

Stat. 847), EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 2, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

**PART 180— [AMENDED]**

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.284, by adding a new paragraph (c) to read as follows:

**§ 180.284 Zinc phosphide; tolerances for residues.**

\* \* \* \* \*

(c) Time-limited tolerances are established for residues of the phosphine resulting from the use of the rodenticide zinc phosphide in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances expire and are automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Potatoes .....	0.05	October 15, 1997
Sugar beet (roots)	0.05	October 15, 1997
Sugar beet (tops) ..	0.1	October 15, 1997

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Parts 382, 383, and 390**

[FHWA Docket No. MC-93-17]

RIN 2125-AE13

**Federal Motor Carrier Safety Regulations; Intermodal Transportation; Withdrawal of Final Rule**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule; withdrawal.

**SUMMARY:** On December 29, 1994, the FHWA published a final rule [59 FR 67544] which implemented the Intermodal Safe Container Transportation Act of 1992 (the 1992 Act). On October 11, 1996, the President signed the Intermodal Safe Container Transportation Amendments Act of 1996 (the 1996 Act) which substantially amended the 1992 Act and removed the requirement that the Secretary of Transportation promulgate implementing regulations. The FHWA, therefore, is withdrawing its December 29 final rule. The FHWA has determined that regulations are not necessary to implement the 1992 Act as amended by the 1996 Act. The 1996 Act will become effective on April 9, 1997. The FHA is also amending the applicability provisions of the regulations on controlled substances and alcohol use and testing.

**EFFECTIVE DATE:** January 9, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366-5763; or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

Background and Summary of the 1992 Act

Almost every intermodal container and trailer travels over the highway at least once during shipment. Motor carriers are usually at the beginning or end of the intermodal transportation chain. It is difficult for motor carriers to comply with highway weight limitations without knowledge of the weight and transportation characteristics of the contents of a container or trailer. The purpose of highway weight laws is to minimize

highway and bridge wear and protect the motoring public.

In the 1980s, motor carriers complained that they had little or no control over the loading of the containers or trailers, were forced to accept containers and trailers with an unknown cargo and weight by threat of economic retaliation, and yet were held responsible for compliance with weight laws. A motor carrier might suspect that a loaded container or trailer was too heavy for the equipment or illegal under State law, but would have no reasonable grounds for refusing to transport it without knowledge of the cargo weight.

On October 28, 1992, the President signed the Intermodal Safe Container Transportation Act of 1992 (the 1992 Act) [Pub. L. 102-548, 106 Stat. 3646, partly codified at 49 U.S.C. 5901-5907 (formerly 49 U.S.C. 501 and 508)]. The 1992 Act requires the person who loads an intermodal container or trailer to prepare a written certification that includes a reasonable description and the actual gross weight of the cargo, and to give the certification to the initial carrier. Each carrier is required to forward the certification to the next carrier transporting the container or trailer. The information will enable motor carriers, which are already familiar with the tare weights of containers, trailers, and chassis, to better estimate the axle weights and gross weight of a given combination. If the certified cargo weight is incorrect and the motor carrier is fined for operating an overweight vehicle as a result of that error, the motor carrier has a lien on the cargo until the shipper or owner of the cargo reimburses it for the fine and all costs associated with the incident. Coercing a person to transport a loaded container or trailer without a certification or with a weight that would make the vehicle combination illegally overweight under applicable State law was prohibited by the 1992 Act.

Summary of Events Between the Enactment of the 1992 Act and the 1996 Act

The FHWA published a notice of proposed rulemaking (NPRM) on July 14, 1993 (58 FR 37895). The NPRM proposed to amend part 390 of the Federal Motor Carrier Safety Regulations (FMCSRs) by adding a new Subpart C, Intermodal Transportation. Most of the proposed regulations simply codified the statutory requirements. The comment period for the NPRM originally closed on September 13, 1993. In response to several requests, the FHWA reopened the comment period and extended it until October 28, 1993.

On December 29, 1994, the FHWA published a final rule implementing the 1992 Act with an effective date of the rule was June 27, 1995. On April 7, 1995, the American Trucking Associations, Inc. (ATA) filed a petition to exempt three types of motor carrier operations from the final rule. During April and May, the FHWA received letters from several companies and industry groups petitioning for an extension of the effective date of the final rule. These petitioners explained that the intermodal transportation industry relies heavily on electronic data interchange (EDI) and that the time necessary to develop EDI standards and complete computer programming and training for electronic forwarding of certifications made it impossible to achieve compliance through the use of EDI by June 27, 1995. On May 16 [60 FR 26001], the FHWA administratively extended the June 27 effective date until September 27, 1995, to allow the agency sufficient time to consider public comment on whether a further extension was warranted. On May 25 (60 FR 27700), the FHWA requested comments on whether an extension of the effective date of the final rule beyond September 27 was necessary. As a part of the May 25 publication, the FHWA requested comments on the April 7 petition filed by the ATA. In their comments to the May 25 publication, the ATA and National Industrial Transportation League (NITL) informed the FHWA that the organizations would file a joint petition for amendments to the final rule. The FHWA, therefore, deferred discussion of the April 7 petition until after the agency had an opportunity to consider the forthcoming petition. The FHWA determined that a further extension was warranted and, therefore, on August 10 (60 FR 40761) extended the effective date of the final rule until September 1, 1996, to allow the intermodal transportation industry sufficient time to comply by means of EDI.

