

**DEPARTMENT OF TRANSPORTATION**

**4910-EX-P**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 392 and 396**

**[Docket No. FMCSA-2012-0336]**

**RIN 2126-AB46**

**Inspection, Repair, and Maintenance; Driver-Vehicle Inspection Report (DVIR)**

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

**ACTION:** Final Rule.

**SUMMARY:** FMCSA rescinds the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, DVIRs when the driver has neither found nor been made aware of any vehicle defects or deficiencies. This rule also harmonizes the pre- and post-trip inspection lists. It responds in part to the President's January 2011 Regulatory Review and Reform initiative, removing a significant information collection burden without adversely impacting safety. The Agency also makes a technical change to section 396.11 to eliminate redundant language.

**DATES:** This final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Petitions for Reconsideration of this final rule must be submitted to FMCSA Administrator no later than **[INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Mike Huntley, Vehicle and Roadside Operations Division, Office of Bus and Truck

Standards and Operations, Federal Motor Carrier Safety Administration, telephone: 202-366-4325.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary of the Benefits and Costs**

This rule affects all motor carriers currently subject to 49 CFR 396.11, both private and for-hire, with the exception of operators of passenger-carrying CMVs. Current safety regulations require drivers employed by motor carriers to prepare a written report at the completion of each day’s work, on each vehicle operated, that lists any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. This report must be submitted to the employing motor carrier so that repairs can be made. Regulations now require drivers to file the DVIR at the end of each tour of duty, even if there are no vehicle defects to report. The rule eliminates the need to file a no-defect DVIR, except for operations involving passenger-carrying CMVs.

The no-defect DVIR imposes a substantial time and paperwork burden on the trucking industry, with no discernible safety benefit. The Agency estimates that non-passenger-carrying CMV drivers spend approximately 46.7 million hours each year completing no-defect DVIRs, time which could be dedicated to other purposes. FMCSA estimates that the monetized value of this time is currently \$1.7 billion per year, which is the estimated benefit that would result from the adoption of the rule.

**Table 1: Summary of the Monetized Benefits, Costs and Net Benefits of the Rule**

	<b>Annual</b>	<b>10 Years, 7 Percent Discount Rate</b>	<b>10 Years, 3 Percent Discount Rate</b>
<b>Monetized Benefits</b>	\$1.7 billion	\$12.8 billion	\$14.9 billion
<b>Costs</b>	\$0	\$0	\$0

<b>Net Benefits</b>	\$1.7 billion	\$12.8 billion	\$14.9 billion
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## **Background**

Presidential Executive Order (E.O.) 13563, “Improving Regulation and Regulatory Review” (issued January 18, 2011, and published January 21 at 76 FR 3821), prompted DOT to publish a notice in the Federal Register (76 FR 8940, February 16, 2011). This notice requested comments on a plan for reviewing existing rules, as well as identification of existing rules that DOT should review because they may be outmoded, ineffective, insufficient, or excessively burdensome. DOT placed all retrospective regulatory review comments, including a transcript of a March 14, 2011, public meeting, in docket DOT-OST-2011-0025. DOT received comments from 102 members of the public, with many providing multiple suggestions. FMCSA received one comment from the American Trucking Associations, Inc. (ATA) concerning what it considered duplicative driver vehicle inspection requirements in 49 CFR parts 392 and 396. Although FMCSA agrees that there is some duplication, the Agency did not believe that it resulted in unnecessary actions or an information collection burden. However, FMCSA did discover a related information collection burden that it considers unnecessary and removes in this final rule.

It has always been the responsibility of a CMV driver to report vehicle defects. In 1939, the Interstate Commerce Commission (ICC) issued regulations requiring every driver to submit a written report on the condition of the vehicle at the end of each day's work or tour of duty. At a minimum, the report had to include information about any vehicle defect or deficiency the driver discovered that would likely affect the safety of operation of that vehicle (4 FR 2294 at 2305, June 7, 1939). The ICC recommended, but did not require, that motor carriers use a ‘Driver’s Trip Report,’ and it provided a sample report format in its 1939 notice. The sample

report format included the driver's name, vehicle number, date, a list of 20 items for inspection, and a space for the driver and mechanic to note defects. This report is now called a DVIR, but the current rule does not include a sample report form. The requirements to prepare, submit, and retain a no-defect DVIR have been in the safety regulations since 1952 (17 FR 4422, 4452, May 15, 1952). In a separate report (54 M.C.C. 337, at 356, April 14, 1952) the ICC explained that it was revising its rule to improve motor carriers' inspection and maintenance procedures and recordkeeping. The ICC noted that the most substantial recordkeeping change proposed and adopted was for the driver to complete the vehicle condition report or trip ticket at the end of the day's work or tour of duty whether or not any defect or deficiency in the equipment is discovered, "... in order to provide a continuous record of vehicle condition and to insure that the reports, particularly those involving defects, will be made out currently and maintained on a current basis."

On December 17, 2008, FMCSA published a final rule to implement § 4118 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) [Pub. L. 109-59, 119 Stat. 1144, 1729, Aug. 10, 2005], dealing with the safety of chassis used to transport intermodal containers (73 FR 76794). Among other things, § 4118 called for the Secretary to mandate "a process by which a driver or motor carrier transporting intermodal equipment [IME] is required to report to the intermodal equipment provider [IEP] or the provider's designated agent any actual damage or defect in the intermodal equipment of which the driver or motor carrier is aware at the time the intermodal equipment is returned to the intermodal equipment provider or the provider's designated agent" (49 U.S.C. 31151(a)(3)(L)). FMCSA's 2008 rule included a new code section – 49 CFR 390.42 – which prescribed the responsibilities of drivers and motor carriers when operating IME. Section 390.42(b) required the

driver or motor carrier to report any damage to or deficiencies in certain IME parts and accessories at the time the equipment is returned to the IEP.

Importantly, FMCSA did not propose any changes to § 396.11(a), “Report content,” which requires – both for IME and non-IME – that “If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate.”

On March 31, 2010, the Ocean Carrier Equipment Management Association (OCEMA) and Institute of International Container Lessors (IICL) jointly filed a petition for rulemaking to rescind the part of § 390.42(b) that required drivers to file no-defect DVIRs on IME they return to IEPs. OCEMA and IICL requested that FMCSA delete the sentence “if no damage, defects, or deficiencies are discovered by the driver, the report shall so indicate.”

The petitioners presented four arguments supporting their request:

1. Section 4118 of SAFETEA-LU requires DVIRs only for known damage or defects. Congress could have added a requirement to file no-defect DVIRs but did not do so.
2. There is significant risk that a large volume of no-defect DVIRs could overwhelm the small proportion (4 percent) of DVIRs that report damage or defects.
3. Data transmission, processing, and storage requirements for no-defect DVIRs could add significant unnecessary costs to intermodal operations without providing offsetting benefits.
4. Submission of no-defect DVIRs contributes to driver productivity losses in the form of congestion and delay at intermodal facilities.

On June 12, 2012 (77 FR 34846), the Agency published a final rule eliminating the requirement for drivers operating IME to submit – and IEPs to retain – DVIRs when the driver has neither found nor been made aware of any defects in the IME. The Agency now extends this relief from the paperwork requirement to all interstate motor carriers subject to Part 396 of the

Federal Motor Carrier Safety Regulations (FMCSRs), except operators of passenger-carrying CMVs.

