

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386, 390, 392, 393, 396, and Appendix G to Subchapter B of Chapter III

[Docket No. FMCSA-2005-23315]

RIN 2126-AA86

Requirements for Intermodal Equipment Providers and for Motor Carriers and Drivers Operating Intermodal Equipment

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

ACTION: Final rule.

SUMMARY: FMCSA adopts regulations to implement section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The regulations require 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 to assure the safe operating condition of each intermodal chassis; maintain documentation of their maintenance program; and provide a means to effectively respond to driver and motor carrier reports about intermodal chassis mechanical defects and deficiencies. The regulations also require IEPs to mark each intermodal chassis offered for transportation in interstate commerce with a U.S. Department of Transportation (USDOT) identification number. These new 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 adopts inspection requirements for motor carriers and drivers operating intermodal equipment. Improved maintenance is expected to result in fewer chassis being placed out-of-service (OOS) and fewer breakdowns involving intermodal chassis, thus improving the Nation's intermodal transportation system. Because inadequately maintained intermodal chassis create risks for crashes, this final rule will also help ensure that commercial motor vehicle (CMV) operations are safer.

DATES: *Effective Date:* This final rule becomes effective June 17, 2009.

Implementation Date: Intermodal equipment providers must comply with the requirements for establishing

systematic inspection, repair, and maintenance programs, recordkeeping systems, and for submitting Form MCS-150C by December 17, 2009. Intermodal equipment providers must comply with the requirement to *mark their intermodal chassis* with a USDOT identification number by December 17, 2010.

Deadline for Applications for Nonpreemption: Any State that wishes to apply for a nonpreemption determination must submit the request to the FMCSA Administrator no later than June 17, 2009.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than January 16, 2009.

ADDRESSES: Please include the Docket ID Number FMCSA-2005-23315 or Regulatory Identification Number (RIN) 2126-AA86 in the subject line of your application or petition, and submit it by any one of the following methods:

- *Mail to:* Administrator, Federal Motor Carrier Safety Administration (MC-A), West Building—6th Floor, Room W60-308, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Courier or Hand-Deliver to:* The U.S. Department of Transportation, Docket Operations, West Building—Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* through the *Federal Docket Management System (FDMS)* at <http://www.regulations.gov>.

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

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations (MC-PSV), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366-4325.

SUPPLEMENTARY INFORMATION:

- I. Legal Basis
- II. Background
- III. Discussion of Comments Received on the Proposed Rule

General

- Part 385—Safety Fitness Procedures
- Part 386—Rules of Practice
- Part 390—Federal Motor Carrier Safety Regulations
- Part 392—Driving of Commercial Motor Vehicles
- Part 393—Parts and Accessories Necessary for Safe Operation
- Part 396—Inspection, Repair, and Maintenance
- Enforcement Plan
- International Implications
- Implementation Date
- Analysis of Safety Data
- Economic Analysis

IV. Summary of the Final Rule

- Part 385—Safety Fitness Procedures
- Part 386—Rules of Practice
- Part 390—Federal Motor Carrier Safety Regulations
- Part 392—Driving of Commercial Motor Vehicles
- Part 393—Parts and Accessories Necessary for Safe Operation.
- Part 396—Inspection, Repair, and Maintenance

V. Regulatory Analyses and Notices

- Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures)
- Regulatory Flexibility Analysis
- Intergovernmental Review
- Paperwork Reduction Act
- National Environmental Policy Act of 1969 (NEPA)
- Executive Order 12898 (Environmental Justice)
- Energy Effects
- Unfunded Mandates Reform Act of 1995
- Civil Justice Reform
- Protection of Children
- Taking of Private Property
- Federalism
- List of Subjects

VI. The Final Rule

I. Legal Basis

This final rule is based on the authority of the Motor Carrier Safety Act of 1984 (1984 Act) and the Motor Carrier Act of 1935 (1935 Act), both of which are broadly discretionary, and the specific mandates of section 4118 of SAFETEA-LU (Pub. L. 109-59, 119 Stat. 1144, at 1729, August 10, 2005, codified at 49 United States Code (U.S.C.) 31151).

The 1984 Act authorizes the Secretary of Transportation (Secretary) to regulate drivers, motor carriers, and vehicle equipment. Codified at 49 U.S.C. 31136(a), section 206(a) of the 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 [§ 31136(a)(1)]; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the

vehicles safely [§ 31136(a)(2)]; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely [§ 31136(a)(3)]; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators [§ 31136(a)(4)].

The final rule establishes a program to ensure that intermodal equipment (IME), mainly chassis¹ interchanged to motor carriers and used to transport intermodal containers, is safe and systematically maintained. An intermodal chassis meets the definition of a "commercial motor vehicle" in the 1984 Act [49 U.S.C. 31132(a)(1)] when used in interstate commerce because it "has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds * * *." FMCSA considered all four of the safety standards included in the 1984 Act when developing this rule. The rule will ensure that IME is maintained, equipped, loaded, and operated safely [§ 31136(a)(1)]. Entities that interchange IME to motor carriers are required to establish a program systematically to inspect, repair, and maintain their equipment, if they do not already have such a program in place. The pre-trip inspection responsibilities imposed on drivers do not impair their ability to operate CMVs safely [§ 31136(a)(2)]. Maintaining IME to the level required by this rule will prevent some roadside repairs and thus reduce the risk both of equipment failure and of crashes when CMVs stop near traffic lanes. Both results may produce a marginal improvement in the physical condition of drivers [§ 31136(a)(4)]. This rule does not deal directly with the medical qualifications of CMV drivers [§ 31136(a)(3)].

The 1935 Act provides that the Secretary may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier [49 U.S.C. 31502(b)(1)], and (2) 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 final rule is based on the Secretary's authority to regulate the safety and standards of equipment of for-hire and private carriers.

Finally, this rule implements the provisions of section 4118 of SAFETEA-LU, entitled "Roadability." Section 31151(a)(1) 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) specifies a minimum of 14 items to be included in the regulations, each of which is included in the final rule or existing Agency procedures. Departmental employees designated by the Secretary are authorized to inspect IME and copy related maintenance and repair records (§ 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 (§ 31151(c)). State, local, or tribal requirements inconsistent with a regulation adopted pursuant to § 31151 are preempted (§ 31151(d)). Specifically, any State requirement for the periodic inspection of intermodal chassis by IEPs that was in effect on January 1, 2005, is preempted on the effective date of this final rule (§ 31151(e)(1)), but 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 (§ 31151(e)(2)). All of the SAFETEA-LU roadability provisions are implemented by this final rule.

II. Background

December 21, 2006, Proposed Rule, and April 13, 2007, Notice of Public Listening Sessions and Reopening of Comment Period

On December 21, 2006, FMCSA published a notice of proposed rulemaking (NPRM) (at 71 FR 76796) to implement section 4118 of SAFETEA-LU. The public comment period for the NPRM closed on March 21, 2007. FMCSA published a notice to advise the public that it was reopening and extending the comment period until May 21, 2007, for interested parties wishing to present oral statements at the public listening sessions (72 FR 18615, April 13, 2007). The listening sessions were held on April 27, 2007, in Norfolk, VA; May 3, 2007, in Port Newark, NJ; and May 18, 2007, in Long Beach, CA. Speakers included representatives of

national and local motor carrier and intermodal industry associations, port operations organizations, a State agency, organized labor, and individual drivers and motor carriers. The issues and questions raised by speakers at the listening sessions were consistent with the issues raised in the written comments. Nevertheless, those oral presentations allowed FMCSA to learn more about the concerns of intermodal equipment providers and operators and to answer questions concerning FMCSA's proposals. Transcripts of the listening sessions are in the docket.

III. Discussion of Comments Received on the Proposed Rule

FMCSA received 57 written comments from IEP, shipper, railroad, and motor carrier organizations, trade associations, State and local governments, State organizations, an industry consultant, labor unions, a safety advocacy group, a Canadian railroad, and private citizens. The commenters included the American Association of Port Authorities (AAPA), the Commercial Vehicle Safety Alliance (CVSA), the Association of American Railroads (AAR), the Institute of International Container Lessors, Ltd. (IICL), the Intermodal Association of North America (IANA), the National Association of Waterfront Employers (NAWE), the Ocean Carrier Equipment Management Association, Inc. (OCEMA), the U.S. Maritime Alliance (USMX), the American Trucking Associations (ATA), the Canadian Trucking Alliance, the Motor & Equipment Manufacturers Association, Clark Freight Lines (Clark), Den-El Transfer, Eagle Systems, Inc., Schneider National Inc. (Schneider), Cowan Systems, LLC (Cowan), Five Star Transport, All Ways Transportation, Inc., ConSurve, Ohio State Highway Patrol (OHP), California Highway Patrol (CHP), Maryland State Highway Administration (Maryland), Georgia Department of Public Safety (Georgia), and Public Utilities Commission of Ohio (PUCO), Advocates for Highway and Auto Safety (Advocates), International Brotherhood of Teamsters (Teamsters), International Longshore and Warehouse Union (ILWU), Owner-Operator Independent Drivers Association, Inc. (OOIDA), Virginia Intermodal Management, LLC (VIM), GE Equipment Services/Rail Services (GE), Pacific Maritime Association (PMA), Pacer Stacktrain (Pacer), Terminal Maintenance Company LLC, the Canadian National Railway Company (CNRC), and 19 individuals.

The following is a summary of the specific substantive issues raised by

¹ Intermodal chassis are specifically designed to transport cargo containers. See Figure 11 of 49 CFR 393.11 for an illustration. In theory § 31151 also applies to flatbed trailers which are occasionally used to transport containers, but it is very unlikely such IEPs would interchange such equipment to motor carriers; the maintenance of such equipment would almost certainly be the responsibility of the motor carrier, not the IEP. Loaded cargo containers are transported on ships and trains to ports and rail facilities in the U.S. and then transferred to chassis trailers for transportation by highway to their final destinations. Similarly, empty containers may be loaded at shippers' facilities in the U.S. and then transported on chassis trailers to ports and rail yards for subsequent movement to other destinations in the U.S. or abroad.

commenters, along with FMCSA's responses to them, grouped according to the relevant sections of the proposed rule.

General

Although many commenters support the idea of IEPs being subject to certain Federal Motor Carrier Safety Regulations (FMCSRs), they offered divergent views on both the statutory provisions and proposed regulatory policies. For example, Teamsters believe that the proposed rules represent a significant step toward improving IME safety, but contain significant gaps that could undermine the objective of improving equipment safety. Maryland believes that although the intent of the NPRM is good, its proposed implementation and execution are problematic. CNRC expressed concern over potential conflicts between Canadian and U.S. regulations that may have an adverse impact on trade between the two countries.

Pacer maintains that the recently amended Uniform Intermodal Interchange and Facilities Access Agreement² (UIIA) creates a market-based incentive for IEPs to ensure their equipment is properly inspected and maintained.

Pacer and USMX questioned the safety statistics used to justify the proposed regulatory action.

FMCSA Response: FMCSA acknowledges commenters' concerns about the implementation of 49 U.S.C. 31151. The Agency must implement the statute, and our previous analysis of roadside inspection data presented in the preamble of the 2006 NPRM provides an indication of the safety need for this rule. As discussed in the NPRM, FMCSA performed an analysis of roadside inspection data to compare the vehicle violation and OOS inspection outcomes of intermodal container chassis and non-intermodal trailers. The results of this analysis confirmed that the percentage of intermodal container chassis operated in an unsafe mechanical condition is greater than the percentage of non-intermodal semitrailers operated in an unsafe mechanical condition.

² The Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) is a standard interchange contract, administered by IANA, developed to promote intermodal productivity and operating efficiencies through the development of uniform industry processes and procedures governing the interchange of intermodal equipment between ocean carriers, railroads, equipment leasing companies and intermodal trucking companies.

Part 385—Safety Fitness Procedures

Advocates, Teamsters, ATA, and PUCO all expressed concern with the proposal to conduct roadability reviews of IEPs without FMCSA assigning safety ratings based on such reviews. Advocates argued that allowing an IEP to undergo the equivalent of a safety fitness evaluation while refusing to assign a rating does not advance motor carrier safety. Advocates also disagreed with FMCSA's use of the Agency's Safety Status Measurement System (SafeStat) database, because they believe SafeStat has inadequate and flawed data sources and no statistical basis for indicating high-risk motor carriers. Teamsters believe that assigning safety ratings would not be a burden to motor carriers and IEPs, since other entities that undergo compliance reviews receive safety ratings.

OCEMA and IICL stated that it is unclear from the proposed regulations what defines the roadability review, when a roadability review will be performed, or what criteria would trigger a review. OCEMA and IICL believe that a definition of "roadability review" should be added to § 385.3 and should include the criteria FMCSA will consider in deciding whether to initiate such a review. Likewise, IANA asked how FMCSA would decide whether there is a pattern of recordable crashes or noncompliance that would warrant enforcement. Teamsters commented that the rule should specify the frequency with which such reviews will be performed and that penalties for noncompliance should be mandatory. OCEMA and IICL also commented that the criteria in Appendix A to part 385 for evaluating the results of a roadability review are inapplicable to IEPs. These commenters recommended that the Agency amend Appendix A to clearly define the process applicable to IEPs or, in the alternative, add a separate appendix relating to IEPs.

PMA and USMX stated that as a result of a roadability review, an IEP might be prohibited from tendering equipment from multiple locations. These commenters believe that each site must be evaluated on its own merit and that such prohibitions should be limited to the offending site. Additionally, Pacer stated that any deficiencies in equipment found at the IEP's facility which the IEP does not intend to interchange should not be considered in a roadability review.

CHP stated that the agency has experienced situations where *intrastate* motor carriers of property whose permit for *intrastate* operations has been suspended lease their equipment to

motor carriers that have an active *intrastate* permit. It recommends a provision to prevent IEPs from leasing or selling equipment to other IEPs or motor carriers, if they have been prohibited from tendering IME in interstate commerce for reasons related to the unsafe condition of equipment.

FMCSA Response: Because a roadability review is significantly limited in scope relative to a compliance review performed on motor carriers, as currently defined in 49 CFR 385.3, the Agency will not issue a "safety rating" to an IEP at the end of a roadability review. The roadability review focuses on an IEP's maintenance program, rather than a motor carrier's safety management controls. FMCSA has a full array of enforcement and compliance tools to measure and ensure an IEP's adherence to the FMCSRs, which includes, but is not limited to, roadability reviews, targeted roadside inspections, notices of violation, civil penalty proceedings, or imminent hazard OOS orders.

In a roadability review, FMCSA will assess an IEP's compliance with the safety requirements of this final rule, specifically 49 CFR parts 390, 393, and 396. If the results of the roadability review indicate that an IEP is not in compliance with the applicable regulations, the Agency will cite the IEP for noncompliance and may impose civil penalties. If an IEP's level of compliance with the FMCSRs is so poor that its continued operation constitutes an imminent hazard to the public, the Agency may prohibit the IEP from tendering its IME for interstate transportation.

In response to Teamsters' comment that other entities subject to a compliance review, such as motor carriers, hazardous materials (HM) shippers, and cargo tank facilities, receive a safety rating, FMCSA does not believe it is necessary to rate IEPs at this time. The Agency's goal is to identify IEPs that fail to establish effective inspection, repair, and maintenance programs and to take appropriate action to bring about improved levels of compliance. A rating of the IEP is not necessary to accomplish this safety objective. Additionally, FMCSA is developing a new safety compliance assurance model through its Comprehensive Safety Analysis (CSA) 2010 initiative where, among other things, FMCSA is considering the elimination of safety "ratings" for carriers, and to focus on the actual safety fitness determination.³

³ The goal of CSA 2010 is to develop and implement more effective and efficient ways for

With respect to Advocates' criticism of FMCSA's use of SafeStat to identify IEPs for potential roadability reviews, and their reference to the findings of oversight organizations, FMCSA believes it is appropriate to use algorithms, such as SafeStat, to target IEPs for enforcement interventions. The algorithms do not, in and of themselves, represent an assessment of the IEPs' maintenance programs but identify at-risk IEPs that should be contacted by the Agency.

To determine if a given IEP should be prioritized for a roadability review, FMCSA will evaluate the IEP's violation rates of the applicable rules in 49 CFR parts 390, 393, and 396. The decision whether to take enforcement action will generally be based on the results of the review. If the IEP has significant compliance issues, it may be subject to the civil penalties outlined in 49 CFR part 386. Noting Teamsters' recommendation that penalties be mandatory, FMCSA will determine through its enforcement policies and procedures the circumstances under which civil penalty proceedings should be initiated against IEPs, the same as it does with motor carriers.

As to OCEMA's and IICL's comments about the definition of the term *roadability review*, it is defined in § 385.3 of the final rule (§ 385.501 in the NPRM). FMCSA will develop enforcement policies and procedures for record sampling rates and thresholds for pursuing enforcement cases based on the results of the roadability review process.

Concerning the frequency of roadability reviews, FMCSA may initiate a roadability review, for example: If an IEP is the subject of a non-frivolous complaint, if an item of its IME (as identified in a police accident report) is involved in a crash or HM incident, if an IEP has a higher-than-average OOS rate for its chassis, or as a routine safety oversight activity to determine its compliance with applicable regulations.

FMCSA agrees with the comments of Pacer and of a participant in the Long Beach listening session that IME that is held OOS and not intended for interchange, such as by being "red-tagged" or physically separated from other IME, should not be considered

during the course of a roadability review. FMCSA already has policies and procedures in place for determining whether vehicle inspections should be conducted during an on-site visit of a regulated entity and guidelines for the selection of vehicles in this process. The Agency has revised the regulatory text in § 390.40(d) to clarify this issue. Regardless of the actual condition of the IEP's intermodal equipment, FMCSA will review some or all of its inspection, repair and maintenance files.

FMCSA agrees with PMA's and USMX's comments concerning the scope of a prohibition against tendering of IME from multiple locations. Section 385.503(c) clearly states that the Agency has the discretion to prohibit an IEP from tendering equipment from a particular location or from multiple locations. The scope of the prohibition would depend upon the nature and extent of the violations noted.

Responding to CHP's comment regarding IEPs that have been prohibited from tendering IME in interstate commerce, an IEP that gains possession or control of IME from an IEP that FMCSA has declared unfit assumes all responsibility for the chassis. Section 390.40 clearly designates IEPs as responsible for ensuring (1) all IME intended for interchange with motor carriers is in safe and proper operating condition (reference Section 390.40(d)), and (2) no IME is placed in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 386.72(b)(1) (reference Section 390.40(j)).

Part 386—Rules of Practice

Maryland believes that an IEP that misses an installment payment on a civil penalty that has previously been assessed should correct this deficiency within 30 days, not the 90-day time frame proposed in § 386.83.

Advocates stated that they could not find any language in the proposed regulation to indicate that FMCSA is prepared to act immediately to stop the violation and place the equipment or the IEP OOS. They point out that, currently 49 CFR 386.72(b)(1) states that an "imminent hazard" means a violation of certain statutes and implementing regulations involving a vehicle, employee, or commercial motor vehicle operations that substantially increases the likelihood of serious injury or death if not discontinued immediately. Advocates urged FMCSA to state unequivocally in the final regulation that the Agency will act immediately to abate the hazard until adequate proof is provided that the hazard will not recur.

FMCSA Response: In response to Maryland's comment about IEPs that miss an installment payment on a civil penalty, the 90-day period proposed in the NPRM is consistent with the existing requirement in 49 CFR 386.83(a)(2) for CMV owners and operators.

With regard to Advocates' concern about roadside OOS orders to abate violations, there is a distinction between such orders and imminent hazard orders. FMCSA personnel and State officials have always had a process for placing unsafe vehicles, including IME, out-of-service. Although the SAFETEA-LU provision creating 49 U.S.C. 31151(c) gave the Agency explicit authority to place intermodal equipment out-of-service, the Agency opted not to include this provision in the NPRM, but has now included it in § 396.9. In § 396.9(d)(1), FMCSA changed the regulatory text to require the driver to provide the report of IME placed OOS to the motor carrier or IEP. In § 396.9(d)(2), a sentence has been added requiring that repairs of items of IME placed OOS must be documented in the maintenance records for such equipment.

Part 390—Federal Motor Carrier Safety Regulations

Section 390.5, Definitions

ATA and NAWA are in agreement with FMCSA's proposal to use the exact language of the statutory definition of "intermodal equipment provider." Most other commenters, however, stated that this definition is ambiguous and confusing. IICL commented that contractors performing maintenance work are not classified as IEPs unless specifically identified as such in contract language. AAR commented that under this definition, more than one entity could qualify as an IEP. According to AAR, the entity with the written interchange agreement could be different from the entity with the contractual responsibility to maintain the IME, and through subcontracting efforts, more than one entity could have a contractual responsibility for maintaining the equipment. IANA estimates the UIIA governs the interchange of more than 90 percent of intermodal loads and believes the UIIA standard document should be incorporated by reference into the FMCSA rules. AAR and CNRC believe FMCSA should assign responsibility for compliance with the regulations to one IEP—the one whose USDOT and other identification number appears on the IME. Schneider recommended that if the owner of a chassis enters into a long-

FMCSA, its State partners and industry to reduce commercial motor vehicle crashes, fatalities, and injuries. CSA 2010 will help FMCSA and its State partners contact more carriers and drivers, use improved data to better identify high risk carriers and drivers and apply a wider range of interventions to correct high risk behavior. See <http://www.fmcsa.dot.gov/safety-security/csa2010/home.htm>.

term lease, the long-term lessee should be the IEP. GE suggests the party with direct physical control over the facility where the equipment is staged and made available to motor carriers is in the best position to comply with the requirements to maintain IME outlined in the proposed regulations.

