

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION  
DECISION**

**DOCKET NO. FMCSA-2005-23315**

**REQUIREMENTS FOR INTERMODAL EQUIPMENT PROVIDERS AND FOR  
MOTOR CARRIERS AND DRIVERS OPERATING INTERMODAL EQUIPMENT**

**DECISION ON PETITION FOR RULEMAKING**

DECIDED: July 30, 2010

On March 31, 2010, the Ocean Carrier Equipment Management Association, Inc. (OCEMA) and the International Institute of Container Lessors, Ltd. (IICL) submitted a joint petition to FMCSA requesting the repeal of the provision in § 390.42(b) of the Federal Motor Carrier Safety Regulations (FMCSRs) requiring motor carriers to prepare and transmit a driver-vehicle inspection report (DVIR) to the intermodal equipment provider (IEP) at the time the intermodal equipment (IME) is returned to the IEP even when no damage, defects, or deficiencies are noted (hereafter referred to as a “no-defect DVIR”). The petitioners contend that requiring the preparation and transmittal of these no-defect DVIRs imposes an undue burden on drivers, motor carriers, IEPs, and intermodal facilities nationwide. Petitioners estimate that a no-defect DVIR requirement will necessitate the completion, transmission, review, and retention of over 38 million unnecessary reports annually. In fact, the petitioners believe that the added administrative burdens of the requirement to file no-defect DVIRs actually could undermine the goal of safe intermodal equipment. A copy of the petition has been placed in the docket referenced at the beginning of this decision.

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

- SAFETEA-LU only requires DVIRs for known damage or defects. Congress could have added a requirement to file no-defect DVIRs but did not do so. As such, the regulatory imposition of no-defect DVIRs is not required by law and likely is inconsistent with Congressional intent.
- Submission of no-defect DVIRs can add to congestion and delay at intermodal facilities. A no-defect DVIR does not add in any meaningful way to the safety of IME and therefore does not justify such congestion and delay.

- An estimated 96% of the chassis in-gated at intermodal facilities have no known damage or defect. If no-defect DVIRs are required, there is a significant risk that the 4% of DVIRs that contain damage or defects could be lost in the volume of no-defect DVIRs or result in delays in correcting reported defects at often overburdened marine, rail, and other terminals.
- Data transmission, processing, and storage requirements for no-defect DVIRs add significant unnecessary costs to intermodal operations with no apparent offsetting benefits.

The petitioners request that § 390.42(b) of the FMCSRs be amended as follows:

A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. The report must include, at a minimum, the items in § 396.11(a)(2) of this chapter. If no damage, defects, or deficiencies are discovered by the driver, no report shall be required.

### **CONCLUSION**

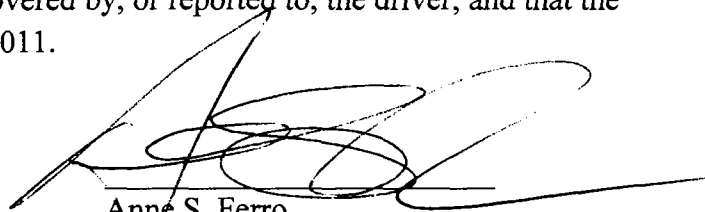
FMCSA has determined that a NPRM should be issued to propose eliminating the portion of § 390.42(b) that requires motor carriers to prepare and transmit a DVIR to the IEP upon returning the IME, even when the IME has no known damage, defects, or deficiencies. The Agency agrees with the petitioners that the existing requirement for motor carriers to prepare no-defect DVIRs goes beyond the specific requirements of 49 U.S.C. 31151(a)(3)(L), and appears likely to provide negligible safety benefits.

The Agency notes that § 390.40(d) requires an IEP to “Provide intermodal equipment that is in safe and proper operating condition.” More specifically, § 390.40(i) requires that at facilities at which the IEP makes IME available for interchange, the IEP must (1) develop and implement procedures to repair any equipment damage, defects, or deficiencies identified as part of a pre-trip inspection, or (2) replace the equipment. As such, the existing regulations provide a system of checks and balances to ensure that all IME offered for interchange is in safe and proper operating condition – regardless of whether the motor carrier prepared a DVIR for IME that had no damage, defects, or deficiencies at the time it was returned.

FMCSA has determined it would be appropriate to extend the June 30, 2010 compliance date with respect to the no-defect DVIR requirement in § 390.42(b) until June 30, 2011.

*It is hereby ordered* that the petition for rulemaking filed by the Ocean Carrier Equipment Management Association, Inc. and the International Institute of Container Lessors, Ltd. be granted.

*It is hereby ordered* that FMCSA vacate the June 30, 2010 compliance date with respect to 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; and that the compliance date is extended until June 30, 2011.

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Anne S. Ferro  
Administrator