FMCSA emphasizes that the Agency is not foregoing the fundamental requirements of Part 393, Parts and Accessories Necessary for Safe Operation. Nor is it making any changes to any other element of the inspection, repair, and maintenance requirements of Part 396. Drivers will still be required to perform pre-trip evaluations of equipment condition, and complete DVIRs if any defects or deficiencies are discovered or reported during the day's operations. Motor carriers will still be required to have systematic inspection, repair, and maintenance programs (including preventative maintenance) and maintain records to prove measures are being taken to reduce to the extent practicable, the risk of mechanical problems happening while the vehicle is in operation. In addition, motor carriers will still be required to review driver vehicle inspections that list defects or deficiencies and take appropriate action before the vehicle is dispatched again. The Agency will retain the requirement for carriers to complete periodic or annual inspections, and maintain documentation for the individuals who perform periodic inspections and individuals responsible for performing brake-related inspection, repair, and maintenance tasks. Furthermore, these CMVs will continue to be subject to roadside inspections. In short, the existing regulations place shared responsibility on drivers and motor carriers to ensure that CMVs used in interstate commerce are in safe and proper operating condition. This final rule does not change a driver's obligation to report on the condition of the CMVs and to report to the motor carrier any defects or deficiencies that could affect the safety of its operation.

### **Legal Basis for the Rulemaking**

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

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

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

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

The 1984 Act authorizes the Secretary to regulate drivers, motor carriers, and vehicle equipment. Section 31136(a) requires the Secretary to publish regulations on CMV safety. Specifically, the Act requires the Secretary to prescribe minimum safety standards to ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely (49 U.S.C. 31136(a)(1)); (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely (49 U.S.C. 31136(a)(2)); (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely (49 U.S.C. 31136(a)(3)); and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)(4)). Section 32911 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) [Pub. L. 112-141, 126 Stat. 405, 818, July 6, 2012] added a fifth requirement, i.e., to ensure that "(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a

regulation promulgated under this section, or chapter 51 or chapter 313 of this title” (49 U.S.C. 31136(a)(5)). The 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to “prescribe recordkeeping and reporting requirements” and to “perform other acts the Secretary considers appropriate” (49 U.S.C. 31133(a)(8) and (10)).

This rule implements, in part, the Administrator’s authority under § 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The final rule is also based on the broad recordkeeping and implementation authority of § 31133(a)(8) and (10). This rule addresses only CMV equipment and reporting requirements. The provisions of the 1984 Act dealing with the physical condition of drivers therefore do not apply (§ 31136(a)(3)-(4)). Finally, as to ensuring that operators of CMVs are not coerced by motor carriers, shippers, receivers, or transportation intermediaries to operate a CMV in violation of a regulation, the rule eliminates only the requirement for drivers (except drivers of passenger-carrying CMVs) to prepare reports when there are no defects or deficiencies; it preserves the rule requiring reports when there are defects or deficiencies, as well as the requirement for motor carriers to take appropriate action on receipt of the report when problems with the vehicle are noted. The removal of the requirement to prepare and retain no-defect DVIRs therefore will not compromise drivers’ ability to report vehicle problems to the carrier, or relieve carriers of the responsibility to take action. Furthermore, elimination of the no-defect DVIRs will not compromise drivers’ protection under existing whistleblower statutes concerning employers taking adverse action against drivers for refusing to violate the FMCSRs. The rule thus provides protection against coercion of drivers by motor carriers. Finally, because the rule removes a regulatory burden criticized by both drivers and motor carriers (and irrelevant to shippers, receivers, and transportation intermediaries), there is virtually no possibility that a CMV operator will be

coerced to violate the rule itself. It is true, of course, that a motor carrier could insist that a driver continue filing no-defect DVIRs even in the absence of a regulatory requirement, but that would be a condition of employment, not coercion to violate a safety regulation.

### **Discussion of Comments**

On August 7, 2013, FMCSA published a notice of proposed rulemaking (NPRM) (78 FR 48125). The Agency proposed to rescind the requirement that CMV drivers, operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, driver-vehicle inspection reports when the driver neither found nor been made aware any vehicle defects or deficiencies.

FMCSA received 41 comments from the following:

- Two governmental agencies: National Transportation Safety Board (NTSB) and Canadian Council of Motor Transport Administrators (CCMTA).
- Six motor carriers: Atlas PyroVision Productions, Con-way Freight, Payne and Dolan, Pyro Spectaculars, RES Specialty Pyrotechnics, and Wald and Company.
- Nine industry associations: American Moving and Storage Association (AMSA), American Pyrotechnics Association (APA), American Truck Dealers Division of the National Automobile Dealers Association (ATD), American Trucking Associations (ATA), California Trucking Association (CTA), National Motor Freight Traffic Association (NMFTA), New England Fuel Institute (NEFI), Petroleum Marketers Association of America (PMAA), and National Strategic Shippers Transportation Council (NASSTRAC).
- Two advocacy organizations: American Association for Justice (AAJ) and Advocates for Highway and Auto Safety (Advocates).

- Two providers of fleet management software: Zonar Systems (Zonar) and J. Hart of Fleettrakker LLC
- 20 individuals.

Several commenters, including Advocates, ATA, and the NTSB, commented on matters outside the scope of this rulemaking (including hours-of-service regulations, transmittal of driver medical certification information, and brake system and tire inspection procedures).

Con-way Freight pointed out an erroneous reference to § 396.11(b)(2), rather than § 396.11(a)(2). FMCSA published a correction notice in the Federal Register on September 6, 2013 (78 FR 54861) to address this error.

### **Comments supporting the proposal**

Thirty-one commenters favored FMCSA's proposal. Most pointed to the potential savings in time and paperwork.

APA stated the current DVIR rule "is an excellent example of an ineffective and excessively burdensome paperwork requirement." Four motor carriers stated they supported APA's position on the proposed rule.

Collette Gott, who identified herself as a trucking company safety director, said the proposed rule would encourage motor carriers to shift their focus from mere recordkeeping to CMV safety and maintenance activities and would improve communications between drivers and maintenance shop staff, as well as lead to better recordkeeping. Because she recognized that a requirement to complete a record of an inspection does not guarantee that the inspection gets done, she also maintained that motor carriers will continue to develop and implement oversight procedures.

Zonar, a provider of fleet management systems, supported the proposed rulemaking.

Con-way Freight stated that it supported the proposal in its entirety.

NMFTA stated its support for the proposed rule. NASSTRAC and CTA both supported the proposed rule and asked FMCSA to continue to eliminate or lessen regulations which have costs that outweigh benefits. ATD also supported the proposed rule, stating that a DVIR is one element of an inspection, repair, and maintenance program, and it only makes sense for the driver to prepare and retain formal inspection reports if the driver discovers safety-related defects or deficiencies.

PMAA and NEFI both favored the proposed rule. PMAA wrote “We applaud the FMCSA for recognizing that keeping non-defect DVIR reports on file does nothing to ensure the safe maintenance of CMVs in interstate commerce. PMAA believes keeping both non-defect DVIRs and defect DVIRs can lead to filing errors that unnecessarily delay repairs on CMVs to the detriment of both operational safety and small motor carriers who are perpetually overburdened by unnecessary paperwork.” Both PMAA and NEFI also provided detailed responses to the questions FMCSA asked in the NPRM concerning procedures for handling DVIRs.

An individual commenter noted that, in the fuel-hauling business, the large number of rules imposed by Federal, State, and local governments, as well as by fuel transfer facilities (“loading racks”) is confusing to both drivers and motor carriers and leads to errors and reduced safety. In his view, reducing the burden on drivers will be helpful.