Pacer and ConSurve commented that the definitions of *interchange* and *IEP* need to be clarified as they relate to equipment pools.

GE believes that the reference to “trailers” in the proposed definition of *intermodal equipment* could be misunderstood to include intermodal truck trailers in common use—even those not used to transport intermodal containers. To prevent confusion, GE contends that the definition of *intermodal equipment* be limited to trailers used to carry intermodal containers and intermodal container chassis. IICL made a similar comment.

FMCSA Response: On the question of whether a vendor performing maintenance could be considered an IEP, FMCSA acknowledges the difference pointed out by several commenters between the text of the preamble and the text of the proposed regulation. The text of the proposed regulation was correct because it reflected the statutory language in section 31151(f)(3); the NPRM preamble contained an error.

FMCSA agrees with IICL’s statement that the IEP is the party responsible for ensuring performance of systematic inspection, repair, and maintenance rather than a vendor or operator who is performing local services on behalf of an IEP. FMCSA also agrees with GE’s comment suggesting that the party with direct physical control over the facility where the equipment is staged and made available to motor carriers would be in the best position to comply with the requirements outlined in the proposed regulations. That is not necessarily the final answer, however.

The party responsible for the maintenance of the IME (for example, a long-term lessee) could be considered the IEP, as long as the entity: (1) Is the party interchanging the IME; and (2) also provides for its systematic inspection, repair, and maintenance. Indeed, the entity shown on an interchange agreement may contract with a third party to provide inspection, repair, and maintenance services. In some cases, such as in a port-wide chassis pool, the third party may be the one tendering the equipment, and thus would be the IEP. In others, the third party may provide maintenance services (e.g., by having maintenance technicians and their equipment at an IEP’s facility),

but does not itself tender IME to motor carriers. The intent of this final rule is to ensure that each intermodal chassis is systematically maintained by the entity that offers it for transportation in interstate commerce. When the owner of IME places its equipment in a pool and relinquishes its control to a pool operator that is contractually obligated to maintain the equipment, the pool operator would be considered the IEP.

The definitions for the terms “Intermodal Equipment Agreement” and “interchange” used in the NPRM were taken directly from 49 U.S.C. 31151(f)(2) and 31151(f)(4), respectively. Given the statutory language, FMCSA does not believe it is appropriate to consider IANA’s request to include a reference to the existing standard industry procedures and definitions in the UIIA.

As for GE’s comment that the reference to “trailers” in the proposed definition of *intermodal equipment* could be misunderstood to include intermodal truck trailers in common use, the definition for the term “intermodal equipment” was taken directly from the text of section 31151(f)(1). That definition, and the Agency’s regulation, both include the phrase “used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.” Thus, it is clear that the definition for “intermodal equipment” applies to trailers that are used in intermodal transportation and not those in common use.

Section 390.15, Assistance in Investigations and Special Studies

Teamsters, ATA, and CHP objected to the proposal to exempt IEPs from the requirement to maintain an accident register under § 390.15(b). Teamsters believe this requirement would undermine the effectiveness of the proposed rule because this information is important not only for assessing the effectiveness of the rule, but also as a tool to help FMCSA document patterns of noncompliance by IEPs, and as a guide for the industry and policy makers in the future. ATA commented that because documentation is a key element to ensure that chassis repairs are actually completed, IEPs should be required to maintain, and make available to inspectors, all records related to chassis damage and the subsequent repairs. Such documentation would also aid in compliance audits that will be undertaken pursuant to these regulations.

CHP recommended including a requirement for motor carriers involved in a recordable collision, while operating IME, to forward a copy of the report required pursuant to § 390.15(b) to the IEP and for the IEP to retain such reports in the same manner as required of the motor carrier.

FMCSA Response: FMCSA believes that the ability to track crashes involving IME does not require the IEP to maintain an accident register. The IEP is not likely to be made aware of a crash involving its IME unless a chassis unit is damaged and returned to the IEP in need of repair, or the motor carrier reports the crash to the IEP. Motor carriers are encouraged to document such crashes and report the information to FMCSA if they believe the mechanical condition of the IME contributed to the crash.

With respect to CHP’s comment about motor carriers not having an incentive to report IME damage sustained in a collision, and ATA’s comment concerning the IEP’s responsibility to make available all records related to chassis damage and subsequent repairs actually made, the new requirement under § 396.12 requires motor carriers to report “any damage, defects, or deficiencies” [emphasis added], and would require IEPs to maintain inspection, repair, and maintenance records required under § 396.3(b).

Section 390.21, Marking of Self-Propelled CMVs and Intermodal Equipment

FMCSA proposed that each unit of IME be marked with a USDOT number but requested comment on what other unique identification numbers could serve the same purpose as the USDOT number. ATA, PUCO, OHP, Advocates, and Georgia believe using a USDOT number to mark IME is the best option. Other commenters disagreed, citing concerns about the practicality of this requirement.

Several commenters suggested, as an alternative, that the IEP could use the current unique identifiers approved by the American Association of Railroads and the Intermodal Equipment Register.

In addition to their individual comments, IICL, IANA, OCEMA, and AAR joined the AAPA, the NAWA, and the USMX (Consensus Group) to “offer a consensus solution to the issue of intermodal equipment identification numbers * * *.” The Consensus Group supported use of the 10-character alphanumeric identifier currently in use to mark IME. The Consensus Group stated that although SAFETEA-LU requires that IME be matched to an IEP through a unique identifying number,

there is no law specifying that a particular provider number be marked on a chassis.

To support its recommendation, the Consensus Group pointed out that: (1) The affected chassis are already marked with the unique 10-character identifier, (2) marking 850,000 chassis in service in the U.S. with a particular provider number would cause confusion and would take as much as two years to complete at substantial cost, and (3) the 10-character identifier is already used by State and local enforcement personnel.

The Consensus Group also recommended the establishment of a Web-based equipment registry through IANA to record and maintain IEPs and equipment identification numbers in an online database that would be accessible to Federal, State, and local enforcement authorities, as well as industry participants, on a real-time basis.

VIM supported the Consensus Group registry proposal; however, another alternative proposed by VIM is to use a sticker similar to those used to show compliance with the inspection process under part 396. The sticker could be designed to last at least 12 months and could display the name and contact information of the IEP. VIM proposed that such a sticker be used as a substitute for the Agency's proposed method of identification.

In some cases, motor carriers are also IEPs. CHP stated that its Biennial Inspection of Terminals (BIT) program requires motor carriers in California to have a carrier identification number issued by the CHP, and because 95 percent of these entities are motor carriers who are already required to mark their power units with their identification number, use of another identification number was not necessary.

FMCSA Response: SAFETEA-LU has two requirements regarding identification: (1) To identify IEPs responsible for inspection and maintenance, and (2) to match IME to an IEP through a unique identifying number.

As several commenters noted, each item of IME already has a unique ID number: The Standard Carrier Alpha Code (SCAC) code, consisting of a 4-character alphabetic field identifying the owner of the IME, followed by a 6-digit numeric field unique to the individual item of equipment. However, the SCAC code does not necessarily identify the IEP. As several commenters noted during the listening sessions, third parties (such as equipment pools) may have the responsibility for systematic inspection, repair, and

maintenance of IME. In some cases, they might be responsible for a particular item of IME for months or years.

However, as was stated at the Norfolk listening session, the Hampton Roads chassis pool "loses" about 400 chassis per month to other locations and "gains" about 400 per month from other ports.

Three main alternatives for physically identifying IME were offered by FMCSA and commenters:

1. Assign a USDOT number and require marking IME as proposed in the NPRM and in accordance with § 390.21 requirements. This has the advantage of being consistent with the current regulations concerning power units. It has the potential disadvantage of high costs because chassis would have to be re-marked when they are transferred to different IEPs, which can easily happen several times a year.

2. Do not mark IME with a USDOT number, but instead use a database, such as IANA proposed, to track the IEP according to the 10-character SCAC code on the IME. The advantages associated with this alternative would be that no new marking of IME would be required and there would be no new costs associated with the activity. However, the potential costs for IEPs to establish and participate in the database, and for FMCSA and its Motor Carrier Safety Assistance Program (MCSAP) partners to access it, are unknown. The potential disadvantages are that the 10-character number does not necessarily identify the IEP; rather, the 10-character number identifies the *chassis owner*. Thus, IEPs would need to continually update their lists of units of IME for which they are responsible to make the information useful to one another and to the safety agencies accessing it. IANA estimated it would need at least 9 months to establish the database and to provide access control.

3. Assign a USDOT number, but allow it to be used on an IEP-specific sticker, similar to a Periodic Inspection (PI) form. This alternative was suggested by VIM in both its comments to the docket and at the Norfolk listening session.

FMCSA believes the third alternative provides the IEP-specific identification called for by the legislation and does so in a far less time-consuming and costly manner than was proposed in the NPRM. Therefore, the final rule provides for the assignment of USDOT numbers to IEPs through the same FMCSA process (49 CFR 390.19) as used for motor carriers. However, instead of requiring marking of chassis in the manner currently specified by 49 CFR 390.21, the rule allows the IEP the

following four options to identify its IME:

- (1) Use a label or other method of marking that identifies the IEP. The label or other marking must be maintained in a manner that retains its legibility. Alternatively, it must be protected from moisture and other damage (e.g., by use of a weatherproof container on the IME of the kind currently used for vehicle registration documents).

- (2) Identify the IME on the interchange agreement, if that document includes additional information to identify the specific item of IME (such as the Vehicle Identification Number (VIN) and the SCAC code and 6-digit unique identifying number). This second alternative is functionally similar to the identification requirements for rented CMVs, described in § 390.21(e)(2)(iii). A copy of the interchange agreement must be present while the vehicle is in transit. The IEP identification must be readily available and easily identifiable so it can be noted by a Federal, State, or local safety enforcement official during an inspection.

- (3) Mark the IME with a USDOT number in the same manner required under § 390.21, except the marking will only be required on the curb side of the equipment in order to minimize costs to IEPs.

- (4) Identify the IEP on trailer documentation carried in a weatherproof compartment attached to the item of IME. The document must include additional information to identify the specific item of IME, such as the VIN and the SCAC code and 6-digit unique identifying number. This alternative is similar to alternative (2) above, but provides another option that some IEPs might find preferable. As in alternative (2), the IEP identification must be clearly available and clearly identifiable so it can be noted by a Federal, State, or local safety enforcement official during an equipment inspection.

In order to provide IEPs sufficient time to inventory their equipment and implement procedures to identify their IME, the final rule allows IEPs until December 17, 2010 to comply with this requirement. FMCSA acknowledges the logistical challenges IEPs will collectively face in accounting for hundreds of thousands of chassis and implementing a system for marking such chassis. During the implementation period, IANA and its partners may continue their efforts to demonstrate the feasibility of their system for future consideration by the Agency. The Agency emphasizes that

IEPs must establish and implement maintenance programs much sooner than the marking requirements to ensure there are no delays in the efforts to improve safety.

Section 390.40, Responsibilities of IEPs

1. The Phrase "Timely Manner"

OOIDA, Maryland, IICL, CNRC, USMX, PMA, Schneider, NAWA, OCEMA, ATA, and IANA expressed concern with the proposed language of § 390.40(h) that "repairs or replacement must be made in a timely manner after * * *" an IEP has been "notified by a driver of such damage, defects, or deficiencies." The consensus of many of these commenters is that the phrase "timely manner" is vague, impractical, and thus possibly unenforceable. The recommendations offered by commenters to address the ambiguity range from deletion of the "timely manner" requirement (IICL), to requiring that the repair be made within 30 minutes (Schneider), to allowing up to 10 days (Teamsters) to comply with this requirement.

PMA, USMX, and NAWA, in a supplemental comment, emphasized two points: (1) That an artificial time frame sacrifices safety for speed; and (2) that this issue concerns a commercial operational and economic issue in which FMCSA should not be involved, because the mission of the FMCSA is truck safety. OCEMA also submitted a supplemental comment on the propriety of FMCSA adopting a regulation relating to the timeliness of repairs or replacements. An AAR supplemental comment expressed similar concerns.

Teamsters, OOIDA, and Maryland are concerned about the effect of the new rules on the amount of time a driver will spend waiting after a defect has been found in IME, as most drivers are paid only when they are driving. Teamsters recommended that the IEP either pay the driver for the waiting time or immediately provide alternate equipment in good condition. In addition, Teamsters recommended that the rules include provisions to protect drivers from carriers who are apt to retaliate against any driver who reports defects or damage to IME.

Similarly, OOIDA stated that drivers reporting deficient equipment to an IEP are routinely made to wait, uncompensated, for long periods of time for repairs to be made at IEP facilities. To help avoid long delays, it is common for drivers to carry tools and certain replacement parts, such as lights, and make minor repairs themselves.

OOIDA is concerned that the "timely manner" provision will not be enforced

and the level or number of complaints required to trigger an investigation of IEP violations under § 390.40 is not defined.

FMCSA Response: In response to these concerns on the use of the phrase "timely manner," one alternative FMCSA considered was to replace the word "timely" with a fixed period of time in § 390.40(h). This would address the concerns expressed by motor carriers and drivers who may be required to spend time waiting for an IEP to repair or replace IME if, for whatever reason, the IME was not in safe and proper operating condition beforehand. It would also eliminate the questions that are likely to arise from use of the NPRM's imprecise term, "timely." However, FMCSA believes setting a specific time limit could have a number of negative consequences as well. For example, it could result in an overemphasis on the time element of the IME interchange process, leading to incomplete repairs by IEPs or to frivolous complaints by drivers and motor carriers when IEPs exceed the time limit.

The other alternative considered by FMCSA was to remove the word "timely" from the proposed § 390.40(h). Although this would satisfy the concerns of commenters who contend repair or replacement of IME is an operational issue outside of FMCSA's jurisdiction, removing the word "timely" could be viewed as allowing a continuation of the status quo for those IEPs tendering equipment in need of repairs to drivers and requiring them to decide between accepting it and risking delays (at best) and crashes (at worst).

FMCSA decided to remove the term "timely" from the final regulatory text. At the same time, the Agency adds a new provision to § 390.40(d) to require IEPs to ensure that equipment intended for interchange is in safe and proper operating condition.

These revisions to the regulatory language serve two purposes. First, the new text of § 390.40(d) reemphasizes the language of 49 U.S.C. 31151(a)(1) " * * * equipment used to transport intermodal containers is safe and systematically maintained." The provision is intended to ensure IME is in proper working order and has been systematically maintained *before* it is interchanged with a motor carrier. Second, the Agency acknowledges that the word "timely" is a subjective description and it is not necessarily in the best interests of the tendering or receiving party to specify a time limit for making repairs or replacing IME.

Although OOIDA expressed concern that FMCSA would not "act

aggressively" to address complaints of drivers being coerced to accept defective IME or to endure lengthy waits for repairs or replacements of defective IME, FMCSA will consider for appropriate handling each non-frivolous complaint. The Agency encourages drivers to call the Agency's Safety Violation Hotline (1-888-DOT-SAFT) if they believe IEPs have violated the FMCSRs. Non-frivolous complaints lodged against IEPs will be investigated and may result in a roadability review or other type of enforcement and compliance intervention. If the IME has defects or deficiencies that an IEP decides are not repairable, it is the IEP's choice as to how to address the IME situation. The IEP must not offer defective IME for interchange to the carrier for transport in interstate commerce.

SAFETEA-LU does not provide the Agency with statutory authority to establish rules concerning driver compensation. This issue is more appropriately addressed through contractual arrangements or other business agreements between motor carriers (or independent owner-operators) and an IEP.

With respect to implementing a requirement suggested by Teamsters to require replacement IME to be provided "immediately," the Agency believes "immediately" would be just as difficult to translate into a consistent time period as "timely." Additionally, drivers who believe they have been penalized by their employers for refusing to violate the FMCSRs are afforded statutory protections and may file a complaint with the U.S. Department of Labor's Occupational Safety and Health Administration (*see* 49 U.S.C. 31105).

2. Other Comments on § 390.40

Teamsters commented that the proposed requirements for reasonable space and repair-replace procedures in § 390.40(g) are a core element in ensuring that the existing driver pre-trip walk around inspection (requiring the driver to confirm that the equipment is in good working condition) will be made. CNRC is concerned that the proposal would impose significant space restraints on intermodal facility operators, particularly if more than one IEP required space in the facility to make repairs to damaged IME. CNRC also commented that the requirements would be impractical if repairs are needed at an intermodal terminal where the IEP does not offer IME for interchange. Similarly, OCEMA stated that the majority of chassis interchanges will occur at facilities not under the control of the equipment provider.

Finally, NAWA stressed that the equipment interchange may take place at a "facility" other than at a marine "terminal."

Advocates stated that they could not find any language in the proposed regulation that states FMCSA is prepared to act immediately to stop a violation of § 390.40(i), which prohibits placing IME in service if it poses an imminent hazard, and to place the equipment, or the IEP as a company, OOS. Advocates urged FMCSA to state unequivocally in the final regulation that the Agency will act immediately to abate any imminent hazard until adequate proof is provided that the hazard will not recur.

FMCSA Response: As to space constraints, nothing in the rule would prohibit IEPs or any repair or maintenance providers with which they may contract, from sharing their resources, including facility space, maintenance technicians, repair services, equipment, or parts to make repairs to defective IME. Individual IEPs and maintenance facilities are in the best position to negotiate and work together to improve the safety of intermodal equipment and establish reasonable space and repair-replace procedures for defective IME. In doing so, they may well find they are all able to achieve improvements in productivity and reductions in costs.

With regard to the Advocates' concern about FMCSA acting immediately to prevent IME in need of repairs from being interchanged, there are two issues to consider: The ability of FMCSA to abate an imminent hazard, and the amount of time for FMCSA to respond to a complaint of defective IME being tendered. The Agency adopts regulatory text under § 386.72 to describe the process by which it can take action against IEPs that constitute an imminent hazard, as authorized by 49 U.S.C. 521(b)(5)(A).

As discussed in the section concerning making repairs in a "timely manner," the term "immediately" is subjective and would result in difficulties in enforcement. Therefore, FMCSA does not indicate a specific time frame for addressing these issues.

Section 390.42, Procedures To Correct Safety Records

OCEMA expressed concern about the proposed procedures for correcting safety records. It states that SAFETEA-LU provides a procedure under which motor carriers, drivers, and IEPs may seek correction of their motor carrier safety records, regardless of whether the data is released to the public. OCEMA argued that the language proposed by

FMCSA limits the correction process required by the statute to the filing of questions and concerns about information released to the public, with no recourse for information that is not released to the public.

Teamsters are concerned that the proposed rules may allow IEPs and motor carriers to redirect a citation to a driver, who is usually classified as an independent contractor (a classification Teamsters dispute). Teamsters stated that if this is not FMCSA's intent, the rules should reflect that while motor carriers and IEPs may have their records corrected, the appropriate party to receive the citation should be either an IEP or a motor carrier, not a driver.

OCEMA further commented that challenges to data provided by State agencies must first be resolved with the appropriate State agency. As an example, OCEMA suggested a situation where a minor defect (e.g., a damaged mud flap or a burned out light) that should have been caught and fixed by the driver, or that occurred after the driver left the terminal, might be attributed to the IEP whose identifying number is on the side of the chassis, potentially leading to an unwarranted roadability review. OCEMA recommends structuring SafeStat such that certain minor violations are not included in that database. In addition, OCEMA believes that drivers are only required to conduct pre-trip inspections and be satisfied that components are in good working order before the equipment is operated on the road. OCEMA contends that there is no mandatory requirement to certify the equipment condition as having passed a pre-trip inspection. Thus, it is OCEMA's understanding that the failure of a driver to report a defect establishes a presumption that items on the inspection list were in good working order when the equipment left the IEP's facility and that the text of proposed § 390.42 should be revised to reflect that presumption. PMA agreed, and also suggested alternative rule language. Further, PMA commented that, to avoid frivolous complaints and unnecessary reviews under this section, roadability reviews based on driver complaints should require adequate evidentiary support for the complaint.

FMCSA Response: IEPs and motor carriers may seek corrections to any information they believe the Agency maintains about their operations, regardless of whether the information is made available to the public. The Agency does not intend to limit the data that IEPs and motor carriers may seek to correct, and has therefore removed the phrase "data released to the public"

from the final rule. FMCSA routinely releases information to the public through its various Web sites, and to motor carriers and other parties in response to requests for data. Interested parties that are aware of inaccurate information are encouraged to contact the Agency to provide corrections to the information.

