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**Federal Motor Carrier Safety
Administration**

**49 CFR Parts 385, 386, 390, et al.
Requirements for Intermodal Equipment
Providers and for Motor Carriers and
Drivers Operating Intermodal Equipment;
Final Rule**

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.

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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

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, 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

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 renumbered (e) through (j). The phrase, "in a timely manner," is deleted from

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.

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

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 IVa 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 IVa 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