ATA supported the proposal, arguing that the current requirement produces a regulatory burden without a safety benefit. However, ATA raised questions concerning FMCSA’s computation of the information collection burden. FMCSA addresses those questions below under the heading “Information Collection Burden Estimates.”

Stephen Carter, a professional driver and private pilot, supported the proposed rule because it would improve his and his carrier's efficiency by eliminating a time- and resource-intensive requirement. He added that it is very much in his and his carrier's interest for him to report equipment defects and for the carrier to remedy them before his CMV is operated. Although he stated that the vast majority of DVIRs submitted currently indicate no defects, he strongly disagreed with the notion, as expressed by some of the opposing comments that drivers would neglect to inspect their CMVs or perform inadequate inspections with the aim of not submitting a DVIR. Mr. Carter added that, as a private pilot, he is bound by Federal Aviation Administration (FAA) regulations – and those regulations require a report only if the pilot finds a safety-related defect in a pre-flight or post-flight inspection.

Twelve other individuals also expressed their support for the proposal. Several of them noted potential savings in time, resources, and paper.

Three commenters -- ATD, NTSB, and Zonar – addressed the proposed harmonization of the part 392 pre-inspection and part 396 DVIR lists. All of them supported it.

**Comments Opposed to the Proposal: Preference for retaining full reporting versus proposed reporting-by-exception**

AAJ believes that eliminating no-defect DVIRs will dramatically increase truck accidents, injuries, and fatalities. AAJ states that “Most truck drivers use the daily report as a checklist, much like airline pilots. Thus, eliminating DVIRs will be interpreted by many drivers as eliminating the necessity for a pre-trip inspection.” AAJ contended that even drivers who understand that an inspection is still necessary “would not have the report and its list of parts and accessories to use as a checklist.”

An individual, Clay Eppard, characterized the DVIR as a vital line of communication between drivers and mechanics/motor carriers to promote vehicle safety. He noted that drivers often include “non-safety-related” defects in their DVIRs, and that some of those defects could affect vehicle safety if they are not addressed in a timely fashion.

AMSA opposed the proposal because it and its members consider the submittal of no-defect DVIRs to be a critical component of preemptive maintenance, and thus an important facet to the general operation of a safe and compliant motor carrier. AMSA and its member companies believe that if FMCSA rescinds the requirement for no-defect DVIRs, drivers could become complacent and this could adversely affect safety and operational practices. AMSA stated that many of its members will continue to require that drivers submit all DVIRs to their respective carriers, regardless of FMCSA’s decision.

Similarly, Advocates contended that eliminating the requirement would lead to less attention being paid to vehicle safety and maintenance, and a higher percentage of vehicle violations and out-of-service (OOS) orders. Advocates asserted that the process of completing the DVIR is a driver’s responsibility - and it makes the driver consider the operation of the CMV during the previous trip, including any problems that did not actually disable it. Advocates stated, “It is inappropriate to allow motor carriers and vehicle maintenance staffs to assume that the failure to complete a report means that no vehicle maintenance or safety issues were encountered.”

The NTSB believes that daily safety inspection is an important component of effective vehicle maintenance, noting that many motor carriers employ inspection checklists. The Board stated that the checklists serve as “job aids” for drivers, provide documentation that the driver has completed the daily inspection, and serve as a means of communication between drivers and

maintenance workers about vehicle safety issues. The NTSB pointed out that similar inspection reports are required in other transportation modes and in the military, and noted that the use of safety checklists has been shown to improve safety outcomes in many non-transportation settings. The NTSB went on to say that, “Although the requirement to submit a no-defect DVIR is not a guarantee that drivers will conduct thorough vehicle inspections, the requirement creates a system of accountability that encourages drivers to do so. Without requiring some type of documentation, such as the signature on the DVIR, drivers may be less likely to conduct inspections, and less likely to detect and document vehicle problems.” The NTSB added that FMCSA requires other types of records to be maintained (hours-of-service records, drug tests, driving records) regardless of whether they indicate compliance or non-compliance. The NTSB also maintained that records preserved by the operator serve as an indicator to regulators that a carrier is following good safety practices.

FMCSA response. The Agency did not propose to change the requirement concerning filing of DVIRs when the driver notes a defect or is made aware of one. FMCSA also did not propose to prohibit motor carriers from continuing to require their drivers to prepare DVIRs, even when the driver has no vehicle defects to report. The fundamental requirement of the FMCSRs is for motor carriers to ensure that their CMVs are in safe and proper operating condition at all times. As the NPRM noted, the Agency attempted to determine, through an analysis of historical inspection and other safety data, whether eliminating the no-defect DVIR would affect the condition and proper maintenance of vehicle components (79 FR 48129). Due to data limitations, mainly the inability to distinguish between form-and-manner violations and serious safety violations, this analysis could not be performed. If anything, the rule may actually improve safety by ensuring that the relatively few DVIRs that report defects are not lost among the vast majority

of those that do not, thereby making it easier for motor carriers to identify vehicles in need of repair. Nonetheless, the safety and potential operational implications of drivers not performing a post-trip inspection and not reporting CMV equipment defects – and motor carriers not remedying those defects – are as important as when the regulation was promulgated in 1952.

FMCSA does not agree with the contention by several commenters that revising the DVIR requirement as proposed would inevitably lead to drivers paying less attention to vehicle maintenance and safety. The new rule would not change the requirement for CMV drivers to conduct pre- and post-trip vehicle inspections. Nor does it change the requirement for CMV drivers to report defects or deficiencies that were found by or reported to them. No commenters provided data or information to support their predictions of reduced safety.

The Agency also disagrees with Advocates' contention that drivers would not report situations that arose in a previous trip, or Mr. Eppard's comment that drivers would not report "non-safety related" defects. The rule does not place a time limit on the driver's ability to report CMV defects. If a driver operates a particular CMV on multiple days, and recalls a potential problem that was not reported the last time he or she drove the CMV, the driver should report the problem to the motor carrier. The rule also does not limit what a driver may report as a safety-related defect.

FMCSA agrees with commenters that completion of a DVIR is an important tool in a motor carrier's systematic inspection, repair, and maintenance program – but disagrees that it is necessary for truck drivers to submit a DVIR when there are no defects to report. The ICC's original 1939 recommendation for use of a "Driver Trip Report" and its 1952 "vehicle condition report by driver" reflected a preference for a "continuous record" of vehicle condition. This type of record would include both the presence and absence of defects. Over the years, however, the

notion of a “continuous record” has given way among many regulatory agencies to “reporting by exception” -- it is more important and efficient to report anomalies, unusual situations, and real defects or deficiencies that might require maintenance staff to act on them.

One example of this reporting-by-exception model is the FAA’s requirement for reporting of anomalies and defects for aircraft. FMCSA reviewed regulations under 14 CFR part 121 applicable to domestic, flag, and supplemental operations (§§ 121.315, 121.563, 121.701, 121.703) and 14 CFR part 135 commuter and on-demand operations (§§ 135.65, 135.415, 135.417) concerning aircraft maintenance logs, reporting of mechanical irregularities, service difficulty reports, and mechanical difficulty summary reports. There is no requirement to file any kind of “normal operation” report. The United States Coast Guard (USCG) regulations concerning tests before getting underway (33 CFR 164.25) describe requirements for testing of certain components (primary and secondary steering gear). That same agency’s regulations for maintenance, failure, and reporting (33 CFR 164.82) address the requirement for marine radar to be maintained operative, and to file reports in the event of an equipment failure. Neither set of requirements calls for logging detailed results of tests that are performed where no deficiencies are found.