FMCSA considers non-frivolous complaints to be written allegations of a violation of the FMCSRs containing sufficient information, such as names of involved individuals or specific circumstances warranting further investigation. FMCSA has policies and procedures already in place for responding to such complaints involving motor carriers, and the same approach may be used for IEPs.

The final rule does not provide a process through which IEPs may redirect equipment citations from themselves to drivers. Generally, State and local enforcement agencies determine the entity to which citations for certain offenses will be issued. The Agency does not seek to resolve this particular issue by attempting to prescribe through regulation how individual State and local enforcement programs must be run. FMCSA's interest is to ensure that equipment safety violations found on trailing units and on power units be properly recorded so they can be addressed by the parties responsible for each CMV's systematic inspection, repair, and maintenance.

In response to comments by OCEMA and Teamsters, stating FMCSA should clarify the criteria for determining what types of defects should be considered detectable by the driver who will be transporting the IME, the Agency restates its intent that the implementing regulation ensure IEPs have in place systematic inspection, repair, and maintenance programs so the IME they tender to motor carriers is in safe and proper operating condition. The final rule includes a requirement for drivers to perform a pre-trip inspection to check the mechanical condition of the IME before it is operated on public roads. This is necessary because even IME maintained by the most safety-conscious IEP may have some defects or deficiencies that appear between the time the IME is reviewed at the end of one trip and the time it is tendered for its next trip.

Section 31151(a)(1) [49 U.S.C. 31151(a)(1)] requires FMCSA to issue regulations ensuring IME used to transport intermodal containers is safe and systematically maintained. The final rule establishes programmatic responsibility for IME maintenance.

However, the statute also carries the expectation FMCSA will issue regulations clearly indicating that a motor carrier accepting IME for transport will take seriously the requirement that the driver be satisfied that IME parts or accessories are in good working order. FMCSA recognizes that, although a driver is not generally in a position to perform an in-depth inspection of IME, the driver has a responsibility to assess whether IME components that can be inspected without going underneath the chassis (e.g., lighting devices and tires) are in good working order. The final rule includes this requirement in § 392.7(b).

FMCSA acknowledges OCEMA's concern that some drivers may fail to report a defect under the requirements of § 390.42(a). Although a driver is required to be satisfied the IME is in safe and proper operating condition before operating it, the Agency did not include a provision in the NPRM for carriers to adopt a particular method to document the visual or auditory inspections of the various components the driver would check. The Agency agrees with OCEMA that IEPs should not be held responsible for citations on equipment a motor carrier has "certified as passing the pre-trip inspection" under § 392.7(b).

There are many components and many potential defects a driver would not be able to see or hear during the pre-trip inspection. Essentially, IEPs are responsible for ensuring the safe and proper operating condition of the IME they are tendering to motor carriers for use in interstate commerce. This premise is clearly embedded in the roadability provisions of the statute.

In response to OCEMA's recommendations that FMCSA's SafeStat database not include "certain minor defects," such as burned out lights and lamp problems, FMCSA disagrees. Approximately 50 percent of OOS violations in three of the four States analyzed by FMCSA represented such minor defects. FMCSA believes a pattern of violations, especially OOS violations, may point to serious gaps in an IEP's inspection, repair, and maintenance program.

This rule, for the first time, makes IEPs subject to the FMCSRs. Fundamentally, IEPs must systematically inspect, repair, and maintain IME (for both major and minor defects) that is intended for interchange with a motor carrier. The rule also imposes additional requirements on motor carriers and drivers operating IME, who must satisfy themselves that certain IME parts and accessories are in good working order before they operate

it over the road. They must also report any known damage or deficiencies to the IEP at the time the equipment is returned. Compliance gaps could originate from IME defects not being reported to an IEP, the IEP not having a process in place to receive the reports, the IEP not taking action upon the reports it receives, or a combination of all of these scenarios. It might be necessary for FMCSA to perform a roadability review of an IEP's operations to determine the root causes for patterns of violations, and whether the causes could lead FMCSA to focus on a party other than the IEP.

The distribution of intermodal semitrailer violations described in Table 7 of the NPRM (71 FR at 76806) fell into 3 main categories: Lamps, tires, and brakes. Lamps accounted for 34 percent of the violations; tires, 12.2 percent; and brakes, 13.8 percent. The OOS violations described in Table 10 of the NPRM (71 FR at 76808–76809) fell into 4 main categories: Brakes, tires, lamps, and container securement. The distribution was brakes, 35.3 percent; lamps, 31.4 percent; container securement, 18.6 percent; and tires, 7.5 percent. In the aggregate, more than 90 percent of the OOS violations fell into these 4 categories, pointing to some relatively straightforward areas for IEPs to focus upon when establishing their intermodal equipment maintenance programs.

FMCSA agrees with OCEMA's statement that a driver's failure to report a defect establishes a presumption that items on the inspection list were in good working order when the IME departed the facility. The IEP is responsible for the systematic inspection, repair, and maintenance of the IME they tender to motor carriers. But drivers are also responsible for making an inspection of IME components before operating that equipment, and their failure to report a defect creates a presumption that items on the inspection list were in good working order when the IME departed the IEP's facility. This rule requires that the driver must be satisfied that the IME is in good working order before the equipment is operated over the road, and that drivers preparing to transport intermodal equipment must make a visual or auditory inspection, as appropriate, of certain components before operating the equipment over the road.

Section 390.44, Responsibilities of Drivers and Motor Carriers

A number of commenters expressed concern with the Agency's assignment of responsibility for compliance.

Teamsters and OOIDA believe that the proposal does not ensure the IEP, and not the driver, will be held responsible in certain situations. OOIDA believes the discussion in the NPRM preamble gives deference to the UIIA, which it contends favors the IEPs. It is also concerned that a lack of discussion on responsibility for hidden IME defects will result in drivers being issued citations for those equipment violations. Teamsters believe the driver's responsibility to inspect and report IME defects or damage should be accompanied by a provision protecting drivers from retaliation from motor carriers and IEPs.

PUCO and OCEMA believe that the responsibility for IME should be shared between IEPs, motor carriers and drivers. In OCEMA's view, drivers are expected to make minor repairs to IME. Clark recommends that the rules should require the driver and the equipment owner's representative to both sign the pre- and post-trip inspection report to eliminate any possible dispute of the equipment condition and repairs noted on the Post Trip Inspection report. Pacer commented that the final rule should ensure responsibility for any defects not reported to the IEP remain with the motor carrier.

Some commenters suggest specific changes to the proposed inspection and reporting requirements. ATA recommends that when a driver discovers an equipment deficiency during the pre-trip inspection, documentation of both the deficiency and subsequent repair should be required. To facilitate implementation and standardization, ATA also recommends that FMCSA adopt the industry's interchange agreement, the UIIA, Exhibit A, as the basis for the pre-trip deficiency report. Similarly, Teamsters argue that §§ 390.44, 392.7(b), and 396.11(a)(2) impose three separate, but overlapping inspection requirements on drivers. Teamsters recommend these requirements be consolidated in one uniform list. Maryland recommends the language used in proposed § 390.44 be consistent with that contained in § 396.13.

AAR suggests FMCSA add a paragraph (c) in § 390.44 to ensure there is one company that has responsibility as an equipment provider for every piece of IME. Paragraph (c) would read as follows: A driver or motor carrier shall not transport intermodal equipment that is not marked with an identifying number pursuant to § 390.40(b).

FMCSA Response: These new regulations call for shared safety responsibility between IEPs, motor

carriers, and drivers. (Here, as elsewhere in this discussion, drivers are acting as agents for their motor carriers.) IEPs must have systematic inspection, repair, and maintenance procedures in place ensuring they provide IME in safe and proper operating condition. Drivers must assess the condition of specified IME parts and accessories, in order to satisfy themselves that they are in good working order. IEPs must have an operational process and space available to have equipment defects repaired or equipment replaced prior to the driver's departure. When IME is returned, the driver must report actual damage or defects on the IME to the IEP. Finally, the IEP must have a process to repair damage or defects reported to them and must document those repairs.

As for the processes for assessing the condition of IME and documenting IME deficiencies and repairs, FMCSA will address, in more specific terms, the matters of the pre-trip inspection under the comments for the proposed revision of § 392.7 and the documentation under the comments for the proposed revision of § 396.11.

Section 390.46, Preemption

Maryland, CHP, Advocates, and ILWU oppose FMCSA's proposal that States must apply for a non-preemption determination before the effective date of the final rule.

FMCSA Response: Section 31151(e)(2)(B) requires States to submit their applications for non-preemption to the Secretary before the "effective date" of the final rule. FMCSA acknowledges commenters' concerns that developing these requests to submit to the Secretary for determinations of non-preemption may be time consuming. The Agency also recognizes that its own timely action will be necessary in order to properly assess and make

recommendations for disposition of such requests. Therefore, FMCSA will establish an effective date of June 17, 2009 to allow States additional time to apply for determinations of non-preemption. FMCSA believes a 6-month effective date period is appropriate to allow States time to prepare requests for non-preemption and for the Agency to act on these requests.

Part 392—Driving of Commercial Motor Vehicles

Section 392.7, Equipment, Inspection, and Use

ATA, Pacer, and OCEMA recommend the Agency adopt the industry inspection procedures by requiring the same list of inspection items as set forth in Exhibit A of the UIIA, which is used throughout the U.S. intermodal industry.

Maryland commented that proposed § 392.7(b) improperly instructed the driver to conduct an audible inspection, rather than an audible and visual inspection.

CNRC points out that FMCSA proposed drivers be given additional inspection duties with respect to IME, but nothing in the regulations provides for any driver qualifications for performing these inspections. CNRC states that, because the inspections could result in significant downtime for the IME, it is imperative the drivers know what they are looking for and provide accurate guidance to the IEP as to what safety issue requires attention.

Teamsters believe that, while drivers are in a good position to observe and report damage or defects to IME, the proposed regulations place the bulk of the responsibility for inspecting this equipment on drivers. Further, Teamsters argue that the components listed in proposed §§ 392.7(b) and

396.11(a)(2) are too broad, and recommend the regulations clarify the extent of the driver's responsibility (e.g., by stating whether the responsibility is limited to problems that are visually detectable).

FMCSA Response: FMCSA disagrees with commenters who contend the inspection checklist contained in the Appendix to the UIIA should form the basis of the FMCSA's proposed items for the driver's pre-trip review under § 392.7 and the driver-vehicle inspection report under § 396.11. First, the current edition of the inspection checklist contains a provision that is inconsistent with the FMCSRs. Exhibit A, Items 8b and 8d of the UIIA state that a tire should not have the following conditions present: "Any tire with excessive wear (2/32nds or less tread depth), visually observable bump, or knot apparently related to tread or sidewall separation; * * * Seventy-five percent or more of the tread width loose or missing in excess of 12 inches (30 cm) in circumference." However, § 393.75(a)(2) of the FMCSRs prohibits operating a motor vehicle on any tire that "has any tread or sidewall separation."

Second, the UIIA checklist also contains items that are not included under 49 CFR part 393. These components would generally be required for the IME to be in safe and proper operating condition under 49 CFR part 396. FMCSA's comparison of the UIIA to the FMCSRs is provided below. The content of the FMCSA inspection checklist is specified in § 392.7(b). To the extent that the contents of any other inspection checklist are compatible with it, and do not otherwise conflict with FMCSR requirements, IEPs and motor carriers may continue to use them.

COMPARISON OF UIIA EXHIBIT A, 49 CFR 392.7(b), AND 49 CFR 396.11(a)(2)

UIIA	Instructions	392.7(b)	396.11(a)(2)
1. Chassis Twist locks, safety latches.	Engaged, properly secured	Locking pins, clevises, clamps, or locks.	Same.
2. Slider pins	Engaged (sliding chassis)	Sliders or sliding frame lock	Same.
3. Bolsters	Not bent, container can be secured.	Tie down bolsters	Same.
4. Landing legs	90 degree position, move up and down.	Not addressed	Not addressed.
5. Sand shoes	Shoes or dolly wheels attached, secure.	Not addressed	Not addressed.
6. Crank handles	Attached, secure, operable	Not addressed	Not addressed.
7. Mud flaps	Whole, properly secured	Not addressed	Not addressed.
8. Tires		Tires	Tires.
a. Flat, underinflated, noticeable leak.	Check that condition not present	Good working order	Listed.
b. Excessive wear, $\frac{2}{32}$ " or less tread.	Check that condition not present	Good working order	Listed.
c. Mounted or inflated in contact with vehicle.	Check that condition not present	Good working order	Listed.

COMPARISON OF UIIA EXHIBIT A, 49 CFR 392.7(b), AND 49 CFR 396.11(a)(2)—Continued

UIIA	Instructions	392.7(b)	396.11(a)(2)
d. 75% or more of tread loose or missing in excess of 12 inches.	Check that condition not present	Good working order	Listed.
9. Rims	Not cracked or bent	Not addressed	Wheels, rims, lugs, tires.
10. Rear underride guard	In place, not bent under frame	Not addressed	Not addressed.
11. Electrical wiring/lights	Lights are in working order	Lighting devices and reflectors	Lighting devices, lamps, markers, and conspicuity marking material.
12. Reflectors/conspicuity treatments.	Check for reflector lenses, presence of conspicuity tape or bar.	Lighting devices and reflectors	Lighting devices, lamps, markers, and conspicuity marking material.
13. Brake Lines, air hoses, glad hands.	Check for audible air leaks and proper pressurization only.	Service brakes, including trailer brake connections.	Air line connections, hoses, and couplers.
14. Current license plate	Check to see that it is affixed	Not addressed	Not addressed.
15. Proper display of HM cargo placards.	In accordance with shipping papers.	Not addressed	Not addressed.
16. Display of non-expired Federal placards or stickers.	Check to see that it is affixed to equipment.	Not addressed	Not addressed.

In response to Teamsters' comment concerning the level of detail of the inspection activity prescribed in § 392.7, the rulemaking does not change the nature of the equipment inspection and use requirement except to add the few items of equipment specific to IME. In fact, the FMCSRs have included a requirement for drivers to be satisfied vehicles are in safe and proper operating condition since the 1930's.

In response to several commenters who questioned the meaning of the phrase "visual or audible inspection" in proposed § 392.7(b), the Agency did not intend to suggest that the inspection be limited to a visual inspection when an auditory inspection or a combination of a visual and an auditory inspection may be more appropriate. For example, some components, such as support rails, call for a visual inspection. For others, such as locking pins, both visual and auditory inspections may be more appropriate.

Regarding a driver's responsibility to inspect the CMV's service brakes, the American Association of Motor Vehicle Administrators (AAMVA) Commercial Driver's License (CDL) Manual provides guidance concerning pre-trip inspection procedures applicants must demonstrate to obtain a CDL. The procedure for checking the service brakes is designed to help the driver determine whether the brakes are working correctly and that the vehicle does not pull to one side or the other. The CDL applicant should drive the CMV forward at 5 mph, apply the service brake, and attempt to stop the vehicle to determine: (1) If it pulls to either side, and (2) that it stops when the brakes are applied. A driver preparing to transport IME may use this procedure to check the IME's brakes.

Responding to commenters who expressed concern about (1) the

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

Part 393—Parts and Accessories Necessary for Safe Operation

CHP argues that IEPs who operate IME on highways are, by definition, motor carriers. Therefore, CHP recommends changing the language "No intermodal equipment provider may operate intermodal equipment * * *" in proposed § 393.1(c) to read "No intermodal equipment provider may tender intermodal equipment for interchange * * *"

FMCSA Response: FMCSA agrees with CHP that, if an IEP itself is operating IME on a highway, the IEP is a motor carrier to the extent that its highway operations are concerned, and it would be covered by the full range of the FMCSRs applicable to those operations. This rule focuses on IEPs that tender IME to be transported over our Nation's highways in interstate

commerce by others. To clarify this, a minor revision has been made to the regulatory language.

Part 396—Inspection, Repair, and Maintenance

Section 396.3, Inspection, Repair, and Maintenance

IANA points out that proposed § 396.3 does not provide a time frame for required systematic inspections, but that the summary of the economic impact in the preamble assumes that quarterly inspections are needed. It believes this lack of clarity should be addressed in the final rule. Teamsters argue that § 396.3 should require motor carriers and IEPs to perform systematic inspections on a quarterly basis. However, IICL believes that a minimum of two inspections per year would be sufficient to protect the safety of the public.

ConSurve seeks clarity on the language of § 396.3(b), which suggests the IEP's responsibilities for equipment condition extend 30 days past interchange. In this regard, ConSurve asks on what basis this determination is made and which party is responsible for inspection, repair, and maintenance when a container/chassis is delivered but then remains at that location for more than 30 days.

In reference to proposed § 396.3(b), OCEMA contends that it is unrealistic to retain records "where the vehicle is either housed or maintained," as required by § 396.3(c), because over the course of a year, either or both of these locations may vary significantly for a given piece of IME. OCEMA recommends adding a separate paragraph describing the record retention requirements for IEPs that would also allow inspection, maintenance, and repair records to be

retained by the IEP in a central location or central electronic database.

FMCSA Response: FMCSA estimates that approximately four inspections of IME will be performed annually. However, the use cycle of IME (and other CMVs, for that matter) is what determines the appropriate number of inspections, their level of detail, and the maintenance and repair activities necessary to ensure all CMVs are in safe and proper operating condition. Therefore the IEP must perform as many inspections as necessary to maintain IME in a condition complying with the FMCSRs.

The second paragraph of § 396.3(b) states “IEPs must maintain, or cause to be maintained, records for *each unit of intermodal equipment they tender or intend to tender*” [emphasis added]. If an IEP has not yet tendered a unit of intermodal equipment, but intends to tender that piece of IME in the future (*i.e.*, the responsibility has not been transferred to another IEP), it continues to be responsible for that piece of IME until tender is made to a carrier or driver. In this instance, the tendering IEP would be required to maintain the maintenance records on that piece of IME until tender is completed. The intent of Congress in enacting the roadability provisions in SAFETEA-LU was to require the tendering IEP to systematically maintain IME and the underlying responsibility for that maintenance to be continuous. Responding to ConSurve’s question, the responsibility for inspection, repair, and maintenance for an item of IME that remains at a consignee’s location more than 30 days would depend upon the terms of the interchange agreement or any other written document executed by an IEP and a motor carrier, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

Responding to OCEMA’s question concerning retention of IME maintenance records at a central location, FMCSA allows motor carriers to retain CMV maintenance records at a location different from one where a vehicle is housed or maintained. The motor carrier is still held responsible for ensuring the records are up to date and accurate, and upon request by the Agency, the maintenance records must be made available within 2 working days. IEPs will be subject to the same requirements.

Section 396.11, Driver Vehicle Inspection Reports

ATA, AAR, and OCEMA believe that the list of components in proposed

§ 396.11(a)(2) for which the driver is responsible to report, if defective or deficient, does not include all of the safety items that can be visually checked by a driver or the defects a driver is likely to become aware of while operating the equipment. These commenters recommend FMCSA add to this list those components contained in Exhibit A to the UIIA. OCEMA also contends that this would be consistent with the requirements of § 390.44 and § 396.12 that require motor carriers’ drivers to report any damage or deficiencies which they become aware of that could affect the safe operation of the IME.

ATA suggests the Agency use photographs as part of the records requirement to document IME condition and repair status, noting that many new and modernized intermodal terminal facilities are already using them. However, ATA believes the reporting requirements set out in § 396.12 will provide a reliable record of equipment condition and repairs needed, as well as providing the tracking/audit basis for insuring that necessary repairs are actually made.

The IICL suggests FMCSA should also require motor carriers to train their drivers to properly inspect and identify defects or problems with IME, including chassis and trailers, and also provide training to drivers on how to properly complete a standardized vehicle inspection and report form. Records of such training should be available to the FMCSA upon request.

FMCSA Response: The Agency believes the list of components is appropriate to ensure IME safety when operated on highways, but IEPs may add the components in Exhibit A of the UIIA to their inspection checklists (as motor carriers are allowed to add components to their checklist). In accordance with 49 CFR 390.31, IEPs may use electronic recordkeeping, at their option.

As for requiring motor carriers to train their drivers to properly inspect IME and to identify and document equipment defects, FMCSA does not prescribe specific CMV inspection training for drivers transporting IME. These issues are currently addressed in parts 391, concerning driver qualifications, 392 concerning the driving of CMVs, and 396, concerning inspection, repair and maintenance, and already apply to drivers transporting IME.

Section 396.12, Requirements for Accepting IEP Reports

ATA recommends that the document proposed for § 396.12(a) should be developed and standardized by the

Agency and should use the safety check items listed in UIIA Exhibit A. ATA believes document standardization would facilitate driver acceptance (and use) and maintenance and repair efficiencies, as well as streamline the audit review process. Schneider suggests drivers should make the report on the industry-accepted J1 or EIR (equipment interchange receipt), so as to not add further paperwork burden to the process. CNRC believes the contents of these reports should be spelled out by FMCSA in more detail. It also argues that a more detailed report will shorten the time required to repair any damage without unnecessarily lengthening the time required to report the damage.

