

is likely 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 percent 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 percent of DVIRs with 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:

(b) A driver or motor carrier transporting intermodal equipment must report to the intermodal equipment provider, or its designated agent, any known damage, defects, or deficiencies in the intermodal equipment at the time the equipment is returned to the provider or the provider's designated agent. 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.

FMCSA Analysis of the Petition

The Agency has reviewed the petitioners' request and finds that it has merit. In developing the 2008 final rule, FMCSA determined that the DVIR requirements for IME should be consistent with the long-standing driver- and motor carrier-DVIR requirements in § 396.11 for non-IME. Section 396.11(b) calls for a DVIR to be prepared to indicate not only any defects or deficiencies discovered by or reported to the driver that would affect the safety or operation of the vehicle, but also to indicate if the driver found no defects or deficiencies.

The Agency notes that § 390.40(d) of the FMCSRs 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. The Agency also agrees with the petitioners that the existing requirement for motor carriers to submit 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 FMCSA also notes that, in addition to the petitioners, two other industry stakeholders, the American Trucking Associations' Intermodal Motor Carriers Conference (ATA-IMCC) and IANA, have written the Agency in support of the petition to eliminate the requirement for no-defect DVIRs. This support, in conjunction with the reasons outlined above, has persuaded the Agency to initiate rulemaking on this issue. Copies of documents submitted by the ATA-IMCC, OCEMA, and IANA have been placed in the docket.

Conclusion

After completing its review and analysis of the petition, FMCSA has determined 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 plans to issue a notice of proposed rulemaking at a later date 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.

Partial Extension of Compliance Date

While the Agency is conducting the rulemaking discussed above, FMCSA extends until June 30, 2011, the June 30, 2010, compliance date of the December 2009 final rule, specifically 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.

Issued on: August 13, 2010.

William Bronrott,
Deputy Administrator.

[FR Doc. 2010-20603 Filed 8-19-10; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 83

[Docket No. FWS-R9-WSR-2010-0009]
[91400-5110-POLI-7B; 91400-9410-POLI-7B]

RIN 1018-AX00

Removing Regulations Implementing the Fish and Wildlife Conservation Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing our regulations implementing the Fish and Wildlife Conservation Act of 1980. The Act authorized financial and technical assistance to States to design conservation plans and programs to benefit nongame species; however, funds never became available to carry out the Act, and we do not expect funds to become available in the future.

DATES: This rule is effective on September 20, 2010.

FOR FURTHER INFORMATION CONTACT: Joyce Johnson, Wildlife and Sport Fish Restoration Program, Division of Policy and Programs, U.S. Fish and Wildlife Service, 703-358-2156.

SUPPLEMENTARY INFORMATION:

Background

The Service manages or comanages 54 financial assistance programs. Our Wildlife and Sport Fish Restoration Program manages, in whole or in part, 19 of these programs. We implement some of these programs via regulations in title 50 of the Code of Federal Regulations (CFR), particularly in subchapter F "Financial Assistance—Wildlife and Sport Fish Restoration Program," which currently includes parts 80 through 86.

The regulations at part 83 implement the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2901-2911). This act authorized the Service to give financial and technical assistance to States and other eligible jurisdictions to design conservation plans and programs to benefit nongame species. The regulations tell the fish and wildlife agencies of the 50 States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa how they can take part in this grant program. However, neither the Fish and Wildlife Conservation Act nor any subsequent legislation established a

continuing source of funds for this grant program, nor have annual Appropriations Acts provided any funds for it. In 1984, the Service's Western Energy and Land Use Team prepared a document identifying potential funding sources, but none of these options were adopted.

Congress has appropriated funds in recent years for State conservation planning and programs to benefit nongame species, but none of these grant programs has been under the authority of the Fish and Wildlife Conservation Act. Instead, Congress made funds available through the Wildlife Conservation and Restoration grant program in 2001 and—during each year since 2002—the State Wildlife Grants program. Based on this 30-year record, we do not expect that the grant program authorized by the Fish and Wildlife Conservation Act of 1980 will receive any funding. Therefore, we are removing its implementing regulations from title 50 of the CFR.

Public Comments

We published our proposed rule to remove the Fish and Wildlife Conservation Act of 1980's implementing regulations (50 CFR 83) in the May 6, 2010, **Federal Register** (75 FR 24862) and invited public comments for 60 days, ending July 6, 2010. During the public comment period, we received one comment. We reviewed and considered that comment, and we determined that it was not applicable to the specific proposed action described in our proposed rule. Therefore, we made no changes to our proposed action in this final rule.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under E.O. 12866. OMB bases its determination on the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency to consider the impact of rules on small entities, i.e., small businesses, small organizations, and small government jurisdictions. If there is a significant economic impact on a substantial number of small entities, the agency must perform a Regulatory Flexibility Analysis. This is not required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. The Small Business Regulatory Enforcement Fairness Act (SBREFA) amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

We are removing a regulation governing an unfunded grant program. Consequently, we certify that the removal would not have a significant economic effect on a substantial number of small entities; a Regulatory Flexibility Analysis is not required.

In addition, this rule is not a major rule under SBREFA and would not have a significant impact on a substantial number of small entities because it:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Does not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. The Act requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of a rule with Federal mandates that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. We have determined the following under the Unfunded Mandates Reform Act:

a. As discussed in the determination for the Regulatory Flexibility Act, this rule will not have a significant economic effect on a substantial number of small entities.

b. This rule does not require a small government agency plan or any other requirement for expenditure of local funds.

c. There are no mandated costs associated with this rule.

d. This rule will not produce a Federal mandate of \$100 million or greater in any year; i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

This rule will not have significant takings implications under E.O. 12630 because it will not have a provision for taking private property. Therefore, a takings implication assessment is not required.

Federalism

This rule will not have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132. It will not interfere with the States' ability to manage themselves or their funds.

Civil Justice Reform

The Office of the Solicitor has determined under E.O. 12988 that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and part 516 of the Departmental Manual (DM). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required because this action qualifies for the categorical exclusion for administrative changes provided in 516 DM 2, Appendix 1, section 1.10.

Government-to-Government Relationship with Tribes

We have evaluated potential effects on federally recognized Indian tribes

under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2. We have determined that there are no potential effects. This rule will not interfere with the tribes' ability to manage themselves or their funds.

Energy Supply, Distribution, or Use

E.O. 13211 addresses regulations that significantly affect energy supply, distribution, and use and requires agencies to prepare Statements of

Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 12866 and would not affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 83

Fish, Grant programs—natural resources, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

■ For the reasons discussed in the preamble, under the authority of 16

U.S.C. 2901, we amend subchapter F of chapter I, title 50 of the Code of Federal Regulations, as follows:

■ Part 83—[Removed and Reserved]

■ Remove and reserve part 83, consisting of §§ 83.1 through 83.21.

Dated: July 28, 2010.

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–20634 Filed 8–19–10; 8:45 am]

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