FMCSA disagrees with the AAJ’s and other commenters’ assertion that “most drivers” would reasonably interpret the proposed rule as deleting not only the requirement for a no-defect DVIR, but the need for a pre-trip and post-trip inspection. The same checklist of what could be covered during a driver vehicle inspection would be retained in the FMCSRs. Drivers of all CMVs subject to this rule will continue to be required to file a DVIR if the driver discovers or is made aware of a safety defect or deficiency. FMCSA also did not propose to do away with the pre-trip inspection list in § 392.7(a) or the list of parts and accessories in § 396.11(a). The NPRM

merely proposed to make the pre-trip inspection list in § 392.7(a) consistent with that of § 396.11(a).

### **Role of DVIR in inspection, repair, and maintenance programs**

Comment. Advocates and several other commenters noted that drivers should positively state whether a malfunction was discovered. The NTSB commented that “the records preserved by a motor carrier serve as an indicator to regulators that a carrier is following good safety practices.” Although Advocates supported FMCSA’s proposal to continue to require drivers of passenger-carrying CMVs to complete a DVIR even when the driver reports no defects or deficiencies, they pointed out that drivers of freight-transporting CMVs also may have interactions with many people during their work day. The NTSB and two individuals, Mr. Eppard and Frank Gaede, shared this viewpoint.

FMCSA response. The rule retains the requirement for CMV drivers to report defects or deficiencies they become aware of – and this holds for all the vehicles that a driver may operate in any given day.

FMCSA acknowledges that all drivers experience interruptions during their work day that could impact their ability to timely document problems with the vehicle.

The Agency is retaining no-defect DVIRs for passenger-carrying CMVs, as proposed in the NPRM. First, a passenger-carrier crash is a low-probability but high-consequence event, in terms of potential deaths and injuries. Second, motorcoach drivers often need to interact with their passengers, particularly at the beginning and end of their work day, but often during the trip as well. Third, because they are carrying the most valuable cargo, motor carriers of passengers must exercise heightened diligence over their operations, including CMV

maintenance. For all of these reasons, FMCSA decided against applying this rule to bus drivers and companies at this time.

Regarding the comment that DVIRs are only one element of an inspection, repair, and maintenance program, FMCSA agrees. The Agency is not foregoing the fundamental requirements of part 393, Parts and Accessories Necessary for Safe Operation. Nor is it proposing to change any other element of the inspection, repair, and maintenance requirements of part 396. Drivers will still be required to perform pre-trip evaluations of equipment condition, and to complete DVIRs if any defects or deficiencies are discovered or reported during the day's operations.

Responding to the NTSB, FMCSA notes that the content and quality of CMV maintenance records often provide a more useful picture of a motor carrier's vehicle safety practices than the sheer quantity of its records. Furthermore, unlike the NTSB, FMCSA by statute must consider benefits and costs to the individuals and entities subject to its regulations. The DVIR is the largest element of the information collection (IC) for part 396 (Office of Management and Budget (OMB) Control No.2126-0003); the no-defect DVIR for property-carrying CMVs makes up more than 46 million of the 58 million burden hours associated with that collection.

**Opposition to proposal: DVIR as “certification”**

Comment. Advocates described a DVIR, when used in slip-seat operations, as “certification from the prior driver ... that the truck is either ready to go or indicates what is needed to get the CMV ready for operation.”

FMCSA response. A document that reports defects or deficiencies – and how the motor carrier has resolved them – is critical for the next driver. A document that reports no defects or

deficiencies is not. Furthermore, the description of a DVIR as a “certification” of the state of a CMV is not consistent with the text of the regulation. Under this rule, the absence of a DVIR will serve the same function as the previous no-defect DVIR, i.e., the driver is not aware of any safety defect. This does not mean that the next driver should not perform a pre-trip inspection – and it certainly does not indicate that the driver may skip a post-trip inspection that would form the basis for a driver-vehicle inspection report required under § 396.11(a).

### **Results of truck and bus inspections**

Comment. Advocates cited the 20 percent vehicle OOS rate for truck and bus inspections as a key reason for its opposition to the proposed rule. AAJ cited a 27.8 percent vehicle OOS rate for CMVs during traffic stops and a 20.18 percent OOS rate during roadside inspections. Both commenters stated or implied that elimination of no-defect DVIRs would adversely affect those figures. Advocates also argued that the differences cited by FMCSA in the number of fatalities per fatal motorcoach crash (1.57) “is not significantly different” from the number of fatalities per fatal truck crash (1.13), and thus not sufficient to justify different rules for trucks and buses.

FMCSA response. The Agency does not believe (1) that any particular vehicle OOS rate is a reason to retain the requirement for no-defect DVIRs, or (2) that the elimination of no-defect DVIRs for property-carrying CMVs will adversely affect the vehicle OOS rate. Furthermore, the Agency believes that the difference between 1.57 fatalities per bus crash and 1.13 fatalities per truck crash is meaningful. And, as noted above, the Agency is taking an appropriately cautious step by retaining the requirement for a no-defect DVIR for passenger-carrying CMVs. FMCSA reiterates the three points made in the NPRM. First, a passenger-carrier crash is a low-probability but high-consequence event, in terms of potential deaths and injuries. Second, motorcoach drivers often need to interact with their passengers, particularly at the beginning and end of their

work day, but often during the trip as well. Third, because they are carrying the most valuable cargo, motor carriers of passengers must exercise heightened diligence over their operations, including CMV maintenance. For all of these reasons, FMCSA decided against applying this rule to bus drivers and companies at this time

### **Safety statistics**

Comment. Advocates cited statistics from FMCSA's Compliance, Safety, Accountability (CSA) program as a basis for recommending that the current DVIR regulation be retained. Advocates stated that the August 2013 Safety Measurement System analyses showed that nearly 30 percent of motor carriers with a Vehicle Maintenance score had scores exceeding an 80 percentile threshold, thus indicating that FMCSA would prioritize these carriers for a safety intervention.

FMCSA Response. FMCSA reviewed the SMS data that Advocates referenced. The Agency agrees that approximately 30 percent of motor carriers with a Vehicle Maintenance score had scores exceeding an 80 percentile threshold, which would likely result in the Agency prioritizing them for an enforcement intervention. However, the Agency is not aware of, and Advocates did not present, any data or information concerning the relationship between the preparation and retention of no-defect DVIRs and carriers' safety performance, as captured in SMS.

Generally, all of the carriers with scores exceeding the 80 percentile threshold are currently subject to the requirement to prepare and retain no-defect DVIRs. These carriers have clearly demonstrated lapses in their safety management controls related to vehicle maintenance and have a pattern of dispatching vehicles that have mechanical problems. These problems may

or may not have been known to the driver who prepared the DVIR the day prior to the roadside inspection during which the violations were noted.

FMCSA has no means of determining the percentage of these instances involving previous-day DVIRs where the mechanical problems were noted but not acted upon by the carrier. Likewise, the Agency has no means of determining the percentage where mechanical problems were present but not reported. Therefore, the maintenance scores in SMS do not provide useful information for determining what actions these carriers would take in the absence of the no-defect DVIR requirement. And, this information does not mean that carriers with SMS scores below the enforcement intervention threshold would lessen their vehicle maintenance efforts upon rescission of the requirement to prepare and maintain no-defect DVIRs.