ATA supports the inclusion of proposed § 396.12(c), as fulfilling a longstanding need for documentation of IME repairs. Teamsters question the 3-month retention period specified in proposed § 396.12(d), stating that proposed § 396.21(b)(1) would require inspection reports to be retained for 14 months, but documentation regarding repair of defects uncovered by the inspection would only be kept for 3 months. Teamsters believe § 396.12(d) should be modified to require IEPs to keep documentation of the repair, as well as documentation that a repair was unnecessary, for as long as the IME is in use.

CHP believes the reports required by § 396.12 should include not only the motor carrier’s USDOT number but also identification of the IEP by the identification number required under § 390.21 and a unique identifier of the particular piece of IME. This would help avoid the potential for wrong identification of a particular piece of IME in terminal environments where there are hundreds of intermodal chassis virtually indistinguishable from one another.

FMCSA Response: In response to ATA’s and CNRC’s recommendation for a standardized form for drivers to use to comply with proposed § 396.12(a), the Agency supports specifying the content of the reports, but not the format of the required documents. This approach provides greater regulatory flexibility to IEPs and carriers without compromising safety. Therefore, the regulated entities may use any forms which contain the minimum information required by the final rule.

The 3-month retention period for IME maintenance records in proposed § 396.12(d) is consistent with § 396.11, which requires a 3-month retention period for DVIRs submitted to motor carriers. Concerning the proposed requirement to document a determination that a requested repair

was unnecessary, this provision is included in § 396.12(c)(2), within the "Corrective Action" section. This is separate from the § 396.3(b) requirement to retain systematic inspection, repair, and maintenance records. If an IEP repairs an item of IME in response to information recorded on a DVIR, the documentation of that repair (a work order, etc.) must be prepared and maintained as a maintenance record for a 12-month period as specified in § 396.3. Also, the information concerning the repair may be noted on the DVIR as an indicator the defect or deficiency reported by the driver was corrected.

FMCSA agrees with CHP that reports required by § 396.12 should include the motor carrier's USDOT number, the IEP's USDOT number, and a unique identifier of the particular piece of IME. This was inadvertently left out of the proposed provision at § 396.12(b)(2), but will now be included in the final rule.

Section 396.17, Periodic Inspection

Advocates argue that they cannot support FMCSA's proposed periodic inspection interval of one year for IME that is interchanged or intended for interchange to motor carriers in intermodal transportation. They believe this is far too infrequent for ensuring the roadability safety of tendered IME. Advocates strongly support the CHP proposal for a minimum of four inspections each year for tendered IME and indicate that these inspections should be spaced at 3-month intervals. ConServe agrees with this argument.

Pacer points out, however, that it currently performs inspections at least annually and believes this is sufficient to properly and safely maintain IME. Pacer adds that FMCSA regulations only require annual inspections for non-intermodal equipment and believes there is no reason that IME should be subjected to more stringent requirements.

PMA suggests that FMCSA develop a separate Appendix G to the FMCSRs for IME. It believes the inspection of some items, such as those concerning lighting devices, are only referenced broadly but other parts or items specific to intermodal chassis are not identified or included in Appendix G.

FMCSA Response: The Agency's periodic or annual inspection should not be construed to be a substitute for a systematic inspection, repair, and maintenance program. The annual inspection is only a fraction of the maintenance program—it is not the entire program. Therefore, the Agency does not believe it necessary to require more frequent "periodic inspections."

IEPs must complete the annual inspection and support a systematic inspection, repair and maintenance program throughout the entire year.

As discussed earlier, the frequency of inspections needed for a CMV, including IME, is dependent upon its usage and would be addressed in the systematic program established by the IEP. Some IEPs might find it necessary to perform more frequent inspections than others. Therefore, FMCSA believes it is more appropriate to establish a performance-based inspection, repair, and maintenance rule rather than to set a specific minimum number of inspections to accomplish the safety objective.

FMCSA does not agree with PMA's suggestion that new, chassis-specific inspection criteria be developed to ensure the proper periodic inspection of IME. Recognizing that the components on IME are similar to those on other types of trailers, the Agency believes the current periodic inspection criteria under Appendix G to the FMCSRs can be appropriately applied to IME.

Section 396.19, Inspector Qualifications

OCEMA opposed the Agency's proposed amendments to § 396.19 requiring IEPs to ensure the persons performing the inspections under § 396.17(e) are qualified and to retain evidence of each person's qualifications for as long as the person is performing annual inspections and for one year thereafter. It believes that IEPs would not be able to perform this function because: (1) Thousands of individual chassis inspectors are employed by third party vendors; and (2) the IEPs have no control over the training, hiring, or firing of these individuals. OCEMA believes the third parties should be responsible for assuring the qualifications of their inspectors and IEPs should be allowed to rely on the third-party certifications.

FMCSA Response: The Agency acknowledges that some IEPs may contract with third parties to perform inspections, repairs, and maintenance on IME. It is the IEP's responsibility to ensure their third-party contractors use persons who have the appropriate training and/or experience to inspect IME. Question 1 of the FMCSA's regulatory guidance for current § 396.19 provides a clarification of how motor carriers and IEPs may satisfy the requirement for maintaining evidence of inspector qualifications (April 4, 1997; 62 FR 16369 at 16429; also available on the Agency's Web site at <http://www.fmcsa.dot.gov>).

Section 396.23, Equivalent to Periodic Inspection

Teamsters support the requirement that an annual inspection be performed by a qualified inspector; however, they believe § 396.23 could result in the driver being cited during a roadside inspection for the motor carrier's or the IEP's failure to comply with the annual inspection requirement. They recommend that the rule be modified to make it clear that it is the motor carrier or the IEP who is liable for failure to perform the annual inspection, not the driver.

FMCSA Response: Sections 396.17, "Periodic inspection," and 396.23, "Equivalent to periodic inspection," are clear in assigning responsibility for the conduct of the annual inspection to the motor carrier or the IEP—and not the driver. Section 396.17(b) requires (1) motor carriers to inspect or cause to be inspected all motor vehicles subject to their control, and (2) IEPs to inspect or cause to be inspected IME that is interchanged or intended for interchange to motor carriers in intermodal transportation. Section 396.17(c) specifies that a motor carrier must not use a CMV, and an IEP must not tender equipment to a motor carrier for interchange, unless (1) each component identified in appendix G to Subchapter B, "Minimum Periodic Inspection Standards," has passed an inspection at least once during the preceding 12 months; and (2) documentation of such inspection is on the vehicle. Further, § 396.17(h) states that failure to properly perform the annual inspection required shall cause the motor carrier or IEP be subject to the penalty provisions of 49 U.S.C. 521(b). It does not state the driver will be liable.

Enforcement Plan

Maryland expressed concern that there is no mechanism to assign responsibility for OOS violations observed during roadside inspections to specific parties. For example, a driver picks up a chassis at the IEP's facility that the driver believes to be in safe and proper operating condition. After the driver leaves the intermodal facility, the vehicle is placed OOS during a roadside inspection. Maryland recommends that to avoid improperly citing the IEP for an OOS violation the driver should have discovered during a pre-trip inspection, the driver should keep a copy of the IEP inspection report indicating the date and time the driver picked up the IME. Enforcement personnel would then have documentation demonstrating that the driver believed the chassis was "in safe

operating condition” when he or she accepted the chassis.

Maryland also expressed concern that implementation of roadside enforcement processes would require modification of FMCSA’s information technology (IT) systems to capture both the motor carrier’s USDOT number and the IEP’s USDOT number or other unique identifier.

OHP raised several questions about FMCSA’s Proposed Enforcement Plans regarding the issuance of an Operations OOS Order (referred to as “Imminent Hazard OOS Order” in the comment) to IEPs. If it is FMCSA’s intent to have inspectors conducting roadside inspections enforce the FMCSRs and issue Imminent Hazardous OOS Orders against IEPs, OHP suggests FMCSA modify the Aspen inspection program to allow the inspector to record intermodal equipment violations on the inspection report against the IEP (similar to noting violations against a shipper of HM). Regarding communication of the OOS order to law enforcement personnel, OHP suggests FMCSA use the FMCSA Safety and Fitness Electronic Records (SAFER) Web site, as is currently used to communicate OOS orders against motor carriers. OHP also asked if an OOS order will state whether the IEP is prohibited from offering IME after the OOS order is issued, or if it would prohibit the further movement of IME already in use by the carrier or driver in interstate commerce. It suggests FMCSA consider issuing OOS orders to prohibit the intermodal service provider from offering IME after the OOS order is issued. Finally, OHP asked what FMCSA expects the roadside inspectors to do if they stop and inspect a properly credentialed motor carrier (i.e., a carrier that does not have an OOS order issued against it) using a piece of IME from an IEP that has been issued an OOS order and it could be proven the IME was offered after the OOS order was issued. To handle such situations, OHP suggests FMCSA consider providing roadside inspectors with a special violation code to use in the Aspen inspection program to indicate whether an IEP violated an OOS order. This would allow the motor carrier to continue with the current trip, assuming the vehicle passed the inspections.

FMCSA Response: Responding to Maryland’s concern about the assignment of responsibility for OOS violations, most of the process will remain as it currently stands. Federal, State, and local enforcement officials will document what is observed during the inspection, including information about the type of defects, their nature, and whether they were observed on the

power unit, the trailer, or both. They will also note the USDOT number of the power unit and the USDOT and other identification numbers of the trailer. Based upon the types of defects and deficiencies noted, equipment-related citations will be assigned to the motor carrier, the IEP, or both. However, if a driver indicated that the IME items in § 392.7(b) were in good working order when the driver accepted the equipment, the motor carrier will also be cited for “failure to inspect” violations. If any CMV is placed OOS for defects on the power unit, trailer unit, or both, the driver must not continue to operate it until the OOS condition is remedied.

As for OHP’s questions, FMCSA will assess the extent and the severity of violations found during a roadability review of an IEP. If the findings indicate a localized situation—perhaps only one facility out of several has significant compliance problems—FMCSA may consider focusing its enforcement actions on that single facility. If a single item of IME is found to have severe defects or deficiencies that are likely to cause a breakdown of the vehicle or to cause a crash, the chassis may be placed OOS during a roadside inspection.

FMCSA clarifies that Imminent Hazard OOS Orders for IEPs can be issued at any time if the Agency believes there is evidence of imminent hazard to safety.

International Implications

ATA, Advocates, and Maryland are concerned about the applicability of the proposed rule to IEPs that are located in foreign countries, but offer equipment for operation in the United States. These three commenters believe that foreign-based IEPs should be treated the same as foreign-based motor carriers, including the marking, recordkeeping, and systematic maintenance and repair requirements. Commenters also believe that IME being transported into the U.S. should be evaluated at the point of entry for safety adequacy and national security.

On the other hand, CNRC believes that costs to assure compliance for foreign-based equipment and for foreign-based IEPs could be lessened if FMCSA were to consider exempting IME in transit between points in the same foreign country from the new regulations, or IME that will be in the U.S. for less than 30 days.

FMCSA Response: All CMVs (including IME) are subject to the FMCSRs when operated in interstate commerce in the U.S. As for CNRC’s recommendation, the Agency has no jurisdiction over foreign-based IEPs that

tender foreign-based IME in transit between points in a foreign country. However, FMCSA declines to grant exemptions for IME operating within the U.S. A foreign-based IEP that tenders foreign-based IME for transportation into the U.S. must obtain a USDOT number and identify its IME accordingly. This is consistent with the current requirements for motor carriers based outside the U.S. to obtain a USDOT number and mark their power units, if they intend to operate in this country.

Implementation Date

Suggestions from commenters on the length of time needed to implement the proposed requirements range from 9–24 months. For example, IICL believes a 2-year phase-in period would be needed if IME had to be physically marked with the IEP’s identifier. However, if the existing alphanumeric identifiers were to be used, only a one-year phase-in period would be needed to implement the requirements after development of a database and reporting process.

FMCSA Response: After consideration of the comments, FMCSA will implement an effective date for this rule 6 months from the date of publication, that is, June 17, 2009 to allow States sufficient time to apply for determinations of non-preemption. In addition, FMCSA has set a compliance date of 12 months after the publication date of this rule, or by December 17, 2009, to allow IEPs time to establish maintenance programs and recordkeeping systems. This means that IEPs must register for a DOT number and set up maintenance and inspection recordkeeping systems by this date. The IEPs must mark their chassis within 24 months of the publication date of this rule, or by December 17, 2010. The two-year phase-in period provides the IEPs with sufficient time to locate and mark all of their IME.

Analysis of Safety Data

OCEMA, Maryland, and AAR commented on the analysis of IME safety data and the estimated number of IEPs.

OCEMA states that most of the analysis compares OOS violation statistics for intermodal chassis maintained by IEPs to those owned by motor carriers or to non-intermodal trailing equipment maintained by motor carriers. It believes that the data in these studies do not clearly reflect the equipment’s safety. In addition, OCEMA notes that FMCSA has demonstrated that most defects can be detected by a visual inspection and that carriers and drivers share with IEPs in the

responsibility for the safe operation of intermodal chassis.

Maryland believes that the Agency's safety data on driver's inspections of brakes (Table 10 in the Safety Analysis portion of the NPRM) gives credence to its argument that drivers do not have the "means or opportunity" to conduct the required safety inspections on IME.

AAR points out that it has reviewed the studies FMCSA used to assess the benefits of its proposed rules on intermodal chassis maintenance and has found flaws. AAR believes that several of the studies overestimated the difference in OOS rates between intermodal chassis and non-intermodal trailers. Further, AAR disagrees with the inclusion of violations associated with the securement of the intermodal container itself. AAR reasons that, because intermodal containers must be secured to chassis, they are subject to potential cargo securement problems that would not exist for non-intermodal trailers. It also disputes the conclusion of the analysis of crash data, stating that their own analysis found only 18 cases where the crash was attributable to the condition of the intermodal chassis, as opposed to the tractor or to the driver's failure to properly secure the container on the chassis. AAR estimates that this amounts to 1.9 percent of the 953 crashes in which intermodal chassis were involved.

FMCSA Response: FMCSA acknowledges that there are circumstances where a driver may not be able to perform a thorough visual inspection on a chassis presented with a container attached. However, the Agency emphasizes that the IEP is responsible for assuring that the IME it intends to tender to motor carriers and drivers is in safe and proper operating condition. IME safety is a shared responsibility and drivers are required by the FMCSRs to report equipment deficiencies or defects they note during the course of a pre-trip inspection performed in accordance with § 392.7(b), as well as any defects or deficiencies that become apparent before the time the IME is returned.

FMCSA disagrees with AAR's contention that the Agency overstated the problem of safety violations for IME. The roadside inspection data consistently show that chassis are not being maintained at a level comparable to non-chassis equipment. Furthermore, because cargo securement—whether the cargo is an intermodal container transported by a chassis trailer or another type of cargo transported upon or within a trailer—is a critical part of ensuring the safe operation of CMVs, FMCSA stands by its decision to

include cargo securement violations in its analyses.

Economic Analysis

Ten commenters addressed FMCSA's economic analysis either generally or by providing specific information or estimates that differ from those included in the NPRM. For example, USMX believes FMCSA underestimated the financial burden of the proposed regulations and that the safety benefits would not outweigh the costs. Pacer, ConSurve, and Clark expressed similar concerns.

OCEMA is concerned about FMCSA's estimate that there are 108 non-motor carrier IEPs in the U.S., of which 93 are steamship lines, 5 are railroads, and 10 are chassis pool operators. It disagrees with using this breakdown to roughly allocate the chassis population among the various chassis owning entities, including motor carriers. OCEMA argues that this distribution does not account for the fact that many of the lessors' chassis are under long-term lease to the steamship lines. Thus, steamship lines operate significantly more chassis than they actually own. OCEMA believes this misallocation of chassis among providers led FMCSA to underestimate the regulatory costs ocean carriers will experience if this rule is implemented.

IICL, ConSurve, and OCEMA believe FMCSA has significantly underestimated the total costs to comply with the rule, and, in particular, argue FMCSA failed to adequately account for the significantly higher wages paid to union workers employed at or near port facilities.

VIM believes FMCSA's estimated cost of applying the IEP number to chassis is significantly lower than the actual cost, also due in part to an underestimate of wages. This commenter marked over 20,000 chassis and states that its direct cost is well over \$25 per chassis, more than double FMCSA's cost, and notes that chassis may need to be re-marked regularly due to frequent migration among chassis pools. VIM also states that there are indirect costs associated with moving a chassis to another area simply to apply the identifying number. OCEMA agreed with VIM.

Maryland, AAR, and OCEMA question FMCSA's estimate of quarterly inspections when the rule language requires only an annual inspection.

PUCO addressed the costs to States of conducting compliance reviews (CRs) and safety audits by stating that it is concerned the amount of money available to undertake these additional tasks may not keep pace with the increased workload. Consequently,

PUCO urged FMCSA to carefully examine the budgetary needs of those conducting the reviews and ensure sufficient funds are made available for this purpose.

AAR questions the Agency's threshold analysis that the costs to comply with the rule would be paid for if the rule prevented 8–12 fatalities (or fatal crashes) per year. AAR contends that achieving what it considers a modest safety improvement may be more than one can reasonably expect even from eliminating fatalities attributable to defects in intermodal chassis. According to AAR's own analysis of the data, if 1.9 percent of the crash fatalities are due to chassis condition, then elimination of fatal crashes caused by chassis condition would prevent about 1 fatality per year—well short of the stated breakeven goal of 8 per year.

Finally, OCEMA questions FMCSA's statement that the Regulatory Flexibility Act does not apply to 93 steamship line equipment providers because they are all foreign entities. OCEMA states "[t]here are in fact a number of U.S. companies that are carriers controlling large numbers of chassis. Examples include Crowley Maritime Corporation, American President Line, Matson Navigation, and Horizon Line. It may also be of interest to FMCSA that many of the foreign steamship lines have established U.S. subsidiaries which, in some cases, are the entities that own and operate chassis."

FMCSA Response: FMCSA acknowledges that the NPRM may have underestimated the costs to some IEPs because of potentially higher labor costs associated with steamship companies, especially if these entities control a larger portion of the chassis pool than originally estimated. Because of these concerns, FMCSA has updated its cost estimates to reflect the labor costs specific to each major industry that IEPs represent. Steamship lines may lease a large fraction of chassis owned by pool operators and under this rule would be financially responsible for the inspection, repair, and maintenance of this equipment. Costs for all pool lessor chassis are evaluated using cost data applicable to steamship lines.

In response to IICL's and OCEMA's comments on wages (specifically, that cost estimates do not account for higher wages of union employees), FMCSA is using the generally accepted source for wage data, the Bureau of Labor Statistics, Occupational Employment Statistics survey. The wages reported for

steamship line employees⁴ reflect any wage premium paid to union employees in this industry group. On net, estimates of costs borne by steamship lines directly, or indirectly via long-term leases of chassis from lessors, were revised upward 10–20 percent for the final rule.

Regarding the number of inspections needed for compliance with this rule, FMCSA presented costs estimates based on a quarterly inspection program to preclude the possibility of understating compliance costs. FMCSA has subsequently added cost estimates based on a semiannual inspection program for IME. The estimates based on quarterly inspections should be viewed as an upper bound for compliance costs, while new estimates based on a semiannual inspection program provide a reasonable lower bound for these costs.

With regard to PUCO's concerns about providing adequate funding for roadability reviews, FMCSA will take this new responsibility into account as it plans to implement the requirements of this final rule.

Regarding cost-effectiveness, it is unclear whether a sufficient number of fatal crashes will be avoided to achieve positive net benefits. However, the Agency reevaluated this threshold to include all crashes avoided and industry efficiency gains, and it believes this rule would reasonably achieve a minimum level of cost-effectiveness. These results are presented in the final Regulatory Impact Analysis.

In response to OCEMA's comments on the Regulatory Flexibility Act Analysis, FMCSA realizes some steamship lines are U.S. companies or U.S.-based subsidiaries of foreign companies that own and control intermodal equipment. However, the Agency does not believe the steamship lines or subsidiaries that own and control intermodal equipment would meet the Small Business Administration's (SBA) definition of "small business." A U.S. small business concern is "independently owned and operated and * * * is not dominant in its field of operation," and has a suggested threshold payroll of 500 employees. FMCSA examined publicly available financial statements and investor relation material (where available) for entities with membership in one of the major trade organizations representing companies affected by this rule. It also looked at any additional steamship lines that provide "direct call liner services" at U.S. port facilities.

The Agency confirmed that the entities identified as being subject to increased costs as a result of this rule are either foreign-based entities that are not subject to the Regulatory Flexibility Act or otherwise do not meet the criteria for the small business designation, based on the SBA's definition of "small business."

The final rule provides IEPs with several options for identifying IME in order to eliminate almost all of the costs associated with chassis marking. Nevertheless, we recognize that frequent flows of IME into and out from an IEP's pool do raise identification costs, because a significant number of chassis change ownership frequently and will need to be re-identified each year. Consequently, the Agency added estimates of chassis re-identification costs to its economic analysis.

IV. Summary of the Final Rule

This section describes only those changes from the proposed rule text in the NPRM. The final rule also includes several provisions, not included in the NPRM, that are necessary to fully address FMCSA's compliance review and enforcement procedures for IEPs.

