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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA-2005-23315]

RIN 2126-AB37

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

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

ACTION: Final rule; partial extension of compliance date.

SUMMARY: The FMCSA extends until June 30, 2012, the compliance date of the requirement for drivers and motor carriers to prepare a driver-vehicle inspection report (DVIR) on an item of intermodal equipment (IME) when no damage, defects, or deficiencies are discovered by, or reported to, the driver (hereafter “no-defect DVIR”). The previous compliance date was June 30, 2011, as a result of the Agency’s August 20, 2010, amended final rule which extended the compliance date of the same provision of the December 17, 2008, final rule concerning maintenance responsibilities for IME. As a result of this action, drivers and carriers are not required to prepare no-defect DVIRs until June 30, 2012. This action is being taken to provide the Agency with sufficient time to address, through a notice-and-comment rulemaking proceeding, a petition to rescind the requirement for no-defect DVIRs. The Agency emphasizes that all requirements concerning drivers’ preparation of DVIRs to report damage, defects, or deficiencies to intermodal equipment providers (IEPs) remain in effect, as well as the requirements for IEPs to take appropriate action in addressing the safety issues identified by such reports.

DATES: *Compliance date:* As of May 20, 2011, the compliance date for the requirement in § 390.42(b) for drivers and motor carriers to prepare a DVIR on an item of IME if no damage, defects, or deficiencies are discovered by, or reported to, the driver, is extended until June 30, 2012.

ADDRESSES:

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

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

SUPPLEMENTARY INFORMATION:

Legal Basis

The legal basis of this and all previous notices dealing with the implementation of section 4118 of SAFETEA-LU was set forth in the final rule of December 17, 2008.

Background

On December 17, 2008, FMCSA published a final rule (73 FR 76794) adopting regulations to implement section 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, 1729, August 10, 2005). The regulations require 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 ensure the safe operating condition of each intermodal chassis; maintain documentation of their maintenance program; and provide a means to effectively respond to driver and motor carrier reports about intermodal chassis mechanical defects and deficiencies. These regulations for the first time made IEPs subject to the Federal Motor Carrier Safety Regulations (FMCSRs), and called for shared safety responsibility among IEPs, motor carriers, and drivers. The December 2008 final rule required IEPs to comply with (1) the requirements for establishing systematic inspection, repair, and maintenance programs, recordkeeping systems, and for submitting Form MCS-150C by

December 17, 2009, and (2) the requirement to mark their intermodal chassis with a USDOT identification number by December 17, 2010.

On December 29, 2009, FMCSA amended the December 2008 final rule to: (1) Create an additional marking option for identifying the IEP responsible for the inspection, repair, and maintenance of items of IME; (2) clarify regulatory text and correct an inadvertent error; and (3) extend the deadline for IEPs, motor carriers, and drivers operating IME to comply with certain provisions pertaining to driver-vehicle inspections (74 FR 68703).

Petition for Rulemaking

On March 31, 2010, the Ocean Carrier Equipment Management Association and the Institute of International Container Lessors submitted a joint petition to FMCSA requesting the rescission of the provision in § 390.42(b) of the FMCSRs that requires drivers or motor carriers to prepare and transmit a no-defect DVIR to the IEP at the time the IME is returned to the IEP. The petitioners contend that the preparation and transmittal of these no-defect DVIRs impose an undue burden on drivers, motor carriers, IEPs, and intermodal facilities nationwide.

The Administrator granted the petition on July 30, 2010, based on the Agency’s preliminary determination that the petition has merit and that a notice-and-comment rulemaking proceeding should be initiated to provide all interested parties the opportunity to comment on the matter. The Agency then extended the compliance date for no-defect DVIRs to June 30, 2011 (75 FR 51419, August 20, 2010). A copy of the petition and the Administrator’s decision has been placed in the docket.

FMCSA plans to issue a notice of proposed rulemaking to eliminate the portion of § 390.42(b) that requires drivers or motor carriers to prepare and transmit no-defect DVIRs. At that time, all interested parties would have the opportunity to submit comments concerning the issue. The Agency would then consider the public comments prior to any decision whether to rescind the no-defect DVIR requirement.

While the Agency is conducting this rulemaking, FMCSA extends until June 30, 2012, the compliance date for the requirement in § 390.42(b) for drivers and motor carriers to prepare a DVIR on an item of IME when no damage,

defects, or deficiencies are discovered by, or reported to, the driver.

Issued on: May 13, 2011.

William Bronrott,

Deputy Administrator.

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