FMCSA believes it is important to note that nothing in this rulemaking relieves drivers of the responsibility to prepare DVIRs for any vehicle for which a defect or deficiency has been observed by or reported to the driver. Motor carriers remain responsible for reviewing those DVIRs and taking appropriate action to either fix the problem or document that no repairs were made because the carrier determined that the problem did not relate to the safe operation of the vehicle. The Agency will continue to use SMS to identify carriers with poor maintenance programs.

### **Information collection burden estimates**

Comments. NMFTA stated that it concurs with FMCSA's analyses, including the Agency's conservative estimate of the reductions in time and cost burdens from eliminating no-defect DVIRs. However, several commenters questioned FMCSA's estimates of reductions in the costs associated with completing and filing DVIRs. Advocates asserted that FMCSA has neither performed a study on the potential outcomes, nor considered costs to society, from the proposed

rule – and Advocates believes the change would lead to unintended and negative consequences from some CMV drivers who “may choose to forego completing a defect DVIR.” Advocates also believes that the estimated time savings for a driver to complete, and for a motor carrier to review and file, a DVIR is so small “there is little or no practical utility for the individual driver or the industry as a whole” resulting from the proposed requirement.

FMCSA response. The Agency did not propose to prohibit motor carriers from continuing to require their drivers to prepare DVIRs even when the driver has no vehicle defects to report. We have complied with the Paperwork Reduction Act (PRA) requirements and routinely published 60- and 30-day notices concerning the estimates used for this information collection burden. If interested parties have accepted these estimates during the multiple notice-and-comment proceedings concerning the renewal of the OMB approval for part 396, it is only appropriate that the Agency use those same estimates for the rulemaking. Through this notice-and-comment rulemaking, we are eliminating a costly portion of an information collection requirement without adversely impacting safety. As for the allegedly de minimis effect of the rule, the PRA calls for the Agency to estimate not only the time and resource requirements associated with filing of a given item of information, but also the aggregate annual total of such filings. In the case of the DVIR, FMCSA estimates that the form is completed an average of 250 days per year for each of the more than 4.58 million CMVs in operation. So, although the requirements imposed on an individual on a daily basis may be low, the aggregate total is very large.

Comment. An individual commenter, Robert Irwin, believes FMCSA should no longer require no-defect DVIRs for passenger CMVs, given that it takes the same amount of time to prepare a DVIR for a bus as for a truck.

FMCSA response. The Agency believes that significant reporting changes in the passenger-carrying CMV segment should not be made at this time, for the reasons given above.

Comment. Zonar questioned FMCSA's time and cost estimates, noting that the inspections themselves would still be required and asserting that the drivers' "paperwork" time is minimal. John Hart, representing Fleettrakker LLC, a provider of fleet management software, asked FMCSA to reconsider its proposal in light of the availability of electronic DVIR applications that would provide comprehensive records of daily CMV inspections while eliminating cumbersome paper records. Mr. Hart said the daily inspection was based on a faulty assumption.

FMCSA response. The PRA estimates focus on recordkeeping and record-retention, not on the performance of the inspection, which is considered part of a normal business practice. The Agency estimates include the actions of preparing, submitting, reviewing, and filing records – and, even if the records were handled electronically, there would still be an information-collection burden associated with them.

### **Processes: paper versus electronic DVIRs**

Comment. Mr. Hart of Fleettrakker LLC argued there is an inconsistency between FMCSA's support of integrated electronic wireless technologies and its policy to allow the use of electronic signatures for DVIRs, and that this calls into question the accuracy of FMCSA's analyses of paper-based DVIR reports. He also claimed that the use of paper DVIRs is not an effective tool to improve CMV safety, and that FMCSA should require the use of electronic applications to perform this function. Zonar asked FMCSA to strengthen its policy concerning use of electronic documents and systems, such as the DVIR application included in its own products. Gregory Hooyman of Payne and Dolan noted that vehicle monitoring systems can

communicate with the safety and maintenance departments from the road to advise them of problems so they can be ready to repair the vehicle when it returns, rather than having to wait until the trip is over and the driver submits a paper DVIR.

FMCSA response. FMCSA does not prohibit motor carriers from using information technology in their CMV maintenance activities. FMCSA also will allow motor carriers to continue to require drivers to submit no-defect DVIRs if they believe that doing so is appropriate for their operations. However, the NPRM did not propose to require motor carriers to use electronic DVIRs in place of paper DVIRs.

FMCSA recognizes that CMV operations and maintenance marketplaces are served by a large and constantly increasing number of system providers. FMCSA's policy since the early 1990s has been to encourage motor carriers to use electronic methods for a wide range of information collection and recordkeeping purposes. In fact, one of the first requests from motor carriers to be allowed to utilize electronic document handling concerned DVIRs. FMCSA's January 2011 Regulatory Guidance Concerning Electronic Signatures and Documents (76 FR 411, January 4, 2011) continues and extends the Agency's support of paperless recordkeeping systems.

Comment. The NTSB noted that many motor carriers use DVIR checklists that are integrated with driver record of duty status (logbook) forms, or use electronic DVIRs. The NTSB believes that, unless drivers elect not to complete inspections, the amount of additional time spent to complete a no-defect DVIR is negligible.

FMCSA response. FMCSA has long allowed motor carriers the option of using the back of the record of duty status (daily log) as the DVIR, provided the motor carrier complies with the record retention requirements in § 395.8 and § 395.11 (see Regulatory Guidance for § 396.11,

Question 15, 62 FR 16370, at 16428). Motor carriers may still use these forms and checklists. FMCSA has encouraged the use of electronic recordkeeping for DVIRs since the early 1990s. However, it still takes time for a driver to complete and submit a DVIR, and for a motor carrier to review it and to file it, whether it is prepared electronically or on paper. FMCSA anticipates that the proportion of DVIRs completed electronically will steadily increase.

Comment. The NTSB does not believe that maintenance personnel would overlook DVIRs indicating defects. In describing how a motor carrier might use DVIRs, the NTSB indicated that no-defect DVIRs are typically not given to maintenance personnel, but are delivered to a separate location. DVIRs noting defects are typically used to initiate work orders.

FMCSA response. FMCSA disagrees with the NTSB's description of the process for handling DVIRs. Drivers required to use paper forms generally submit all of their documents in a trip envelope, and someone sorts them out and forwards them to the appropriate staff or offices. All vehicle-related documents, except for fuel purchases, would generally be forwarded to the maintenance department. Only at that point would the DVIRs that note vehicle defects or deficiencies be sorted and assigned for action.

Comment. AAJ stated that it is sympathetic to the need to reduce paperwork and costs and suggested that, rather than eliminate no-defect DVIRs altogether, FMCSA could reduce costs to motor carriers if the daily inspection report were to be included in a weekly format. According to AAJ, this would continue to ensure that daily inspections were performed and reduce the volume of paper records needing to be maintained.

FMCSA response. There are several potential drawbacks to this suggestion. In a June 1998 final rule, the Agency revised the part 396 requirements [63 FR 33254, June 18, 1998, at 33279] to acknowledge the growing use of centralized maintenance recordkeeping systems and to

eliminate the requirement that the previous day's DVIR be physically carried in the CMV. Because drivers often do not operate the same CMV every day, a multiday form would probably need to be tracked to follow a given CMV. Thus, the AAJ's suggestion appears to recommend returning to the pre-1998 rule. It is also unclear what would happen to the weekly report if a driver discovered a mechanical problem on the third day of the week, for example, and submitted the defect report (on the weekly form) to the maintenance shop.