Part 385—Safety Fitness Procedures

The final rule incorporates the NPRM text for part 385 with several changes. A definition for the term *roadability review* is added to § 385.3 and deleted from proposed § 385.203. In §§ 385.201 and 385.203, roadability reviews were added to the list of functions that Safety Inspectors, Auditors, and Investigators can perform. FMCSA also deleted a portion of § 385.503(c) to ensure that §§ 385.503(b) and (c) provide a consistent definition for the term "imminent hazard." The Agency then added the appropriate cross-reference for the definition of "imminent hazard."

Under the final rule, FMCSA will conduct roadability reviews to evaluate the safety of IEPs and their compliance with the relevant FMCSRs. This activity will consist of an on-site examination of an IEP's inspection, repair, and maintenance operation; and records to determine its compliance with applicable FMCSRs (i.e., parts 390, 393, and 396).

In addition to IEPs identified in SafeStat, a roadability review may be conducted on an IEP that falls into one of the following categories: (1) The provider is the subject of a complaint that FMCSA determines to be non-frivolous; (2) the provider has equipment involved in a higher-than-average number of recordable crashes or HM incidents; (3) the provider has a higher than average OOS rate for its

chassis; or (4) the Agency determines there is a need for a review. FMCSA will conduct roadability reviews using the software called Compliance Analysis and Performance Review Information (CAPRI). If FMCSA finds violations of parts 390, 393, or 396, the Agency will cite the IEP for those violations and impose civil penalties according to the civil penalty structure contained in 49 U.S.C. 521(b). FMCSA may prohibit an IEP from tendering any IME from one or more locations if the provider's compliance with the FMCSRs is so deficient that continued operation constitutes an imminent hazard to highway safety under 49 U.S.C. 521(b)(5).

Part 386—Rules of Practice

The final rule amends 49 CFR part 386 concerning rules of practice for enforcement proceedings before the FMCSA Assistant Administrator. This will make part 386 applicable to IEPs subject to today's final rule concerning inspection, repair, and maintenance requirements.

FMCSA determined that § 386.72(b) needed to be amended to include an explicit reference to placing IEPs OOS when they tender IME that poses an imminent hazard to safety, although the Agency did not propose to do so in the NPRM. In title 49 of the U.S. Code, section 521(b)(5)(B) defines *imminent hazard* as a violation of certain statutes and implementing regulations involving a "vehicle, employee, or commercial motor vehicle operations which substantially increases the likelihood of serious injury or death if not discontinued immediately." [emphasis added]. Thus, if an IEP tenders equipment meeting the definition in section 521(b)(5)(B), the Secretary can stop it from tendering such equipment.

The final rule also amends § 386.83 to extend the applicability of this section to IEPs.

Finally, the final rule amends Appendix A to part 386 to add IEPs' violations of OOS orders to the penalty table in this appendix.

Part 390—Federal Motor Carrier Safety Regulations

The final rule requires IME to be identified with the USDOT number issued by FMCSA to the IEP. However, in response to commenters' concerns about the cost and complexity of re-marking chassis when IME is transferred to a different IEP, the rule allows IEPs to use several alternatives for identifying IME. It also provides a 24-month period for IEPs to comply with the IME identification requirement.

⁴North American Industry Classification System (NAICS), industry code 483100 (Deep Sea, Coastal, and Great Lakes Water Transportation).

IEPs have the choice of identifying the IME with a label, sticker, decal, or other easily applied marking, instead of the more elaborate marking (for power units) required by 49 CFR 390.21. If an IEP uses a label, it must be readily visible and legible to an inspection official during daylight hours when the vehicle is stationary. The label must be a color that contrasts sharply with the background on which it is placed, and the letters must contrast sharply in color with the background of the label. The label must be kept and maintained in a manner that retains this legibility.

As an alternative, the IEP may use a paper identification document but must protect it from damage in a weatherproof container on the IME, of the kind used for vehicle registration documents. Also, the IEP may include its USDOT number on interchange paperwork, so long as the unique identification of the item of IME is clearly delineated as well. The IEP identification (USDOT number) must be clear enough to be immediately legible to a safety official during the course of an equipment inspection. Alternatively, IME may be marked with a USDOT number in the same fashion as required under the current § 390.21, except the marking will only be required on the curb side of the equipment. IEPs may use the 10-character alphanumeric codes until the compliance date of December 17, 2010. Even though the FMCSA Administrator denied IANA's request to initiate a pilot program,⁵ the Agency asked IANA to communicate with it in the future concerning its progress in developing the Global Intermodal Equipment Registry (GIER). The Agency will consider allowing the GIER if it becomes apparent that its use could serve as an additional alternative method of complying with the provisions of 49 CFR 390.21.

Section 390.40 of the final rule lists the responsibilities of an IEP. The final rule adds a new paragraph (d) that requires IEPs to "ensure that intermodal equipment intended for interchange with motor carriers is in safe and proper operating condition." Former paragraphs (d) through (i) were re-numbered (e) through (j). The phrase, "in a timely manner," is deleted from

paragraph (h), which was paragraph (g) in the NPRM.

The order of presentation of §§ 390.42 and 390.44 are reversed from the order in which they were published in the NPRM.

Section 390.42 addresses the rights and responsibilities of drivers and motor carriers operating intermodal equipment. Former paragraph (b) was deleted and the subject covering accuracy of violations data is now addressed in § 390.44. Paragraph (a) is adopted as proposed. Paragraph (c) is revised slightly to make the text consistent with § 390.40(i) and is redesignated as paragraph (b). Section 390.44 prescribes procedures for IEPs and motor carriers to request correction of their safety records. Paragraphs 390.44(a) and (b) are expanded to state that these procedures include safety violations cited during roadside inspections the IEP or the motor carrier believed were improperly attributed to them. Paragraphs 390.44(c) and (d) are adopted as proposed.

Part 392—Driving of Commercial Motor Vehicles

The final rule amends § 392.7 to provide a more comprehensive list of IME-specific components. Drivers preparing to transport IME are required to make an inspection of specific components of IME and be satisfied the IME is in good working order before operating it over the road. FMCSA emphasizes that this does not limit a driver to performing a visual inspection where an auditory inspection or a combination of a visual and an auditory inspection may be more appropriate.

Part 393—Parts and Accessories Necessary for Safe Operation

The final rule amends paragraph (d) of § 390.40 to require that intermodal equipment intended for interchange with motor carriers to transport intermodal containers is in safe and proper operating condition. As discussed earlier in this document, FMCSA believes this change is responsive to CHP's comment concerning the definitional language of Part 393 because the new requirement focuses on IEPs as equipment providers while the current regulations continue to focus on IEPs that operate as motor carriers. Also, the final rule replaces § 393.1(a), "Scope", which was deleted in error in the NPRM.

Part 396—Inspection, Repair, and Maintenance

The final rule amends part 396 to require IEPs to establish a systematic inspection, repair, and maintenance

program and to maintain records documenting its program. Equipment providers are also required to comply with FMCSA's periodic and annual inspection regulations. Further, IEPs are required to establish a process by which a motor carrier or driver can report the defects or deficiencies on container chassis that they discover or are reported to them. IEPs are then required to document whether they repaired the defect or deficiency, or whether repair is unnecessary, before the IME is tendered for interchange.

Section 396.9 has been revised to explicitly include IME among the types of CMVs the Agency may place OOS. Although FMCSA and its predecessor agencies have always had the authority to place CMVs OOS, § 31151(c) specifically authorizes the Agency to place IME OOS. This requirement is now added to the FMCSRs in § 396.9. In § 396.9(d)(1), FMCSA changed the last part of the second sentence to require the driver to immediately mail, fax, or otherwise transmit the report to the motor carrier and IEP if the driver would not return to a carrier or IEP facility within 24 hours. In § 396.9(d)(2), a sentence was added to require that repairs to IME taken OOS must also be documented in the maintenance records for such equipment (see 49 U.S.C. 31151(c)).

The final rule also amends § 396.11 to add a new paragraph (a)(2), specifying that the IEP must have a process to receive reports of defects or deficiencies in the equipment.

Finally, the final rule adds a new § 396.12 to require 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. The text is revised from the NPRM to require the IEP to record its USDOT number and a unique identifier of the particular IME, in repair records. The latter is the 10-character alphanumeric identification assigned to the individual IME (comprised of the 4-letter Standard Carrier Alpha Code of the IME leasing company, steamship line, or other party, and a 6-digit numeric field unique to the IME), the license-plate number, the VIN, or another number permanently associated with the IME.

V. Regulatory Analyses and Notices

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

FMCSA determined this final rule is a "significant regulatory action" under Executive Order 12866, Regulatory

⁵ On January 2, 2008, IANA *et al.* submitted a petition proposing a pilot program that would have been implemented through the development and subsequent maintenance of a central database to register all chassis operated in the United States. The so-called GIER database would enable IEPs and motor carrier safety enforcement personnel to identify the responsible IEP that is associated with the existing unique alphanumeric identifier (ID), which consists of four letters followed by six numbers.

Planning and Review, and significant under DOT regulatory policies and procedures. Therefore, this final rule has been reviewed by the Department's Office of the Secretary of Transportation (OST) and the Office of Management and Budget (OMB). However, the Agency estimates that the economic impact of this final rule will not exceed the annual \$100 million threshold for economic significance. This final rule implements statutory requirements and reflects the Agency's response to comments received on the NPRM issued on December 21, 2006 (71 FR 76796).

FMCSA prepared a regulatory evaluation analyzing the costs and benefits of this rule. The regulatory evaluation indicates that the rule will not have a significant economic impact on IEPs, motor carriers, and drivers. The economic benefits of the rule are estimated to include: (1) Safety benefits from avoiding crashes involving IME, and (2) efficiency benefits resulting from a reduction in vehicle OOS orders on intermodal chassis and wait times for drivers to receive a roadworthy chassis. The results of this evaluation are summarized below. A copy of the full Regulatory Evaluation document is included in Docket Number FMCSA-2005-23315.

Estimated Compliance Costs for Intermodal Equipment Providers

Potential costs considered in this Regulatory Evaluation include costs to:

- File an Intermodal Equipment Provider Identification Report (FMCSA Form MCS-150C),
- Identify the IEP responsible for the equipment through the USDOT number assigned by FMCSA,
- Establish a systematic inspection program, and a repair and maintenance program to ensure the safe operating condition of each chassis,
- Maintain documentation of the inspection program, and
- Establish and maintain a new reporting system for identifying and correcting defective and deficient equipment.

When considering the cost impact of the rule, the Agency recognized that some of these costs are already being incurred by the motor carrier and intermodal industries. Based on information provided by commenters and participants in public listening

sessions, FMCSA believes that periodic inspections of IME by those controlling that equipment (§ 396.17(c)) are being performed at least once every 12 months, as required by the regulation. As discussed in more detail below, surveys of steamship lines and railroads that are also IEPs indicate that some are engaging in regular repair and preventive maintenance, and conducting inspections in addition to the mandatory periodic inspection. Further, because some motor carriers themselves apparently make repairs to IMEs, this final rule would shift many of these uncompensated costs back to IEPs. Therefore, for all of these reasons, the costs of this final rule are lower than would be in the absence of any inspection, repair, or maintenance activity currently performed on IME.

Total first-year costs associated with this rule range from \$7.8–\$38.8 million, depending on equipment providers' current inspection, maintenance, and repair programs for their chassis. Total discounted costs over the 10-year analysis period range from \$52.4–\$285.4 million, using a 7 percent discount rate.

Filing Intermodal Equipment Provider Identification Report (Form MCS-150C)

This final rule requires each IEP to (1) obtain a unique USDOT number by submitting an Intermodal Equipment Provider Identification Report, Form MCS-150C, to FMCSA, and (2) file an update of its report every 24 months. FMCSA estimates that 108 entities (93 steamship lines, 5 railroads, and 10 common pool operators/equipment lessors) will need to submit form MCS-150C.

FMCSA estimates that it takes 20 minutes to complete the Form MCS-150C the first time it is filed.⁶ As mandated in section 217 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), Pub. L. 106–159, 113 Stat. 1748, at 1767 (December 9, 1999), the Form MCS-150 need not be updated more frequently than every two years. FMCSA estimates that the biennial update would take considerably less time than the original submission, as little as 10 minutes, because most of the updated information is likely to be the same as the original filing, and

equipment providers will have had experience in completing the form at least once before.⁷

A supervisor or manager would most likely be responsible for filing a Form MCS-150C. According to the national employment and wage data from the May 2006 Occupational Employment Statistics survey published by the Bureau of Labor Statistics (BLS), the median hourly wages for “first line office and administrative managers”⁸ in the trucking, ocean shipping and railroad industries⁹ were \$22.57, \$21.77, and \$27.04, respectively (this analysis will use wages in the steamship industry for common pool operators). The weighted average of these hourly wage estimates is \$22.09. The BLS also publishes estimates of benefits in its National Compensation Survey (NCS).¹⁰ According to the December 2006 NCS, total hourly employee compensation in the transportation and warehousing industries is \$31.39, of which \$20.80 (or 65.4 percent) is wages and salary, and \$10.99 (or 34.6 percent) is benefits. Including benefits brings the labor cost for filing the Form MCS-150C to \$33.77 per hour.

IEPs would incur a one-time cost of \$10.26 per entity (20 minutes at \$33.77 per hour), or about \$1,108 for the 108 non-motor carrier IEPs. Biennial updates would occur in years 3, 5, 7, and 9 and cost \$5.63 per entity (10 minutes at \$33.77 per hour), or about \$554 for IEPs in each of those years. Total 10-year costs to IEPs discounted at a 7 percent rate would be \$1,754. Table 1 summarizes the estimated initial costs for IEPs to file a Form MCS-150C with FMCSA, as well as subsequent costs incurred to file the biennial updates. Motor carriers are already required to file the Form MCS-150, and will not incur any new costs.

⁷ The estimated time requirements for IEPs to fill out a Form MCS-150C for the first time and biennially are consistent with FMCSA's estimate of the time it takes motor carriers to fill out a Form MCS-150.

⁸ Standard Occupational Classification (SOC) 43–1011.

⁹ North American Industry Classification System (NAICS) 484100 (General freight, trucking), 483100 (Deep Sea, Coastal, Great Lakes Shipping), 482100 (Railroads).

¹⁰ Benefits include paid leave, supplementary pay, insurance, retirement and savings, as well as legally required items, such as social security, and workers' compensation.

⁶ FMCSA, Motor Carrier Identification Report, (65 FR 70509; November 24, 2000).

TABLE 1—COSTS TO FILE IDENTIFICATION REPORT (MCS–150 OR MCS–150C)

Provider	Number of entities	Additional costs due to the Final Rule	
		Year 1 costs	Total costs over 10 years, discounted at 7%
Steamship Lines	93	\$1,032	\$1,488
Railroads	5	69	99
Common-pool operators	10	115	166
Motor Carriers	1,900	0	0
Total	2,008	1,216	1,754

Note: Figures may not sum to totals due to rounding.

USDOT Number IEP Identification on Each Chassis

This final rule requires all IEPs to identify their chassis with a USDOT number that is assigned when the Form MCS–150C is filed with the Agency. This final rule allows IEPs to mark their IME with a label or other marking that identifies the IEP through its assigned USDOT number. The label or other marking must be legible and the IEP identification must be clearly readily visible to an enforcement official during the course of an equipment inspection.

FMCSA believes that IEPs will be able to fulfill these identification requirements at the very low cost of \$2 per chassis, which includes \$1 for labor and \$1 for materials. With regard to labor, this analysis assumes that this activity will take on average no more than a minute per chassis to affix a label or insert a document that clearly displays the IEP's USDOT number in the weatherproof container used for vehicle registration documents. Regardless of who completes these tasks at the IEP's facility, the cost (including overhead and fringe benefits) of one-minute's worth of labor will not exceed \$1.

Material costs will vary depending on which option the IEP chooses, but should also be minimal. FMCSA staff researched custom-printed weather-proof outdoor vinyl labels offered by numerous companies and found that these may be purchased in bulk-lots of 1,000—each non-motor carrier IEP controls on average about 7,500 chassis—for well below \$1 dollar per vinyl label. If an IEP chooses to simply include in the vehicle a document with its USDOT number, material costs are even lower: Commercial printing services would cost about \$0.10 per page (for each chassis), and these documents could be produced by the IEPs themselves at even lower cost. Nevertheless, this analysis rounds up all material costs to \$1.

Chassis identification will not be a one-time expense for IEPs for three main reasons. First, older chassis are retired and replaced each year. Based upon research and assessment conducted at the time the NPRM was developed, FMCSA believes that the operational life of an intermodal chassis is approximately 14 years and consequently that $\frac{1}{14}$ of the total chassis pool turns over each year.¹¹ Second, vendors that sell weatherproof vinyl

labels indicate that these labels last for about three years and therefore will need to be replaced as they wear out. Last, some IEPs report that the composition of their chassis pools changes quite often. This “churn” in chassis in a pool can reportedly be as high as 40 percent per year. Because each chassis will need to be identified with the USDOT number of the IEP that currently controls it, a large fraction of the total chassis pool may need to be re-identified each year.

Table 2 summarizes the cost of chassis identification. High “churn” rates were reported only by chassis pool lessors, and, as previously discussed, many of their chassis are actually under long-term lease to steamship lines. Consequently, these high rates of turnover are likely concentrated among less than one-quarter of the total chassis pool. Costs were calculated under a variety of churn rates that were applied to the total non-motor carrier-controlled pool, and, as can be seen, total costs do not vary greatly. This analysis will subsequently use a churn rate of 20 percent. It is also worth noting that more frequent re-identification of IME by IEPs alleviates the costs from replacing worn-out labels.

TABLE 2—COMPARISON OF CHASSIS IDENTIFICATION COSTS
[\$ Millions]

Annual chassis churn	50%	40%	30%	20%	10%	5%	0%
First Year Costs:							
Initial Marking	\$1.6	\$1.6	\$1.6	\$1.6	\$1.6	\$1.6	\$1.6
Year 1 Churn	0.8	0.6	0.5	0.3	0.2	0.1	0.0
Costs in Years 2–10, Discounted at 7%:							
Label Replacement	0.5	0.7	1.0	1.2	1.4	1.4	1.4
Churn	4.9	3.9	2.9	2.0	1.0	0.5	0.0
New Chassis	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Total 10-Year Costs, Discounted at 7%	8.5	7.6	6.8	5.9	4.9	4.4	3.8

Note: Figures may not sum to totals due to rounding.

¹¹ The operational life estimate was derived using data on the model years of chassis that underwent roadside inspections.

Systematic Inspection, Repair, and Maintenance Programs

Current regulations (49 CFR 396.17) require motor carriers or their agents to conduct periodic (annual) inspections on their equipment. Also, in accordance with § 396.3(a), every motor carrier is required to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control. The parts and accessories for those motor vehicles are required to be in safe and proper operating condition at all times a vehicle is being operated. These parts and accessories include those components specified in part 393 and any additional parts and accessories that may affect safety of operation. Such parts and accessories include but are not limited to frame and frame assemblies, suspension systems, axles and attaching parts, wheels and rims, and steering systems (§ 396.3(a)(1)). This final rule explicitly extends these requirements to IEPs.

Information collected prior to this rulemaking (surveys, port visits, anecdotal information provided by industry contacts) led FMCSA to conclude that most IEPs currently have active inspection, repair, and maintenance programs for their chassis that satisfy § 396.17, and would bear no additional costs to satisfy this particular regulation. With regard to the requirements of § 396.3, FMCSA believes that the majority of providers are performing regular inbound and outbound inspections at terminals, annual inspections, and some forms of preventive maintenance, along with maintaining records on the inspection, repair, and maintenance (IRM) activities performed. However, the Agency could not conclude that all IEPs are 100 percent in compliance with the systematic IRM requirements of § 396.3. Consequently, the Agency anticipates some additional costs associated with the requirements for systematic IRM specifically due to the need for additional IME inspections by some IEPs.

Maintenance and Repair Costs

Maintenance programs for some IEPs may need to be improved to bring them into full compliance with the requirements. However, these changes are expected to make maintenance and repair more proactive and less reactive. For instance, currently some IEPs perform maintenance only in direct response to equipment deficiencies noted by drivers or IEP personnel in the course of driver pre-trip, outbound, or inbound inspections, or during the

annual inspection required by the FMCSRs. The final rule instead now requires all IEPs to proactively conduct inspections and preventive maintenance at more regularly scheduled intervals. Overall repair costs could increase if there were cost savings from delaying certain repairs as long as possible. Some of these delayed repairs, however, may have resulted in more costly repairs later or shortened chassis life, so it is unclear the extent to which the strategy of delaying repairs reduces costs.

Delaying repairs, however, would increase the chances that repairs were undertaken by carriers after IME had left an IEP terminal, usually while the driver was en route to his or her destination. In these instances, this final rule shifts some of the uncompensated repair costs from motor carriers to IEPs. Further, if on-the-road repairs are more expensive than those done at the IEP terminals, this final rule could result in a net reduction in certain repair costs. Regardless, there is much uncertainty about the magnitude of any of these effects, and the Agency does not have data on repairs that did not occur, to be able to estimate the impact on repair costs. The Agency continues to assume, as it did in the NPRM, no additional costs for maintenance and repair as a result of this final rule.

