.O. 12372 (Intergovernmental Review)*

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*M. E.O. 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect

on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

*N. E.O. 13175 (Indian Tribal Governments)*

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

*O. National Technology Transfer and Advancement Act (Technical Standards)*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

*P. Environment (NEPA)*

FMCSA analyzed this NPRM consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680 (Mar. 1, 2004)), Appendix 2, paragraph (6)(aa). The Categorical Exclusion (CE) in paragraph (6)(aa) relates to regulations requiring motor carriers, drivers, and others to “inspect, repair, and provide maintenance for every CMV used on a public road,” which is the focus of this rulemaking. The proposed requirements in this rule are covered by this CE, there are no extraordinary circumstances present, and the proposed action does not have the potential to significantly affect the quality of the environment. The CE determination is available for inspection or copying in the

regulations.gov website listed under **ADDRESSES**.

**List of Subjects in 49 CFR Part 396**

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

For the reasons stated in the preamble, FMCSA proposes amending title 49 CFR, Code of Federal Regulations, chapter III, to read as follows:

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

■ 1. The authority citation for part 396 continues to read as follows:

**Authority:** 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524, Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 2. Amend § 396.11 by revising paragraph (a)(2) to read as follows:

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

(a) \* \* \*

(2) *Report content.* (i) The report must identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If a driver operates more than one vehicle during the day, a report must be prepared for each vehicle operated. Drivers are not required to prepare a report if no defect or deficiency is discovered by or reported to the driver.

(ii) The driver must sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified.

\* \* \* \* \*

Issued under authority delegated in 49 CFR 1.87 on: November 4, 2019.

**Jim Mullen,**

*Acting Administrator.*

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