Comment. ATA believes that FMCSA has overstated the potential benefits associated with eliminating the no-defect DVIR. ATA estimates that about 40 percent of the 600,000-800,000 electronic on-board recorders<sup>1</sup> in use include an electronic-DVIR function. ATA also believes that FMCSA has over-estimated the amount of time needed to complete the paperwork for a no-defect DVIR: As ATA views it, 47.2 million hours, divided by 500,000 fleets, equals approximately 95 hours per fleet per year. ATA also believes that many motor carriers will continue to maintain no-defect DVIRs in order to provide continuity to their maintenance programs and because of concerns over litigation. ATA surveyed the motor carrier members of its Technology & Maintenance Council and received responses from 59 carriers. Although nearly three-fourths (70.2 percent) of them supported rescinding the regulatory requirement, there was nearly an even division among the carriers that said they would continue to retain no-defect DVIRs, those that would no longer retain them, and those that were uncertain. Among the 13 carriers providing individual comments to the survey, opinions were divided. Although most expressed support for the proposal, others expressed concerns similar to those of Advocates, that drivers might not complete DVIRs to report defects [even though this will still be required]. Of the 37 carriers responding to a question concerning costs of submitting and retaining no-defect

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<sup>1</sup> The term "electronic on-board recorder" is understood in this context to include multiple functions, not limited to recording driver hours-of service.

DVIRs, 16 stated that they were unable to provide estimates or that the costs were minimal, although one carrier estimated a cost of \$25,000 per truck per year.

FMCSA response. Rather than estimating information-collection burdens on a per-fleet basis, as ATA did, FMCSA calculated its time estimate on a per-vehicle basis (approximately 11 hours). Because there is enormous variation in fleet sizes, and because approximately 152,000 single-CMV fleets are not required to prepare or retain DVIRs, FMCSA believes that it is more appropriate to estimate information collection burdens on a per-vehicle basis, and to express them as industry-wide totals rather than per-fleet totals. In addition, it appears that ATA might not have accounted for the motor carriers that operate only a single CMV and are not required to prepare DVIRs, so might have under-estimated the reduction in information-collection burden.

Concerning the proportion of DVIRs prepared electronically, FMCSA received no comments on its estimated information collection burden for inspection, repair, and maintenance recordkeeping requirements the last several times this collection has come up for renewal. FMCSA's current estimate that 5 percent of DVIRs are completed electronically (5% x 4,578,250 CMVs), is somewhat less than the ATA's estimate (40% of between 600,000 and 800,000 CMVs so equipped = 240,000 to 280,000 CMVs using electronic DVIRs).

### **Applicability to intrastate operations**

Comment. Gregory Hooyman, who supported the proposal, also asked FMCSA to make it applicable to intrastate drivers in order to avoid potential confusion.

FMCSA response. In order to be eligible for Motor Carrier Safety Assistance Program (MCSAP) grants, States must adopt and enforce motor carrier safety laws and regulations for intrastate as well as interstate operations that are compatible with the FMCSRs, including parts

392 and 396 (49 CFR 350.201(a)). MCSAP recipients have up to 3 years to adopt the requirements of this final rule.

### **Comment concerning U.S.-Canada reciprocity**

Comment. The CCMTA noted that, in accordance with the Canada-U.S. Trip Inspection Reciprocity Agreement, “CCMTA jurisdictions will accept the pre- and post-trip inspection reports prepared by U.S. base-plated motor carriers in accordance with 49 CFR part 396 as fully compliant with the requirements of NSC [National Safety Code] Standard 13 on Trip Inspection dated September 2008 provided such motor carriers carry, and produce upon demand, a post-trip inspection report that is no more than 24-hours old. If a driver does not have access to the vehicle’s previous post-trip inspection report, the driver will prepare and produce the report required by 49 CFR 396.11 for the purpose of the Canadian operations.” CCMTA stated that the proposed change to the FMCSRs would require amending the Reciprocity Agreement, to state that U.S. domiciled drivers will continue to be required to produce a DVIR at roadside when operating in Canada even when no defect has been detected. CCMTA provided a copy of a May 14, 2009, letter on this matter.

FMCSA response. Motor carriers operating in Canada will need to comply with Canadian national, Provincial and Territorial requirements that require the previous post-trip DVIR. Drivers will need to prepare and to carry a copy of their previous day’s post-trip DVIR, regardless of whether there are defects to report.

### **Section-By-Section Analysis**

This final rule adopts the NPRM as proposed with minor revisions for clarity.

In § 392.7, FMCSA adds “wheels and rims” and “emergency equipment” to the pre-trip list in paragraph (a) in order to harmonize it with the post-trip list in § 396.11(a)(1).

Additionally, FMCSA amends 49 CFR part 396 by deleting the sentence in § 396.11(a)(2) that reads “If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate.” In its place, FMCSA inserts “The driver of a passenger-carrying CMV must prepare and submit a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor vehicles are not required to prepare or submit a report if no defect or deficiency is discovered by or reported to the driver.” FMCSA also makes minor editorial and formatting changes to the remainder of the text of § 396.11(a)(2).

The Agency makes a technical change to § 396.11 to eliminate redundant language. In the final rule of June 12, 2012 (77 FR 34852), the text of § 396.11(c) was moved to § 396.11(a)(3) and the text of § 396.11(d) was moved to § 396.11(a)(5). However, the amendatory text to delete paragraphs (c) and (d) was not included in that final rule. The Agency corrects that omission here.

## **Rulemaking Analyses**

### Executive Order 12866 (Regulatory Planning and Review) as Supplemented by E.O. 13563 and DOT Regulatory Policies and Procedures

Under E.O. 12866, “Regulatory Planning and Review” (issued September 30, 1993, published October 4 at 58 FR 51735), as supplemented by E.O. 13563 (discussed above in the “Background” section), and DOT policies and procedures, FMCSA must determine whether a regulatory action is “significant” and therefore subject to OMB review. E.O. 12866 defines “significant regulatory action” as one likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA has determined that this rule does have an annual effect of \$100 million or more. The value of the time saved by eliminating the paperwork burden associated with the filing of no-defect DVIRs is approximately \$1.7 billion per year. The explanation of how these savings were estimated is presented below. The rule is not expected to have any negative safety impacts.

The Agency conducted an analysis pursuant to the Paperwork Reduction Act (PRA) to estimate the reduction in hourly burden from elimination of DVIRs for non-passenger-carrying operators of CMVs. FMCSA determined that 46.7 million hours of paperwork burden would be eliminated by this rule. The full details of the PRA analysis are included in the “Paperwork Reduction Act” section below. Using a labor cost of \$37 per hour (with a base wage of \$18.61,<sup>2</sup> fringe benefits of 57 percent<sup>3</sup>, and overhead of 27 percent;<sup>4</sup>  $\$18.61 \times 1.57 \times 1.27 = \$37$ ), the

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<sup>2</sup> The median hourly wage for heavy truck drivers. See <http://www.bls.gov/oes/current/oes533032.htm>. Accessed April 18, 2014.