Additional Inspections

Although any reallocation of maintenance and repair costs is assumed to have zero net cost impact, the extent to which this reallocation occurs will depend on the effectiveness of IEPs' current inspection systems at identifying needed repairs or performing regular maintenance *before* chassis are tendered to truck drivers to operate in interstate commerce. Drivers who submitted comments to the proposed rule stated that chassis are often tendered without having been adequately inspected, specifically noting that pre-trip walk-around inspections uncover problems that should have been noted and addressed earlier by IEPs. However, information from a limited survey of steamship lines indicates that the majority seem to already comply with the systematic IRM requirement. Because FMCSA is unable to conclude that full compliance already exists, it assumes that non-motor carrier IEPs will need to undertake new activities and thus incur costs in order to comply with the requirements of this rule. New costs will specifically arise from IEPs' performing additional inspections where needed.

FMCSA is uncertain about the proportion of chassis that are currently inspected often and thoroughly enough

to meet the requirement of this final rule. For this analysis, FMCSA assumes a range of compliance of 50–75 percent of the intermodal chassis population. The baseline rate of compliance may be higher, although FMCSA did not find evidence that it is at 100 percent. To calculate the costs of this final rule, FMCSA assumed that IEPs will have to conduct additional inspections on the non-compliant fraction (25 to 50 percent) of the chassis pool to meet the IRM requirement.

FMCSA based the foregoing assumptions on information from a variety of sources, including surveys, port visits, its own observations at roadside inspections, and comments on the NPRM and at the public listening sessions. Although intermodal survey responses suggest that some IEPs are already achieving a high level of compliance with this rule, FMCSA believes the survey responses are dominated by larger, better-managed firms with more rigorous inspection and repair programs. FMCSA did not survey chassis pool operators, although this industry submitted comments to the NPRM. FMCSA believes its assumption of 25 to 50 percent non-compliance does not underestimate costs.

The final rule sets no explicit requirements on the number of inspections per chassis under a systematic IRM program. However, to create cost estimates, FMCSA made assumptions about how many additional inspections IEPs would actually undertake. FMCSA assumes all chassis currently receive at least an annual inspection. In the Regulatory Evaluation for the NPRM, FMCSA assumed that typically three additional inspections (amounting to a quarterly inspection program) would be needed to bring the non-compliant portion (non-motor-carrier-controlled IME pool) into compliance. Some commenters may have interpreted that estimate as implying a requirement for 4 inspections annually; because a typical intermodal chassis travels only several thousand miles per year, this number of inspections might be excessive. In response to those commenters, for the final rule, FMCSA also analyzed the costs of semiannual inspections, where non-compliant chassis would need just one additional scheduled inspection to be brought into compliance with the FMCSRs. The Agency notes that mileage is not the only factor that contributes to chassis wear, as environmental factors may also play a prominent role in some parts of the country. A quarterly inspection regime can be used to calculate a reasonable upper bound for costs, while a semiannual program can

be used to calculate a reasonable lower bound.

This analysis assumes that it takes, on average, 45 minutes to conduct an annual inspection of an intermodal chassis. FMCSA assumes 30 minutes for all its current annual inspection programs. AAR members note that it takes 30 minutes to conduct the annual inspection of intermodal chassis. However, OCEMA indicates the annual FMCSA inspection takes one hour regardless of who is performing the inspection. The cost of conducting inspections can vary depending on the nature of the labor being used (e.g., union or non-union, employees or contractors, on-site or off-site) and the geographic region. FMCSA assumes a transportation equipment inspector will devote 30 minutes to the inspection. The inspector would be supported by a truck maintenance technician who is assumed to devote 15 minutes to the inspection.¹²

FMCSA examined wages from three distinct industry segments: Motor carriers, steamship lines, and railroads.¹³ Public comments note that common pool operators may lease a

large fraction of their chassis to steamship lines and also are often located near ports. For both reasons, FMCSA believes wages specific to steamship lines are also applicable to chassis pool operators. A transportation equipment inspector earns wages of \$16.88, \$23.04, and \$27.56 per hour in the motor carrier, railroad, and steamship industries, respectively. A truck maintenance technician earns wages of \$17.14, \$22.33, and \$23.86 per hour in the motor carrier, railroad, and steamship industries, respectively. As previously discussed regarding the costs of filing the Form MCS-150C, wages account for 65.4 percent of total compensation. Applying these data and the estimated time for an inspection yields a per inspection cost of wages of \$19.46, \$26.15, and \$30.19 for motor carrier, railroad, and steamship industries, respectively. Because this rule extends no additional requirements to motor carriers, additional costs are based only on chassis controlled by non-motor carrier IEPs.

FMCSA also estimated existing IRM costs for all IEPs for comparison with

the additional costs of the final rule. Using responses from the recent IEP surveys, FMCSA estimates that the average cost of repair and maintenance was \$1,356 per chassis per year for railroads, and \$688 per chassis per year for steamship lines. When put on a per mile basis (also taken from the survey responses), these estimates are close (\$0.13 for railroads and \$0.15 for steamship lines). For the purposes of this analysis, the average, \$1,022 per chassis per year, is used as the expected cost of repair and maintenance.

Table 3 shows the estimated costs of IRM programs for equipment providers. Costs are presented for two scenarios, that 50 percent of chassis are not part of compliant IRM programs, and that 25 percent are not. For each scenario, two estimates on the additional number of inspections needed to achieve compliance, one or three, are presented. Additional costs of this rule for new inspections to meet systematic IRM requirements were estimated to be between \$6.0 million and \$36.0 million per year.

TABLE 3—ESTIMATED ANNUAL COSTS OF SYSTEMATIC INSPECTION, REPAIR, AND MAINTENANCE PROGRAMS FOR INTERMODAL CHASSIS

IEP	Firms	Chassis	Existing costs (\$ millions)				Costs from final rule (\$ millions)			
			Inspections per year currently performed on compliant chassis*				Additional inspections per year needed to bring non-compliant chassis into compliance*			
			4		2		3		1	
			Percent of chassis currently in full compliance		Percent of chassis currently in full compliance		Percent of chassis currently not in compliance		Percent of chassis cur- rently not in compliance	
			50%	75%	50%	75%	50%	25%	50%	25%
Steamship Lines	93	392,000	430.2	439.1	418.4	421.3	17.8	8.9	5.9	3.0
Railroads	5	96,200	104.6	106.5	102.1	102.7	3.8	1.9	1.3	0.6
Common Pool Operators	10	320,000	351.2	358.4	341.5	343.9	14.5	7.2	4.8	2.4
Motor Carriers	1,900	41,800	46.0		44.3		0.0		0.0	
Total	2,008	850,000	932.0	950.0	906.3	912.3	36.0	18.0	12.0	6.0

* All chassis are assumed to undergo an annual inspection.

Note: Figures may not sum to totals due to rounding.

Recordkeeping

FMCSA believes that the systematic IRM requirement will prompt IEPs to conduct one to three additional inspections per year on a subset of the

total number of chassis. The Agency assumes that IEPs are already keeping records on the inspections they currently perform. FMCSA estimates that the time needed to document and

file each inspection report is approximately 3 minutes.¹⁴ Including benefits, a transportation equipment inspector earns wages between \$26 and \$42 per hour. The 3 minutes of an

¹² All wage figures are from the May 2006 DOL Occupational Employee Statistics (OES). The specific occupations used were Transportation Inspector (53-6051) and Bus and Truck Mechanic (49-3031).

¹³ Specifically, industries as defined by the North American Industry Classification System (NAICS): General Freight Trucking (488400), Rail Transportation (482100), and Deep Sea, Coastal, and Great Lakes Water Transportation (483100). Where specific occupations were not included in

the latter, industry Support Activities for Water Transportation (488300) was used.

¹⁴ FMCSA's supporting document on information collection titled, "Inspection, Repair, and Maintenance," is covered by OMB approval number 2126-0003.

inspector's time devoted to recordkeeping would cost IEPs, on average, wages of no more than \$2 per

inspection. Table 4 presents the annual estimated cost of recordkeeping for the

additional inspections underlying the costs presented in Table 3 above.,

TABLE 4—ADDITIONAL ANNUAL RECORDKEEPING COSTS

IEP	Firms	Chassis	Costs from final rule (\$ millions)			
			Additional inspections per year to reach full compliance			
			3		1	
			Percent of chassis currently not in compliance		Percent of chassis currently not in compliance	
			50%	25%	50%	25%
Steamship Lines	93	392,000	1.2	0.6	0.4	0.2
Railroads	5	96,200	0.3	0.1	0.1	0.0
Common Pool Operators	10	320,000	1.0	0.5	0.3	0.2
Total	108	808,200	2.4	1.2	0.8	0.4

Note: Figures may not sum to totals due to rounding.

Defective and Deficient Equipment Reporting

The final rule requires that IEPs establish a system for motor carriers and drivers to report to IEPs any defects or deficiencies in tendered chassis that would affect the safety of the operation of those chassis or result in its mechanical breakdown on the road. This change potentially requires: (1) The establishment of the system; (2) the minimum information that the intermodal provider must obtain from

motor carriers and drivers; (3) the corrective actions that must be taken when a chassis is identified as being defective or deficient in some way; and (4) the retention period for all documentation generated as a consequence of this system. This requirement will be added to the FMCSRs in a new § 396.12, "Procedures for intermodal equipment providers to accept reports required by § 390.44(b)."

The requirements of § 396.12 are not expected to result in additional costs to

IEPs or motor carriers and their drivers. Surveys and other research indicate that all required actions are currently performed in some form. A detailed discussion of the requirements of § 396.12 is contained in the full Regulatory Evaluation in the docket.

Total Compliance Costs of the Regulation

Table 5 summarizes the expected compliance costs attributable to the regulation.

TABLE 5—TOTAL COSTS OF INTERMODAL RULE

[\$ millions]

Period	Additional annual inspections needed to achieve full compliance	Current percentage of non-compliant chassis	Filing form MCS-150C	Chassis marking	Inspections	Record-keeping	Total
Year 1	3	50	0.001	1.6	36.0	1.2	38.8
		25			18.0	0.6	20.2
	1	50			12.0	0.4	14.0
		25			6.0	0.2	7.8
10-Year Discounted at 7%	3	50	0.003	5.9	270.7	8.8	285.4
		25			135.3	4.4	145.6
	1	50			90.2	2.9	99.0
		25			45.1	1.5	52.4
10-Year Discounted at 3%	3	50	0.003	6.6	316.5	10.3	333.4
		25			158.2	5.2	170.0
	1	50			105.5	3.4	115.6
		25			52.7	1.7	61.1

Note: Figures may not sum to totals due to rounding.

The first-year costs are estimated to be between \$7.8 million and \$38.8 million. The present value of compliance costs over ten years, calculated using a 7

percent discount rate, are expected to be between \$52.4 million and \$285.4 million. With a 3 percent discount rate, these ten-year costs are expected to be

between \$61.1 million and \$333.4 million. This wide range of cost estimates primarily reflects the Agency's decision to include a lower cost

scenario for how IEPs will meet the systematic IRM requirements of this final rule.

Safety and Economic Benefits of Improving Container Chassis Maintenance

The expected benefits of the final rule include the following:

- Prevented crashes:
 1. Prevented injuries;
 2. Saved lives;
 3. Reduced property damage;
- Increased operational efficiency of intermodal chassis by:
 1. Reduced vehicle out-of-service rate;
 2. Reduced average unproductive time spent by truckers waiting for chassis repairs on the road;
 3. Reduced average time spent by truckers at rail terminals or port facilities waiting to be given a roadworthy chassis.

The following sections quantify the potential benefits of the rule by estimating the number of crashes avoided to justify the compliance costs directly or indirectly imposed by the rule. These sections also provide a qualitative discussion of benefits of the rule where quantitative estimates are not available.

Threshold Analysis for Safety Benefits

FMCSA is cautious in presenting safety benefits because it lacks data that systematically identify crashes associated with hauling intermodal freight. Most crash data do not indicate specifically what type of semitrailer is involved in the crash, and the limited amount of detail in such data makes any conclusions based on crash analyses less certain. One can determine from carriers' filings of Form MCS-150 if the motor carrier involved in a crash hauls, exclusively or in part, intermodal freight. However, the information collected on that form may not be accurate, and carriers are not required to indicate what fraction of carriers' business is devoted to intermodal freight, so estimates derived from this information are extremely uncertain. Furthermore the small fraction of crash reports that identify an intermodal chassis often do not present enough information to allow the Agency to determine whether poor chassis condition was a contributing factor in the crash.

FMCSA conducted a threshold analysis of the benefits needed to make this final rule cost effective. Because the costs of this rule are relatively low, even small safety benefits would make it cost beneficial. The estimated average cost of a truck crash involving a truck tractor

with a single semitrailer is \$170,229.¹⁵ Based on the cost estimates presented in Table 5, this final rule will need to prevent between 40 and 230 crashes per year to yield positive net benefits.¹⁶

Benefits Associated with Increased Operational Efficiency

The final rule is likely to produce some productivity benefits by enabling the hauling of intermodal freight to function more smoothly through a reduction of vehicle OOS rates. According to information provided to FMCSA by ATA members, carriers spend, on average, 3 hours of a driver's time and 1.5 hours of other employees' time to correct each vehicle OOS order received on chassis tendered by an equipment provider.¹⁷ The opportunity cost for a truck driver and one employee's time is calculated at \$140 per vehicle OOS order attributable to a problem chassis.¹⁸ Given that, on average, between 18.5 and 25 percent of roadside inspections of intermodal chassis result in vehicle OOS violations, the cost savings associated with this final rule, in terms of the opportunity cost of the driver and motor carriers' time, would quickly add up, as there are an estimated 850,000 intermodal chassis in operation in the U.S.

¹⁵ Zaloshnja, Eduard and Ted Miller (December 2006). "Unit Costs of Medium and Heavy Truck Crashes." <http://ai.volpe.dot.gov/CarrierResearchResults/PDFs/Crash%20Costs%202006.pdf>. These costs represent the present value of all costs over the victim's expected life span that result from a crash, computed using a 4 percent discount rate. The costs are medically related costs, emergency services costs, property damage costs, lost productivity, and monetized value of the pain, suffering, and quality of life adjustments. Zaloshnja and Miller present estimates in 2005 dollars; this evaluation adjusts these estimates to 2006 dollars using the 2.93 percent increase in the gross domestic price deflator from 2005 to 2006. Zaloshnja and Miller use a \$3.0 million value of a statistical life (VSL). We have recomputed crash costs using a \$5.8 million VSL in accordance with DOT guidance (Office of the Secretary of Transportation, "Treatment of the Economic Value of a Statistical Life in Departmental Analyses." Feb. 2008. Available at: <http://ostpxweb.ost.dot.gov/policy/reports/080205.htm>) and also published at 73 FR 35194, June 20, 2008.

¹⁶ The net present value of a single crash avoided per year over 10 years, with a 7 percent discount rate, is \$1,242,863. Total discounted costs over ten years are divided by this number to calculate the annual average number crashes.

¹⁷ Average revenue per tractor would also measure opportunity cost, but this analysis only measures the cost of staff time, not equipment (the tractor and trailer), thereby resulting in a lower potential cost savings estimate.

¹⁸ Using National employment and wage data, the median hourly wage for a truck driver is estimated at \$16.01 and supervisor/manager is estimated at \$21.08. With fringe benefit added to the wages, the hourly wage and salaries are estimated at \$23.39 and \$30.79 for truck driver and the manager/supervisor, respectively.

FMCSA estimated the number of OOS orders this final rule would eliminate. A complete discussion on the methodology behind these estimates is contained in the full Regulatory Evaluation in the docket. Based on its research, FMCSA assumed intermodal chassis have OOS rates of 19 percent and that this final rule will reduce this OOS rate 25 percent, to a 14.25 percent rate. This is slightly above the trailing-unit OOS rate of 13 percent for non-intermodal carriers. In 2006, FMCSA determined that 21,154 inspections were performed on intermodal chassis, resulting in 3,982 OOS orders. FMCSA currently estimates that 95 percent of chassis are tendered by non-motor carrier IEPs, and therefore 95 percent of these OOS orders are for non-motor carrier IME. If this rule eliminated 25 percent of OOS orders on non-motor carrier IME, it would result in a reduction of about 950 OOS orders per year. Applying the estimated cost of \$140 per OOS order yields an annual benefit of \$133,000. The net present value of this benefit over 10 years, discounted at a 7 percent rate, will be about \$1 million.

FMCSA anticipates this final rule, by mandating that IEPs implement systematic IRM, will reduce the number of defective chassis being offered or tendered for transportation in interstate commerce, and thereby reduce the time needed by truck drivers to find a roadworthy chassis at intermodal terminal facilities.

Regulatory Flexibility Analysis

FMCSA believes there will not be a significant economic impact on a substantial number of small entities. Chapter 4.2 of the Regulatory Evaluation in the docket contains the full Regulatory Flexibility Analysis for this rule. The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (5 U.S.C. 601 *et seq.*) requires agencies to consider the impact of regulations on small businesses, small non-profit organizations, and small governmental jurisdictions, unless the Agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities (SEISNOSE). This final rule will affect primarily 93 steamship lines, 10 IME pool operators, and 5 railroads—all of which are either large entities or foreign-owned businesses. This final rule does not apply to a substantial number of small entities.

Intergovernmental Review

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities do not apply to this program.

Paperwork Reduction Act

FMCSA determined that this final rule requires revisions to two existing information collections. OMB Number 2126-0003 entitled, "Inspection, Repair and Maintenance," will expire on April 30, 2009. The currently-approved "total annual burden hours" for 2126-0003 is 59,093,244 hours.

OMB Number 2126-0013 entitled, "Motor Carrier Identification Report," expires March 31, 2011. The currently-approved "total annual burden hours" for 2126-0013 is 119,270 hours.

The amendments in this final rule that affect existing information collections include the requirements for entities that offer intermodal container chassis for transportation in interstate commerce to: (1) File an Intermodal Equipment Provider Identification Report (FMCSA Form MCS-150C, a variant on the currently-approved Motor Carrier Identification Report, Form MCS-150); (2) establish a systematic inspection, repair, and maintenance program to ensure the safe operating condition of each IME tendered to motor carriers and drivers, and to maintain documentation of the program in accordance with 49 CFR part 396; and (3) provide a means for an IEP to effectively respond, using a variant of the Driver-Vehicle Inspection Report currently approved by OMB, to driver and motor carrier complaints about the condition of intermodal container chassis.

The requirement for IEPs to file the Form MCS-150C report is expected to add only 36 burden hours to data collection 2126-0013 in the first year after this rule takes effect, and 18 hours every 2 years thereafter for updates to the form. In addition, it is anticipated that electronic recordkeeping will reduce, to the greatest extent practicable, the costs associated with complying with the recordkeeping requirements.

National Environmental Policy Act of 1969 (NEPA)

FMCSA analyzed this final rule for the purpose of the NEPA (42 U.S.C. 4321 *et seq.*) and conducted an environmental assessment under the procedures set forth in FMCSA Order 56101.1, published March 1, 2004 (69 FR 9680). Under FMCSA Order 56101.1, the environmental assessment focuses only on those resource categories that are of interest to the public or important to the decision, including Public Health and Safety, Hazardous Materials Transportation, Solid Waste Disposal,

and other Special Areas of Consideration. In addition, the NEPA analysis also incorporates the rule's potential impact on Historic Properties (Section 106 Analysis under the National Historic Preservation Act) and Section 4(f) Determinations under the DOT Act (recodified at 49 U.S.C. 303(c)).

The results of the Environmental Assessment indicate that the potential for crash reduction may result in a small net benefit to the environment. FMCSA calculated the impacts of CMV crashes on the environment and the estimated crash reductions for this final rule will prevent emissions from congestion resulting from these CMV crashes, as well as prevent hazardous materials spills and solid waste generated as a result of the averted CMV crashes. However, because these impacts are rather small, FMCSA made a Finding of No Significant Impact for this rulemaking. Further environmental review in the form of an Environmental Impact Statement is not required. The Environmental Assessment and the Finding of No Significant Impact are in the docket.

Executive Order 12898 (Environmental Justice)

FMCSA considered the environmental effects of this final rule in accordance with Executive Order 12898 and DOT Order 5610.2 on addressing Environmental Justice for Minority Populations and Low-Income Populations, published April 15, 1997 (62 FR 18377) and determined that there are no environmental justice issues associated with this rule nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on minority or low-income populations. None of the regulatory alternatives considered in this rulemaking will result in high and adverse environmental impacts.

Energy Effects

FMCSA analyzed this action under Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use." FMCSA determined that it is not a "significant energy action" because it is not economically significant (i.e., a cost of more than \$120.7 million in a single year) and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Unfunded Mandates Reform Act of 1995

FMCSA determined this final rule does not impose an unfunded mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more (adjusted for inflation) in any one year.

Civil Justice Reform

This rulemaking 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.