<sup>3</sup> The ratio of total fringe benefits to wages and salaries for transportation and warehousing workers. See [http://www.bls.gov/news.release/archives/ecec\\_03122014.pdf](http://www.bls.gov/news.release/archives/ecec_03122014.pdf). Table 10, Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, March 12, 2014. Transportation and Warehousing. <http://www.bls.gov/news.release/pdf/ecec.pdf>. Accessed April 18, 2014.

<sup>4</sup> Industry data gathered for the Truck Costing Model developed by the Upper Great Plains Transportation Institute Berwick showed an average cost of \$0.107 per mile of CMV operation for management and overhead, and \$0.39 per mile for labor, indicating an overhead rate of 27 percent ( $\$0.107 \div \$0.39$ ). See Farooq. “Truck Costing Model for Transportation Managers”. Upper Great Plains Transportation Institute, North Dakota State University (2003) accessed on April 18, 2014 at <http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf>. See Appendix A, pp. 42-47. Overhead is applied to the base wage and fringe benefits.

Agency valued this time savings at \$1.7 billion per year (46.7 million hours saved × \$37 per hour).

The Agency added “wheels and rims” and “emergency equipment” to the items required to be inspected under § 392.7 to make the lists in this section and § 396.11 consistent. The addition of these two items to § 392.7 is expected to impose a de minimis additional burden on drivers performing pre-trip evaluations of equipment, as drivers will be able readily to observe whether these newly added items are in good working order during their review of the items currently in the § 392.7 list (service brakes, including trailer brake connections, parking (hand) brake, steering mechanism, lighting devices and reflectors, tires, horn, windshield wiper or wipers, rear-vision mirror or mirrors, and coupling devices). For example, a driver making a visual examination of tires can hardly avoid examining the wheels and rims at the same time, and defects on these components are usually fairly obvious. Similarly, while getting into the cab to check the steering mechanism and horn, he or she can easily glance at the dial gauge on the fire extinguisher to determine that it is still fully charged. Other emergency equipment, including warning triangles, flares, or fuses are usually stored in an easy-to-reach location (often under or behind the driver’s seat) and are readily checked. These items were added to the inspection list for consistency, and the Agency expects the cost and benefits of these additions to be de minimis.

#### Regulatory Flexibility Act

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

not dominant in their fields, and governmental jurisdictions with a population of less than 50,000.<sup>5</sup>

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies try to minimize any adverse effects on these entities.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), the rule will have a significant economic impact on a substantial number of small entities in the form of cost savings through the elimination of 46.7 million paperwork burden hours. These firms would receive regulatory relief of approximately \$3,000 per entity, which is a positive benefit and does not impose a cost on the regulated entities. See 5 U.S.C. 605(b).

### **Regulatory Flexibility Analysis (RFA)**

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

FMCSA rescinds the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce, except drivers of passenger-carrying CMVs, submit, and motor carriers retain, driver-vehicle inspection reports (DVIR) when the driver has neither found nor been made aware of any vehicle defects or deficiencies (no-defect DVIR). This rule removes a significant information collection burden without adversely impacting safety. This rule responds, in part, to the President’s January 2011 Regulatory Review and Reform initiative. Finally, this rule harmonizes the pre- and post-trip inspection lists.

#### **(2) A succinct statement of the objectives of, and legal basis why action by the Agency is being considered.**

This final rule grants regulatory relief to motor carriers and drivers of all sizes of

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

vehicles currently subject to 49 CFR 396.11, both private and for-hire, with the exception of operators of passenger-carrying CMVs. This rule is based on the authority of the Motor Carrier Act of 1935 (1935 Act) [49 U.S.C. 31502(b)] and the Motor Carrier Safety Act of 1984 (1984 Act) [49 U.S.C. 31136(a)], both of which are broadly discretionary. The rule implements, to some extent, the Administrator's authority under § 31136(a)(1) to ensure that CMVs are maintained, equipped, loaded, and operated safely. The NPRM is also based on the broad recordkeeping and implementation authority of § 31133(a)(8) and (10). The removal of the obligation to prepare and retain no-defect DVIRs does not compromise drivers' ability to report vehicle problems to the carrier, or relieve carriers of the responsibility to take corrective action.

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

The motor carriers regulated by FMCSA operate in many different industries, and no single "small business" size threshold used by the Small Business Administration (SBA) is applicable to all motor carriers. Most for-hire property carriers operate under North American Industrial Classification System<sup>6</sup> (NAICS) code 484, truck transportation (see, <http://www.bls.gov/iag/tgs/iag484.htm>), although some for-hire carriers categorize themselves as "express delivery services" (NAICS 492110), "local delivery" (NAICS 492210), or operate primarily in other modes of freight transportation. The SBA size standard for "small" truck transportation and local delivery services is currently \$25.5 million or less in revenue per year, and 1,500 or fewer employees for express delivery services. For other firms in other modes that

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<sup>6</sup> More information about NAICS is available at: <http://www.census.gov/eos/www/naics/>, Accessed Feb. 4, 2014

may also be registered as for-hire motor carriers, the “small” size standard is 500 or 1,500 employees.<sup>7</sup>

This rulemaking would also affect private motor carriers. These carriers use CMVs they own or lease to ship their own goods (such as a motor carrier that is operated by a retail department store chain to distribute goods from its warehouses to its store locations) or in other regulated transportation activities related to their primary business activities (for example, dump trucks used by construction companies). FMCSA does not have NAICS codes for private motor carriers and therefore cannot determine the appropriate size standard to use for each case. The “small” size standards vary widely, from \$0.75 million for many types of farms, to \$33.5 million for building construction firms.

For for-hire motor carriers, FMCSA examined data from the 2007 Economic Census<sup>8</sup> to determine the percentage of firms that have revenue at or below SBA’s thresholds. Although boundaries for the revenue categories used in the Economic Census do not exactly coincide with the SBA thresholds, FMCSA was able to make reasonable estimates using these data. According to the Economic Census, about 99 percent of trucking firms had annual revenue less than \$25 million; the Agency concluded that the percentage would be approximately the same using the SBA threshold of \$25.5 million as the boundary.

For private carriers, the Agency assumed that private carriers with fewer CMVs than the top 1 percent (ranked by total CMVs) of for-hire carriers would also be small. That is, any company maintaining a CMV fleet the size of that of a large for-hire carrier would be considered

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<sup>7</sup> U.S. Small Business Administration Table of small Business Size Standards matched to North American Industry Classification System (NAICS) codes, effective January 1, 2012. See [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

<sup>8</sup> U.S. Census Bureau, “2007 Economic Census.” Accessed December 18, 2013 at: <http://www.census.gov/econ/census07/>

large within its own industry. The Agency found that the top 1 percent of for-hire carriers had at least 194 CMVs. Using this threshold, FMCSA identified 201,725 small private property carriers (99.4 percent of this group) with fewer than 194 CMVs. This could overestimate the number of small, private carriers. However, the Agency is confident that no small private carrier would be excluded.

The table below shows the complete estimates of the number of small carriers. All told, FMCSA estimates that 99.1 percent of regulated motor carriers are small businesses according to SBA size standards.

**Table 3. Estimates of Numbers of Small Entities**

	<b>For-Hire General Freight</b>	<b>For-Hire Specialized Freight</b>	<b>Private Property</b>	<b>Total</b>
Carriers	176,000	139,000	203,000	518,000
Percentage of Small Carriers	98.9%	98.9%	99.4%	99.1%
Number of Small Carriers*	174,064	137,471	201,725	513,260

\*Number of carriers does not exactly equal percentages due to rounding.