Protection of Children

FMCSA analyzed this action, as required under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks." FMCSA certifies it is not an economically significant rule, nor does it concern an environmental risk to health or safety that may disproportionately affect children.

Taking of Private Property

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

Federalism

FMCSA analyzed this final rule in accordance with the principles and criteria of Executive Order 13132, "Federalism," and determined it has federalism implications within the meaning of the Order.

The Federalism Order applies to "policies that have federalism implications," which it defines as regulations and other actions "that have 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." Sec. 1(a). The key concept here is "substantial direct effects on the States."

Section 31151(d) preempts "a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to commercial motor vehicle safety" if it "exceeds or is inconsistent with a requirement imposed under or pursuant to" 49 U.S.C. 31151. In other words, this final rule establishing maintenance and related requirements for IME preempts any State or local law or regulation on

the same subject if it exceeds or is inconsistent with the Federal requirement.

Nonetheless, there are exceptions to this "preemption" principle. "[A] State requirement for the periodic inspection of intermodal chassis by IEPs that was in effect on January 1, 2005," shall remain in effect only until the effective date of the final rule adopted under this proceeding [section 31151(e)(1)]; thus giving the States time to adapt to, and/or change, existing State laws and requirements to coincide with the new Federal roadability requirements. Additionally, notwithstanding section 31151(d), State requirements are not preempted by a Federal requirement if the Secretary "determines that the State requirement is as effective as the Federal requirement and does not unduly burden interstate commerce" [section 31151(e)(2)(A)]. A State must request a non-preemption determination before the effective date of the FMCSA final rule (section 31151(e)(2)(B)), here 6 months after publication in the **Federal Register**. No subsequent amendment to a non-preempted requirement may take effect unless it is first submitted to the Secretary, who must find that the amendment is no less effective than the FMCSA requirements and does not unduly burden interstate commerce (section 31151(e)(2)(C)).

Section 31151 clearly has a "direct effect" on the States, federalism implications, and preempts State law, but all of those results are intended and required by the statute. Although most of the States that adopted statutes regulating the maintenance of IME did not enforce them for several years, section 31151 will foreclose the opportunity for States to enact alternative legislation on this subject. We believe, however, that section 31151 does not create a "substantial direct effect on 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." The IME affected by this rulemaking operate in interstate commerce. The regulation of interstate commerce is constitutionally and historically vested in the Federal government, not the States. The assertion of Federal authority in this area does not change the traditional relationship between the national government and the States, nor does it affect the constitutional and practical distribution of power and responsibilities among the various levels of government.

Section 3(b) of the Federalism Order provides that "[n]ational action limiting the policymaking discretion of the

States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance." The constitutional authority and statutory mandate for this rulemaking are clear and explicit.

FMCSA determined that this action will have a direct effect on States. However, because existing State laws on the maintenance of IME are so few and narrow in scope, the Agency also determined that this action will not have a substantial direct effect nor impose substantial additional costs or burdens on the States.

The Agency consulted with the States on the federalism implications of this regulation, as required by E.O. 13132, to ensure that State and local officials had meaningful and timely input into the formal promulgation and development of this regulation. Also, FMCSA provided State and local governments with ample opportunity to address this issue during the NPRM comment period and subsequent reopening of the comment period for the purpose of hearing oral comments at three public listening sessions, as indicated previously in this rule. Most of the States' concerns were based on the amount of time the Agency would allow them to file requests for non-preemption. FMCSA responded to these requests by setting a more realistic 6-month delayed effective date for this final rule, in light of the additional time States need to develop applications for non-preemption and the Agency will need to act on these requests. Thus, the Agency believes it has met the concerns of these State and local officials in this regard.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Intermodal equipment roadability, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

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

49 CFR Part 390

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

49 CFR Part 392

Highway safety, Intermodal equipment providers, Motor carriers.

49 CFR Part 393

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

49 CFR Part 396

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

VI. The Final Rule

■ For the reasons discussed above, FMCSA amends Subchapter B, Chapter III, in Title 49 of the Code of Federal Regulations, as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, 31151, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

■ 2. Amend § 385.1 by adding paragraph (e) to read as follows:

§ 385.1 Purpose and scope.

* * * * *

(e) Subpart F of this part establishes procedures to perform a roadability review of intermodal equipment providers to determine their compliance with the applicable Federal Motor Carrier Safety Regulations (FMCSRs).

■ 3. Amend § 385.3 by adding paragraph (4) to the definition of "Reviews," to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Reviews. * * *

(4) *Roadability review* means an on-site examination of the intermodal equipment provider's compliance with the applicable FMCSRs.

* * * * *

■ 4. Revise § 385.201 to read as follows:

§ 385.201 Who is qualified to perform a review of a motor carrier or an intermodal equipment provider?

(a) An FMCSA employee, or a State or local government employee funded through the Motor Carrier Safety Assistance Program (MCSAP), who was qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit, roadability review, or roadside inspection if he or she complies with § 385.203(b).

(b) A person who was not qualified to perform a compliance review before June 17, 2002, may perform a compliance review, safety audit, roadability review, or roadside inspection after complying with the requirements of § 385.203(a).

§ 385.203 [Amended]

- 5. Amend § 385.203 by adding "roadability review," after "safety audit," in paragraphs (a) and (b).
- 6. Amend part 385 by adding a new Subpart F—Intermodal Equipment Providers (§§ 385.501–385.503) to read as follows:

Subpart F—Intermodal Equipment Providers

§ 385.501 Roadability review.

(a) FMCSA will perform roadability reviews of intermodal equipment providers, as defined in § 390.5 of this chapter.

(b) FMCSA will evaluate the results of the roadability review using the criteria in Appendix A to this part as they relate to compliance with parts 390, 393, and 396 of this chapter.

§ 385.503 Results of roadability review.

(a) FMCSA will not assign a safety rating to an intermodal equipment provider based on the results of a roadability review. However, FMCSA may cite the intermodal equipment provider for violations of parts 390, 393, and 396 of this chapter and may impose civil penalties resulting from the roadability review.

(b) FMCSA may prohibit the intermodal equipment provider from tendering specific items of intermodal equipment determined to constitute an "imminent hazard" (See § 386.72(b)(1) of this chapter).

(c) FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment from a particular location or multiple locations if the agency determines the intermodal equipment provider's failure to comply with the FMCSRs constitutes an imminent hazard under § 386.72(b)(1).

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

- 7. The authority citation for part 386 is revised to read as follows:

Authority: 49 U.S.C. 521, 5123, 13301, 13902, 14915, 31132–31133, 31136, 31144, 31151, 31502, 31504; Sec. 204, Pub. L. 104–

88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

- 8. Revise the heading of part 386 to read as set forth above.

- 9. Revise § 386.1 to read as follows:

§ 386.1 Scope of the rules in this part.

(a) The rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350–399), including the commercial regulations (49 CFR parts 360–379), and the Hazardous Materials Regulations (49 CFR parts 171–180).

(b) The purpose of the proceedings is to enable the Assistant Administrator:

- (1) To determine whether a motor carrier, intermodal equipment provider (as defined in § 390.5 of this chapter), property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations; and
- (2) To issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both, if such violations are found.

- 10. Amend § 386.72 by revising paragraph (b) to read as follows:

§ 386.72 Imminent hazard.

* * * * *

(b)(1) Whenever it is determined that a violation of 49 U.S.C. 31502 or the Motor Carrier Safety Act of 1984, as amended, or the Commercial Motor Vehicle Safety Act of 1986, as amended, or a regulation issued under such section or Acts, or a combination of such violations, poses an imminent hazard to safety, the Director of the Office of Enforcement and Compliance or a Division Administrator, or his or her delegate, shall order:

- (i) A commercial motor vehicle or employee operating such vehicle out-of-service, or order an employer to cease all or part of the employer's commercial motor vehicle operations, as provided by 49 U.S.C. 521(b)(5);
- (ii) An intermodal equipment provider's specific vehicle or equipment out-of-service, or order an intermodal equipment provider to cease all or part of its operations, as provided by 49 U.S.C. 521(b)(5) and 49 U.S.C. 31151(a)(3)(I).

(2) In making any such order, no restrictions shall be imposed on any vehicle, terminal or facility, employee,

employer or intermodal equipment provider beyond that required to abate the hazard.

(3) In this paragraph (b), *imminent hazard* means any condition of vehicle, intermodal equipment, or commercial motor vehicle operations that substantially increases the likelihood of serious injury or death if not discontinued immediately.

(4) Upon the issuance of an order under paragraph (b)(1) of this section, the motor carrier employer, intermodal equipment provider or driver employee shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554, except that such review shall occur not later than 10 days after issuance of such order, as provided by section 213(b) of the Motor Carrier Safety Act of 1984 (49 U.S.C. 521(b)(5)). An order to an employer or intermodal equipment provider to cease all or part of its operations shall not prevent vehicles in transit at the time the order is served from proceeding to their immediate destinations, unless any such vehicle or its driver is specifically ordered out-of-service forthwith. However, vehicles and drivers proceeding to their immediate destination shall be subject to compliance upon arrival.

(5) For purposes of this section, the term *immediate destination* is the next scheduled stop of the vehicle already in motion where the cargo on board can be safely secured.

(6) Failure to comply immediately with an order issued under this section shall subject the motor carrier employer, intermodal equipment provider, or driver to penalties prescribed in subpart G of this part.

- 11. Revise § 386.83 to read as follows:

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

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

(2) *Civil penalties paid in installments.* The FMCSA Service Center may allow a CMV owner or operator, or an intermodal equipment provider, to pay a civil penalty in installments. If the CMV owner or operator, or intermodal equipment provider, fails to make an installment

payment on schedule, the payment plan is void and the entire debt is payable immediately. A CMV owner or operator, or intermodal equipment provider, that fails to pay the full outstanding balance of its civil penalty within 90 days after the date of the missed installment payment, is prohibited from operating in interstate commerce on the next (i.e., the 91st) day. The prohibition continues until the FMCSA has received full payment of the entire penalty.

(3) *Appeals to Federal Court.* If the CMV owner or operator, or intermodal equipment provider, appeals the final agency order to a Federal Circuit Court of Appeals, the terms and payment due date of the final agency order are not stayed unless the Court so directs.

(b) *Show cause proceeding.* (1) FMCSA will notify a CMV owner or operator, or intermodal equipment provider, in writing if it has not received payment within 45 days after the date specified for payment by the final agency order or the date of a missed installment payment. The notice will include a warning that failure to pay the entire penalty within 90 days after payment was due, will result in the CMV owner or operator, or an intermodal equipment provider, being prohibited from operating in interstate commerce.

(2) The notice will order the CMV owner or operator, or intermodal equipment provider, to show cause why it should not be prohibited from operating in interstate commerce on the 91st day after the date specified for payment. The prohibition may be avoided only by submitting to the Chief Safety Officer:

(i) Evidence that the respondent has paid the entire amount due; or

(ii) Evidence that the respondent has filed for bankruptcy under chapter 11, title 11, United States Code. Respondents in bankruptcy must also submit the information required by paragraph (d) of this section.

(3) The notice will be delivered by certified mail or commercial express service. If the principal place of business of a CMV owner or operator, or an intermodal equipment provider, is in a foreign country, the notice will be delivered to the designated agent of the CMV owner or operator or intermodal equipment provider.

(c) A CMV owner or operator, or intermodal equipment provider, that continues to operate in interstate commerce in violation of this section may be subject to additional sanctions under paragraph IV(h) of appendix A to part 386.

(d) This section does not apply to any person who is unable to pay a civil

penalty because the person is a debtor in a case under 11 U.S.C. chapter 11. CMV owners or operators, or intermodal equipment providers, in bankruptcy proceedings under chapter 11 must provide the following information in their response to the FMCSA:

(1) The chapter of the Bankruptcy Code under which the bankruptcy proceeding is filed (i.e., chapter 7 or 11);

(2) The bankruptcy case number;

(3) The court in which the bankruptcy proceeding was filed; and

(4) Any other information requested by the agency to determine a debtor's bankruptcy status.

■ 12. Amend appendix A to part 386 by revising paragraphs IV.c, IV.d, and IV.g. to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

* * * * *

IV. Out-of-Service Order * * *

c. Violation—Operation of a commercial motor vehicle or intermodal equipment by a driver after the vehicle or intermodal equipment was placed out-of-service and before the required repairs are made.

Penalty—\$2,100 each time the vehicle or intermodal equipment is so operated. (This violation applies to drivers as defined in IV.a above.)

d. Violation—Requiring or permitting the operation of a commercial motor vehicle or intermodal equipment placed out-of-service before the required repairs are made.

Penalty—Up to \$16,000 each time the vehicle or intermodal equipment is so operated after notice of the defect is received.

(This violation applies to intermodal equipment providers and motor carriers, including an independent owner-operator who is not a "driver," as defined in IV.a above.)

* * * * *

g. Violation—Operating in violation of an order issued under § 386.72(b) to cease all or part of the employer's commercial motor vehicle operations or to cease all or part of an intermodal equipment provider's operations, i.e., failure to cease operations as ordered.

Penalty—Up to \$16,000 per day the operation continues after the effective date and time of the order to cease.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 13. Revise the authority citation for part 390 to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31144, 31151, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1767, 1773; and 49 CFR 1.73.

■ 14. Amend § 390.3 by adding a new paragraph (h) to read as follows:

§ 390.3 General applicability.

* * * * *

(h) *Intermodal equipment providers.* On and after December 17, 2009, the rules in the following provisions of subchapter B of this chapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 390, Federal Motor Carrier Safety Regulations; General, *except* § 390.15(b) concerning accident registers.

(4) Part 393, Parts and Accessories Necessary for Safe Operation.

(5) Part 396, Inspection, Repair, and Maintenance.

■ 15. Amend § 390.5 by adding, in alphabetical order, definitions for *Interchange*, *Intermodal equipment*, *Intermodal equipment interchange agreement*, and *Intermodal equipment provider* to read as follows:

§ 390.5 Definitions.

* * * * *

Interchange means the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider, but it does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations.

Intermodal equipment means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis.

Intermodal equipment interchange agreement means the Uniform Intermodal Interchange and Facilities Access Agreement (UIIFA) or any other written document executed by an intermodal equipment provider or its agent and a motor carrier or its agent, the primary purpose of which is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment.

Intermodal equipment provider means any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange

agreement or has a contractual responsibility for the maintenance of the intermodal equipment.

* * * * *

■ 16. Revise § 390.15(a) to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) Each motor carrier and intermodal equipment provider must do the following:

(1) Make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration, an authorized State or local enforcement agency representative, or authorized third party representative within such time as the request or investigation may specify.

(2) Give an authorized representative all reasonable assistance in the investigation of any accident, including providing a full, true, and correct response to any question of the inquiry.

* * * * *

■ 17. Revise § 390.19 to read as follows:

§ 390.19 Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports.

(a) *Applicability.* Each motor carrier and intermodal equipment provider must file Form MCS-150, Form MCS-150B or Form MCS-150C with FMCSA as follows:

(1) A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce must file a Motor Carrier Identification Report, Form MCS-150.

(2) A motor carrier conducting operations in intrastate commerce and requiring a Safety Permit under 49 CFR part 385, subpart E of this chapter must file the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS-150B.

(3) Each intermodal equipment provider that offers intermodal equipment for transportation in interstate commerce must file an Intermodal Equipment Provider Identification Report, Form MCS-150C.

(b) *Filing schedule.* Each motor carrier or intermodal equipment provider must file the appropriate form under paragraph (a) of this section at the following times:

(1) Before it begins operations; and
(2) Every 24 months, according to the following schedule:

USDOT number ending in	Must file by last day of
1	January.
2	February.

USDOT number ending in	Must file by last day of
3	March.
4	April.
5	May.
6	June.
7	July.
8	August.
9	September.
0	October.

(3) If the next-to-last digit of its USDOT Number is odd, the motor carrier or intermodal equipment provider shall file its update in every odd-numbered calendar year. If the next-to-last digit of the USDOT Number is even, the motor carrier or intermodal equipment provider shall file its update in every even-numbered calendar year.

(c) *Availability of forms.* The forms described under paragraph (a) of this section and complete instructions are available from the FMCSA Web site at <http://www.fmcsa.dot.gov> (Keyword "MCS-150," or "MCS-150B," or "MCS-150C"); from all FMCSA Service Centers and Division offices nationwide; or by calling 1-800-832-5660.

(d) *Where to file.* The required form under paragraph (a) of this section must be filed with FMCSA Office of Information Management. The form may be filed electronically according to the instructions at the Agency's Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Information Management, MC-RIO, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(e) *Special instructions for for-hire motor carriers.* A for-hire motor carrier should submit the Form MCS-150, or Form MCS-150B, along with its application for operating authority (Form OP-1, OP-1(MX), OP-1(NNA) or OP-2), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in paragraph (d) of this section.

(f) Only the legal name or a single trade name of the motor carrier or intermodal equipment provider may be used on the forms under paragraph (a) of this section (Form MCS-150, MCS-150B, or MCS-150C).

(g) A motor carrier or intermodal equipment provider that fails to file the form required under paragraph (a) of this section, or furnishes misleading information or makes false statements upon the form, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(h)(1) Upon receipt and processing of the form described in paragraph (a) of this section, FMCSA will issue the motor carrier or intermodal equipment

provider an identification number (USDOT Number).

(2) The following applicants must additionally pass a pre-authorization safety audit as described below before being issued a USDOT Number:

(i) A Mexico-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce between Mexico and points in the United States beyond the municipalities and commercial zones along the United States-Mexico international border must pass the pre-authorization safety audit under § 365.507 of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(ii) A non-North America-domiciled motor carrier seeking to provide transportation of property or passengers in interstate commerce within the United States must pass the pre-authorization safety audit under § 385.607(c) of this subchapter. The Agency will not issue a USDOT Number until expiration of the protest period provided in § 365.115 of this subchapter or—if a protest is received—after FMCSA denies or rejects the protest.

(3) The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

(4) The intermodal equipment provider must identify each unit of interchanged intermodal equipment by its assigned USDOT number.

(i) A motor carrier that registers its vehicles in a State that participates in the Performance and Registration Information Systems Management (PRISM) program (authorized under section 4004 of the Transportation Equity Act for the 21st Century [(Public Law 105-178, 112 Stat. 107)]) is exempt from the requirements of this section, provided it files all the required information with the appropriate State office.

■ 18. Amend § 390.21 by revising the section heading and paragraphs (a) and (b)(2), and by adding paragraph (g) to read as follows:

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

(a) *General.* Every self-propelled CMV subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section, and each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject

to subchapter B of this chapter must be marked as specified in paragraph (g) of this section.

(b) * * *

(2) The identification number issued by FMCSA to the motor carrier or intermodal equipment provider, preceded by the letters "USDOT."

* * * * *

(g) *Intermodal equipment.* (1) The requirements for marking intermodal equipment apply to each intermodal equipment provider, as defined in § 390.5, that interchanges or offers for interchange intermodal equipment to a motor carrier.

(2) Each unit of intermodal equipment interchanged or offered for interchange to a motor carrier by an intermodal equipment provider subject to subchapter B of this chapter must identify the intermodal equipment provider.

(3) The intermodal equipment provider must be identified by its legal name or a single trade name and the identification number issued by FMCSA, preceded by the letters "USDOT."

(4) The intermodal equipment must be identified as follows, using any one of the following methods:

(i) The identification marking must appear on the curb side of the item of equipment. It must be in letters that contrast sharply in color with the background on which the letters are placed. The letters must be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the CMV is stationary; and be kept and maintained in a manner that retains this legibility; or

(ii) The identification marking must appear on a label placed upon the curb side of the item of equipment. The label must be readily visible and legible to an inspection official during daylight hours when the vehicle is stationary. The label must be a color that contrasts sharply with the background on which it is placed, and the letters must also contrast sharply in color with the background of the label. The label must be kept and maintained in a manner that retains this legibility; or

(iii) The USDOT number of the intermodal equipment provider must appear on the interchange agreement so that it is clearly identifiable to an inspection official. The interchange agreement must include additional information to identify the specific item of intermodal equipment (such as the VIN and 4-character SCAC code and 6-digit unique identifying number); or

(iv) The identification marking must be shown on a document placed in a

weather-tight compartment affixed to the frame of the item of intermodal equipment. The color of the letters used in the document must contrast sharply in color with the background of the document. The document must include additional information to identify the specific item of intermodal equipment (such as the VIN and 4-character SCAC code and 6-digit unique identifying number).

■ 19. Amend part 390 by adding a new subpart C (§§ 390.40–390.46) to read as follows:

Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

Sec.

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

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

390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

Subpart C—Requirements and Information for Intermodal Equipment Providers and for Motor Carriers Operating Intermodal Equipment

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

An intermodal equipment provider must—

(a) Identify its operations to the FMCSA by filing the Form MCS–150C required by § 390.19.

(b) Mark its intermodal equipment with the USDOT number as required by § 390.21 before tendering the equipment to a motor carrier.

(c) Systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, in a manner consistent with § 396.3(a)(1), as applicable, all intermodal equipment intended for interchange with a motor carrier.

(d) Ensure that intermodal equipment intended for interchange with motor carriers is in safe and proper operating condition.

(e) Maintain a system of driver vehicle inspection reports submitted to the intermodal equipment provider as required by § 396.11 of this chapter.

(f) Maintain a system of inspection, repair, and maintenance records as

required by § 396.12 of this chapter for equipment intended for interchange with a motor carrier.

(g) Periodically inspect equipment intended for interchange, as required under § 396.17 of this chapter.

(h) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, have procedures in place, and provide sufficient space, for drivers to perform a pre-trip inspection of tendered intermodal equipment.

(i) At facilities at which the intermodal equipment provider makes intermodal equipment available for interchange, develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or replace the equipment, prior to the driver's departure. The repairs or replacement must be made after being notified by a driver of such damage, defects, or deficiencies.

(j) Refrain from placing intermodal equipment in service on the public highways if that equipment has been found to pose an imminent hazard, as defined in § 386.72(b)(1) of this chapter.

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

(a) Before operating intermodal equipment over the road, the driver accepting the equipment must inspect the equipment components listed in § 392.7(b) of this subchapter and be satisfied they are in good working order.

(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.

§ 390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

(a) An intermodal equipment provider or its agent may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the provider. This includes safety violations alleging that the components, parts, or accessories of intermodal chassis or trailers listed in § 392.7(b) of this chapter were not in good working order when inspected at roadside. An

intermodal equipment provider should not be held responsible for such violations because a motor carrier indicated pursuant to § 392.7(b) that these components, parts, or accessories had no safety defects at the time of the pre-trip inspection.

(b) *A motor carrier or its agent* may electronically file questions or concerns at <http://dataqs.fmcsa.dot.gov> about Federal and State data that reference the motor carrier. This includes safety violations alleging that any components, parts, or accessories of intermodal chassis or trailers, except those listed in § 392.7(b) of this chapter, were not in good working order when inspected at roadside. Such violations will not be used by FMCSA in making a safety fitness determination of a motor carrier (unless there is evidence that the driver or motor carrier caused or substantially contributed to the violations) because the driver could not readily detect these violations during a pre-trip inspection performed in accordance with § 392.7(b).

(c) *An intermodal equipment provider, or its agent*, may request FMCSA to investigate a motor carrier believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

(d) *A motor carrier or its agent* may request FMCSA to investigate an intermodal equipment provider believed to be in noncompliance with responsibilities under 49 U.S.C. 31151 or the implementing regulations in this subchapter regarding interchange of intermodal equipment by contacting the appropriate FMCSA Field Office.

§ 390.46 Are State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment preempted by the Federal Motor Carrier Safety Regulations?

(a) *General.* As provided by 49 U.S.C. 31151(d), a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the Federal Motor Carrier Safety Regulations.

(b) *Pre-existing State requirements—*(1) *In general.* Pursuant to 49 U.S.C. 31151(e)(1), unless otherwise provided in paragraph (b)(2) of this section, a State requirement for the periodic inspection of intermodal chassis by intermodal equipment providers that

was in effect on January 1, 2005, shall remain in effect only until June 17, 2009.

(2) *Nonpreemption determinations—*(i) *In general.* Pursuant to 49 U.S.C. 31151(e)(2), and notwithstanding paragraph (a) of this section, a State requirement described in paragraph (b)(1) of this section is not preempted if the Administrator determines that the State requirement is as effective as the FMCSA final rule and does not unduly burden interstate commerce.

(ii) *Application required.* Paragraph (b)(2)(i) of this section applies to a State requirement only if the State applies to the Administrator for a determination with respect to the requirement before the effective date of the final rule (June 17, 2009). The Administrator will make a determination with respect to any such application within 6 months after the date on which the Administrator receives the application.

(iii) *Amended State requirements.* If a State amends a regulation for which it previously received a nonpreemption determination from the Administrator under paragraph (b)(2)(i) of this section, it must apply for a determination of nonpreemption for the amended regulation. Any amendment to a State requirement not preempted under this subsection because of a determination by the Administrator may not take effect unless it is submitted to the Agency before the effective date of the amendment, and the Administrator determines that the amendment would not cause the State requirement to be less effective than the FMCSA final rule on “Requirements for Intermodal Equipment Providers and Motor Carriers and Drivers Operating Intermodal Equipment” and would not unduly burden interstate commerce.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 20. Revise the authority citation for part 392 to read:

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

■ 21. Amend § 392.7 by designating the existing text as paragraph (a) and adding a new paragraph (b) to read:

§ 392.7 Equipment, inspection, and use.
* * * * *

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

following components were in good working order when the driver accepted the equipment:

Service brake components that are readily visible to a driver performing as thorough a visual inspection as possible without physically going under the vehicle, and trailer brake connections.

Lighting devices and reflectors.

Tires.

Coupling devices.

Rails or support frames.

Tie down bolsters.

Locking pins, clevises, clamps, or hooks.

Sliders or sliding frame lock.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 22. Revise the authority citation for part 393 to read as follows:

Authority: 49 U.S.C. 322, 31136, 31151 and 31502; sec. 1041(b), Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

■ 23. Amend § 393.1 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 393.1 Scope of the rules of this part.

* * * * *

(b)(1) Every motor carrier and its employees must be knowledgeable of and comply with the requirements and specifications of this part.

(2) Every intermodal equipment provider and its employees or agents responsible for the inspection, repair, and maintenance of intermodal equipment interchanged to motor carriers must be knowledgeable of and comply with the applicable requirements and specifications of this part.

(c) 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.

(d) No intermodal equipment provider may operate intermodal equipment, or cause or permit such equipment to be operated, unless it is equipped in accordance with the requirements and specifications of this part.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

■ 24. Revise the authority citation for part 396 to read as follows:

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

■ 25. Revise § 396.1 to read as follows:

§ 396.1 Scope.

(a) Every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of commercial motor vehicles must be knowledgeable of and comply with the rules of this part.

(b) Every intermodal equipment provider, its officers, agents, representatives, and employees directly concerned with the inspection or maintenance of intermodal equipment interchanged or offered for interchange to motor carriers must be knowledgeable of and comply with the rules of this part.

■ 26. Amend § 396.3 by revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 396.3 Inspection, repair, and maintenance.

(a) *General.* Every motor carrier and intermodal equipment provider must systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles and intermodal equipment subject to its control.

* * * * *

(b) *Required records.* Motor carriers, except for a private motor carrier of passengers (nonbusiness), must maintain, or cause to be maintained, records for each motor vehicle they control for 30 consecutive days. Intermodal equipment providers must maintain or cause to be maintained, records for each unit of intermodal equipment they tender or intend to tender to a motor carrier. These records must include:

* * * * *

■ 27. Revise § 396.9 to read as follows:

§ 396.9 Inspection of motor vehicles and intermodal equipment in operation.

(a) Personnel authorized to perform inspections—Every special agent of the FMCSA (as defined in Appendix B to this subchapter) is authorized to enter upon and perform inspections of a motor carrier's vehicles in operation and intermodal equipment in operation.

(b) Prescribed inspection report—The Driver Vehicle Examination Report shall be used to record results of motor vehicle inspections and results of intermodal equipment inspections conducted by authorized FMCSA personnel.

(c) Motor vehicles and intermodal equipment declared “out-of-service.”

(1) Authorized personnel shall declare and mark “out-of-service” any motor vehicle or intermodal equipment which by reason of its mechanical condition or

loading would likely cause an accident or a breakdown. An “Out-of-Service Vehicle” sticker shall be used to mark vehicles and intermodal equipment “out-of-service.”

(2) No motor carrier or intermodal equipment provider shall require or permit any person to operate nor shall any person operate any motor vehicle or intermodal equipment declared and marked “out-of-service” until all repairs required by the “out-of-service notice” have been satisfactorily completed. The term *operate* as used in this section shall include towing the vehicle or intermodal equipment, except that vehicles or intermodal equipment marked “out-of-service” may be towed away by means of a vehicle using a crane or hoist. A vehicle combination consisting of an emergency towing vehicle and an “out-of-service” vehicle shall not be operated unless such combination meets the performance requirements of this subchapter except for those conditions noted on the Driver Vehicle Examination Report.

(3) No person shall remove the “Out-of-Service Vehicle” sticker from any motor vehicle or intermodal equipment prior to completion of all repairs required by the “out-of-service notice.”

(d) Motor carrier or intermodal equipment provider disposition.

(1) The driver of any motor vehicle, including a motor vehicle transporting intermodal equipment, who receives an inspection report shall deliver a copy to both the motor carrier operating the vehicle and the intermodal equipment provider upon his/her arrival at the next terminal or facility. If the driver is not scheduled to arrive at a terminal or facility of the motor carrier operating the vehicle or at a facility of the intermodal equipment provider within 24 hours, the driver shall immediately mail, fax, or otherwise transmit the report to the motor carrier and intermodal equipment provider.

(2) Motor carriers and intermodal equipment providers shall examine the report. Violations or defects noted thereon shall be corrected. Repairs of items of intermodal equipment placed out-of-service are also to be documented in the maintenance records for such equipment.

(3) Within 15 days following the date of the inspection, the motor carrier or intermodal equipment provider shall—

(i) Certify that all violations noted have been corrected by completing the “Signature of Carrier/Intermodal Equipment Provider Official, Title, and Date Signed” portions of the form; and

(ii) Return the completed roadside inspection form to the issuing agency at the address indicated on the form and

retain a copy at the motor carrier's principal place of business, at the intermodal equipment provider's principal place of business, or where the vehicle is housed for 12 months from the date of the inspection.

■ 28. Amend § 396.11 by revising paragraph (a) to read:

§ 396.11 Driver vehicle inspection report(s).

(a) *Report required.* (1) *Motor carriers.* Every motor carrier must require its drivers to report, and every driver must prepare a report in writing at the completion of each day's work on each vehicle operated. The report must cover at least the following parts and accessories:

- 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

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

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

* * * * *

■ 29. Add § 396.12 to read as follows:

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

(a) *System for reports.* Each intermodal equipment provider must establish a system for motor carriers and drivers to report to it any damage, defects, or deficiencies of intermodal equipment discovered by, or reported to, the motor carrier or driver which would—

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

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

(b) *Report content.* The system required by paragraph (a) of this section must include documentation of all of the following:

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

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

(3) Date and time the report was submitted.

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

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

(c) *Corrective action.* (1) Prior to allowing or permitting a motor carrier to transport a piece of intermodal equipment for which a motor carrier or driver has submitted a report about damage, defects or deficiencies, each intermodal equipment provider or its agent must repair the reported damage, defects, or deficiencies that are likely to affect the safety of operation of the vehicle.

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

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

■ 30. Revise §§ 396.17, 396.19, 396.21, 396.23, and 396.25 to read:

§ 396.17 Periodic inspection.

(a) Every commercial motor vehicle must be inspected as required by this section. The inspection must include, at a minimum, the parts and accessories set forth in appendix G of this subchapter. The term *commercial motor vehicle* includes each vehicle in a combination vehicle. For example, for a

tractor semitrailer, full trailer combination, the tractor, semitrailer, and the full trailer (including the converter dolly if so equipped) must each be inspected.

(b) Except as provided in § 396.23 and this paragraph, motor carriers must inspect or cause to be inspected all motor vehicles subject to their control. Intermodal equipment providers must inspect or cause to be inspected intermodal equipment that is interchanged or intended for interchange to motor carriers in intermodal transportation.

(c) A motor carrier must not use a commercial motor vehicle, and an intermodal equipment provider must not tender equipment to a motor carrier for interchange, unless each component identified in appendix G of this subchapter has passed an inspection in accordance with the terms of this section at least once during the preceding 12 months and documentation of such inspection is on the vehicle. The documentation may be:

(1) The inspection report prepared in accordance with § 396.21(a), or

(2) Other forms of documentation, based on the inspection report (e.g., sticker or decal), which contains the following information:

(i) The date of inspection;

(ii) Name and address of the motor carrier, intermodal equipment provider, or other entity where the inspection report is maintained;

(iii) Information uniquely identifying the vehicle inspected if not clearly marked on the motor vehicle; and

(iv) A certification that the vehicle has passed an inspection in accordance with § 396.17.

(d) A motor carrier may perform the required annual inspection for vehicles under the carrier's control which are not subject to an inspection under § 396.23(b)(1). An intermodal equipment provider may perform the required annual inspection for intermodal equipment interchanged or intended for interchange to motor carriers that are not subject to an inspection under § 396.23(b)(1).

(e) In lieu of the self-inspection provided for in paragraph (d) of this section, a motor carrier or intermodal equipment provider responsible for the inspection may choose to have a commercial garage, fleet leasing company, truck stop, or other similar commercial business perform the inspection as its agent, provided that business operates and maintains facilities appropriate for commercial vehicle inspections and it employs qualified inspectors, as required by § 396.19.

(f) Vehicles passing roadside or periodic inspections performed under the auspices of any State government or equivalent jurisdiction or the FMCSA, meeting the minimum standards contained in appendix G of this subchapter, will be considered to have met the requirements of an annual inspection for a period of 12 months commencing from the last day of the month in which the inspection was performed. If a vehicle is subject to a mandatory State inspection program, as provided in § 396.23(b)(1), a roadside inspection may only be considered equivalent if it complies with the requirements of that program.

(g) It is the responsibility of the motor carrier or intermodal equipment provider to ensure that all parts and accessories on commercial motor vehicles intended for use in interstate commerce for which they are responsible are maintained at, or promptly repaired to, the minimum standards set forth in appendix G to this subchapter.

(h) Failure to perform properly the annual inspection required by this section shall cause the motor carrier or intermodal equipment provider to be subject to the penalty provisions of 49 U.S.C. 521(b).

§ 396.19 Inspector qualifications.

(a) Motor carriers and intermodal equipment providers must ensure that individuals performing annual inspections under § 396.17(d) or (e) are qualified as follows:

(1) Understand the inspection criteria set forth in part 393 and appendix G of this subchapter and can identify defective components;

(2) Are knowledgeable of and have mastered the methods, procedures, tools and equipment used when performing an inspection; and

(3) Are capable of performing an inspection by reason of experience, training, or both as follows:

(i) Successfully completed a Federal- or State-sponsored training program or have a certificate from a State or Canadian Province that qualifies the individuals to perform commercial motor vehicle safety inspections, or

(ii) Have a combination of training or experience totaling at least 1 year. Such training or experience may consist of:

(A) Participation in a commercial motor vehicle manufacturer-sponsored training program or similar commercial training program designed to train students in commercial motor vehicle operation and maintenance;

(B) Experience as a mechanic or inspector in a motor carrier or

intermodal equipment maintenance program;

(C) Experience as a mechanic or inspector in commercial motor vehicle maintenance at a commercial garage, fleet leasing company, or similar facility; or

(D) Experience as a commercial motor vehicle inspector for a State, Provincial or Federal government.

(b) Motor carriers and intermodal equipment providers must retain evidence of that individual's qualifications under this section. They must retain this evidence for the period during which that individual is performing annual motor vehicle inspections for the motor carrier or intermodal equipment provider, and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain documentation of inspector qualifications for those inspections performed either as part of a State periodic inspection program or at the roadside as part of a random roadside inspection program.

§ 396.21 Periodic inspection recordkeeping requirements.

(a) The qualified inspector performing the inspection shall prepare a report that:

(1) Identifies the individual performing the inspection;

(2) Identifies the motor carrier operating the vehicle or intermodal equipment provider intending to interchange the vehicle to a motor carrier;

(3) Identifies the date of the inspection;

(4) Identifies the vehicle inspected;

(5) Identifies the vehicle components inspected and describes the results of the inspection, including the identification of those components not meeting the minimum standards set forth in appendix G to this subchapter; and

(6) Certifies the accuracy and completeness of the inspection as complying with all the requirements of this section.

(b)(1) The original or a copy of the inspection report shall be retained by the motor carrier, intermodal equipment provider, or other entity that is responsible for the inspection for a period of fourteen months from the date of the inspection report. The original or a copy of the inspection report must be retained where the vehicle is either housed or maintained.

(2) The original or a copy of the inspection report must be available for inspection upon demand of an authorized Federal, State or local official.

(3) *Exception.* If the motor carrier operating the commercial motor vehicles did not perform the commercial motor vehicle's last annual inspection, or if an intermodal equipment provider did not itself perform the annual inspection on equipment intended for interchange to a motor carrier, the motor carrier or intermodal equipment provider is responsible for obtaining the original or a copy of the last annual inspection report upon demand of an authorized Federal, State, or local official.

§ 396.23 Equivalent to periodic inspection.

(a) A motor carrier or an intermodal equipment provider may meet the requirements of § 396.17 through a State or other jurisdiction's roadside inspection program. The inspection must have been performed during the preceding 12 months. In using the roadside inspection, the motor carrier or intermodal equipment provider would need to retain a copy of an annual inspection report showing that the inspection was performed in accordance with the minimum periodic inspection standards set forth in appendix G to this subchapter. If the motor carrier operating the commercial vehicle is not the party directly responsible for its maintenance, the motor carrier must deliver the roadside inspection report to the responsible party in a timely manner. Before accepting such an inspection report, the motor carrier or intermodal equipment provider must ensure that the report complies with the requirements of § 396.21(a).

(b)(1) If a commercial motor vehicle is subject to a mandatory State inspection program which is determined by the Administrator to be as effective as § 396.17, the motor carrier or intermodal equipment provider must meet the requirement of § 396.17 through that State's inspection program. Commercial motor vehicle inspections may be conducted by State personnel, at State authorized commercial facilities, or by the motor carrier or intermodal equipment provider itself under the auspices of a State authorized self-inspection program.

(2) Should the FMCSA determine that a State inspection program, in whole or in part, is not as effective as § 396.17, the motor carrier or intermodal equipment provider must ensure that the periodic inspection required by § 396.17 is performed on all commercial motor vehicles under its control in a manner specified in § 396.17.

§ 396.25 Qualifications of brake inspectors.

(a) Motor carriers and intermodal equipment providers must ensure that all inspections, maintenance, repairs or service to the brakes of its commercial motor vehicles, are performed in compliance with the requirements of this section.

(b) For purposes of this section, *brake inspector* means any employee of a motor carrier or intermodal equipment provider who is responsible for ensuring that all brake inspections, maintenance, service, or repairs to any commercial motor vehicle, subject to the motor carrier's or intermodal equipment provider's control, meet the applicable Federal standards.

(c) No motor carrier or intermodal equipment provider may require or permit any employee who does not meet the minimum brake inspector qualifications of paragraph (d) of this section to be responsible for the inspection, maintenance, service or repairs of any brakes on its commercial motor vehicles.

(d) The motor carrier or intermodal equipment provider must ensure that each brake inspector is qualified as follows:

(1) Understands the brake service or inspection task to be accomplished and can perform that task; and

(2) Is knowledgeable of and has mastered the methods, procedures, tools and equipment used when performing an assigned brake service or inspection task; and

(3) Is capable of performing the assigned brake service or inspection by reason of experience, training, or both as follows:

(i) Has successfully completed an apprenticeship program sponsored by a State, a Canadian Province, a Federal agency or a labor union, or a training program approved by a State, Provincial or Federal agency, or has a certificate from a State or Canadian Province that qualifies the person to perform the assigned brake service or inspection task (including passage of Commercial Driver's License air brake tests in the case of a brake inspection); or

(ii) Has brake-related training or experience or a combination thereof totaling at least one year. Such training or experience may consist of:

(A) Participation in a training program sponsored by a brake or vehicle manufacturer or similar commercial training program designed to train students in brake maintenance or inspection similar to the assigned brake service or inspection tasks; or

(B) Experience performing brake maintenance or inspection similar to the

assigned brake service or inspection task in a motor carrier or intermodal equipment provider maintenance program; or

(C) Experience performing brake maintenance or inspection similar to the assigned brake service or inspection task at a commercial garage, fleet leasing company, or similar facility.

(e) No motor carrier or intermodal equipment provider may employ any person as a brake inspector unless the evidence of the inspector's qualifications, required under this section, is maintained by the motor carrier or intermodal equipment provider at its principal place of business, or at the location at which the brake inspector is employed. The evidence must be maintained for the

period during which the brake inspector is employed in that capacity and for one year thereafter. However, motor carriers and intermodal equipment providers do not have to maintain evidence of qualifications to inspect air brake systems for such inspections performed by persons who have passed the air brake knowledge and skills test for a Commercial Driver's License.

■ 31. Amend Appendix G to Subchapter B—Minimum Periodic Inspection Standards, in Paragraph 6. *Safe Loading*, by adding new subparagraph 6.c to read:

Appendix G to Subchapter B of Chapter III—Minimum Periodic Inspection Standards

* * * * *

6. Safe loading.

* * * * *

c. Container securement devices on intermodal equipment—All devices used to secure an intermodal container to a chassis, including rails or support frames, tiedown bolsters, locking pins, clevises, clamps, and hooks that are cracked, broken, loose, or missing.

* * * * *

Issued on: December 4, 2008.

John H. Hill,

Administrator.

[FR Doc. E8–29254 Filed 12–16–08; 8:45 am]

BILLING CODE 4910–EX–P