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

This rule reduces costs on small entities by eliminating a substantial paperwork filing burden. The reduction in this burden is estimated to save the industry 46.7 million hours of driver time with associated monetized savings of \$1.7 billion, as explained in the Paperwork

Reduction Act section. These benefits will accrue primarily to small carriers that make up the majority of firms and employ the majority of drivers in the industry. The skills for drivers to complete DVIRs are basic reading and writing proficiency skills.

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

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

**(6) A description of any significant alternatives to the rules which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.**

The Agency has concluded that there are no significant alternatives to the rule that would achieve either the value of \$1.7 billion in time savings or other objectives of this final rule, except eliminating the paperwork burden. Because small businesses are such a considerable part of the demographic the Agency regulates, providing alternatives to small businesses for non-compliance options is neither feasible nor consistent with public safety.

Assistance for Small Entities

Pursuant to section 213 of SBREFA, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on them. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Deborah M. Freund, listed in the **For Further Information Contact** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory

Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247).

#### Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$151 million (which was the value of \$100 million in 2013 after adjusting for inflation) or more in any 1 year. Although this rule does not result in such expenditure, FMCSA discusses the effects of this rule elsewhere in this preamble.

#### National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under its environmental procedures Order 5610.1, published February 24, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(aa) of Appendix 2. The Categorical Exclusion under paragraph 6(aa) relates to regulations requiring motor carriers, drivers, and others to “inspect, repair, and provide maintenance for every CMV used on a public road”, which is the focus of this rulemaking. A Categorical Exclusion determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 et seq.) also requires FMCSA to analyze the potential

impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. No additional contributions to air emissions are expected from this rule and FMCSA expects the rule to not be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

#### Executive Order 12898 Environmental Justice

FMCSA evaluated the environmental effects of this proposed rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions 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.

#### Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires FMCSA to consider the impact of paperwork and other information collection burdens imposed on the public. This rule reduces the burden hours for the “Inspection, Repair, and Maintenance” information collection request (ICR), OMB control number 2126-0003. This ICR comprises six individual information collections, each corresponding to a different area of the inspection, repair, and maintenance requirements. This rule affects only the DVIR section of this ICR.

Based on data from its Motor Carrier Management Information System (MCMIS) and Licensing and Insurance System (L&I), FMCSA estimates that there are approximately 4,117,000 CMVs being operated that are subject to these requirements, which includes 1,845,000 tractors and 101,000 passenger-carrying CMVs, but excludes the 152,000 CMVs of single-vehicle owner operators. Consistent with past analyses of this ICR, the Agency assumes that these CMVs are used on average 65 percent of the days of a year, and that 25 percent of tractor-

trailer drivers operate two vehicle combinations per day, which effectively increases the number of CMVs or CMV combinations requiring a DVIR by 461,250 (25 percent  $\times$  1,845,000 tractors) to a total of 4,578,250 (4,117,000 CMVs + 461,250 additional tractor-trailer combinations). Applying the 65 percent utilization rate yields an annual estimate of 1,086,189,813 DVIRs (4,578,250 CMVs or CMV combinations  $\times$  65 percent  $\times$  365 days per year).

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

When this rule goes into effect, 93 percent of the burden associated with DVIRs will be eliminated. The remaining burden would be associated with DVIRs that note defects and no-defect DVIRs for passenger-carrying CMVs. The annual burden remaining from these two activities is 2,564,615 hours and 980,123 hours respectively. The table below illustrates how these results were calculated.

**Table 4: Detail of DVIR PRA Calculations**

Activity	Number of CMVs or CMV Combinations	Utilization Rate (of 365 Calendar Days)	Percent of CMVs Affected	Total DVIRs (CMVs $\times$ Utilization Rate $\times$ Percent of CMVs Affected $\times$ 365)	Burden per DVIR	Total Annual Hourly Burden
<b>Defect DVIRs, All</b>	4,578,250	65%	5%	54,309,491	170 seconds	2,564,615
<b>No Defect DVIRs, passenger-carrying CMVs</b>	101,000	65%	95%	22,764,138	155 seconds	980,123
<b>Total</b>						3,544,738

Defect DVIRs create 2,564,615 hours of annual burden ( $4,578,250 \text{ CMVs} \times 65\% \text{ utilization} \times 365 \text{ days} \times 5\% \text{ of CMVs} \times 170 \text{ seconds} \div 3,600 \text{ seconds per hour}$ ). The annual hourly burden of no defect DVIRs for passenger carrying CMVs is estimated to be 980,123 hours ( $101,000 \text{ CMVs} \times 65\% \text{ utilization} \times 365 \text{ days} \times 95\% \text{ of CMVs} \times 155 \text{ seconds} \div 3,600 \text{ seconds per hour}$ ). The total remaining hourly burden of DVIRs is 3,544,738 hours. This new total represents a reduction of 46,669,294 hours compared to the 50,214,032 hours of annual burden estimated in the currently approved ICR. The monetary value of this annual burden reduction, calculated using an hourly labor cost of \$37, is \$1.7 billion ( $46,669,294 \text{ hours} \times \$37 \text{ per hour}$ ).

#### Executive Order 12630 (Taking of Private Property)

This rule 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.

#### Executive Order 12988 (Civil Justice Reform)

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Executive Order 13045 (Protection of Children)

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an Agency to submit for a covered regulatory action an evaluation of its

environmental health or safety effects on children. FMCSA has determined that this rule is not a covered regulatory action as defined under Executive Order 13045. This determination is based on the fact that this proposal would not constitute an environmental health risk or safety risk that would disproportionately affect children.

#### Executive Order 13132 (Federalism)

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on States or localities. FMCSA analyzed this rule under that Order and has determined that it does not have implications for federalism.

#### Executive Order 12372 (Intergovernmental Review)

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

#### Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this rule under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” This final rule is not a significant energy action within the meaning of section 4(b) of the Executive Order. This final rule is a procedural action, is not economically significant, and does not have a significant adverse effect on the supply, distribution, or use of energy.

#### Privacy Impact Analysis

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108-447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the

rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this rule would have no privacy impacts.

### **List of Subjects**

#### 49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers

#### 49 CFR Part 396

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

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

### **PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES**

1. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103-311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112-141, 126 Stat. 405-805 (2012); and 49 CFR 1.87.

2. Revise § 392.7(a) to read as follows:

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

(a) No commercial motor vehicle shall be driven unless the driver is satisfied that the following parts and accessories are in good working order, nor shall any driver fail to use or make use of such parts and accessories when and as needed:

Service brakes, including trailer brake connections.

Parking (hand) brake.

Steering mechanism.

Lighting devices and reflectors.

Tires.

Horn.

Windshield wiper or wipers.

Rear-vision mirror or mirrors.

Coupling devices.

Wheels and rims.

Emergency equipment.

(b) \* \* \*

\* \* \* \* \*

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

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

Authority: 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

4. Amend § 396.11 as follows:

a. Remove paragraphs (c) and (d) in their entirety; and

b. Revise paragraph (a)(2) to read as follows:

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

(a) \* \* \* \* \*

(2) Report content. (i) The report must identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If a driver operates more than one vehicle during the day, a report must be prepared for each vehicle operated. The driver of a passenger-carrying CMV subject to this regulation must prepare and submit a report even if no defect or deficiency is discovered by or reported to the driver; the drivers of all other commercial motor

vehicles are not required to prepare or submit a report if no defect or deficiency is discovered by or reported to the driver.

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

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Anthony R. Foxx  
Secretary