On August 31, 1995, the NITL, ATA, and Interstate Truckload Carriers Conference filed a joint petition for amendments to the final rule. Between November 1995 and February 1996, the FHWA and the petitioners exchanged letters about the petitions. On March 29, the NITL, the Intermodal Conference of the ATA, and the Intermodal Safe Container Coalition asked the FHWA to delay its decision on both petitions until after April 30. The organizations explained that they were engaged in negotiations to reach agreement on amendments to the final rule which they believed were needed. On May 21,

the three organizations notified the FHWA that they had reached consensus and would seek amendments to the 1992 Act. The organizations asked the FHWA to delay its decision on both petitions until July 1, 1996. The petitions and letters discussed above are available for review in the public docket.

On July 16, 1996, a bill to amend the 1992 Act, S. 1957, was introduced by the Chairman of the Senate Committee on Commerce, Science, and Transportation with co-sponsorship of the Chairman and ranking minority member of the Subcommittee on Surface Transportation and Merchant Marine. On July 23, 1996, the sponsors of the bill wrote to the Secretary of Transportation requesting that the September 1, 1996, effective date of the FHWA's rule be extended. The Senators expressed concern that implementation as currently planned could have devastating consequences for intermodal transportation, including delays and severe congestion at the nation's ports. On August 19 (61 FR 42822), the FHWA administratively extended the September 1, 1996, effective date until January 2, 1997, because (1) the two petitions before the agency had not been resolved, (2) a significant number of foreign entities were not familiar with their responsibilities, and (3) implementation of the final rule prior to possible enactment of S. 1957 could disrupt both interstate and foreign commerce. A revised version of S. 1957 was approved by both chambers of Congress as title II of H.R. 3159 which was signed by the President on October 11, 1996 [Pub. L. 104-291, 110 Stat. 3452].

#### Highlights of the 1996 Act

The 1996 Act amends the 1992 Act in several significant ways. Among other things, the 1996 Act:

1. Raises the jurisdictional weight threshold from 4,536 kilograms (10,000 pounds) to 13,154 kilograms (29,000 pounds);
2. Creates a presumption that the cargo weight of an intermodal container or trailer is less than 13,154 kilograms (29,000 pounds) if no certification is provided to the motor carrier;
3. Exempts highway/railroad intermodal movements where one motor carrier performs all of the highway transportation itself or assumes responsibility for overweight fines incurred by any other motor carrier that handles part of the highway transportation;
4. Makes explicit the applicability of the 1992 Act to foreign persons who tender a loaded container or trailer for

intermodal transportation within the United States;

5. Treats a bill of lading or other shipping document prepared by the person who tenders a loaded container or trailer as a certification if it includes certain information specified by the 1996 Act;

6. Prohibits the use of the term "Freight All Kinds" as a reasonable commodity description after December 31, 2000, if the weight of any single commodity is 20 percent or more of the total cargo weight;

7. Makes any person—in most cases an intermediate carrier—who inaccurately converts a paper certification into an electronic format or fails to forward a certification, indirectly liable for any fine or other costs incurred by a motor carrier as a result of that incorrect information or missing certification;

8. Provides that a copy of the certification is not required to accompany the loaded container or trailer during intermodal transportation;

9. Removes language prohibiting a motor carrier from transporting an intermodal container or trailer for which a certification is required, before receiving a certification;

10. Requires motor carriers to give leased operators written notice of the gross cargo weight of an intermodal container or trailer if they know that it would cause a vehicle combination to violate gross vehicle weight limits. If no such notice is given and the leased operator is fined for violating a gross vehicle weight law or regulation, the operator is entitled to reimbursement from the motor carrier; and

11. Removes the requirement that the Secretary of Transportation promulgate implementing regulations.

#### Overview of the 1996 Act

##### *General Applicability*

The certification requirements of the 1992 Act, as amended by the 1996 Act, apply to any domestic or foreign person who first tenders a container or trailer for intermodal transportation in the United States. The notification and certification requirements do not apply to any intermodal container or trailer containing consolidated shipments loaded by a motor carrier if such motor carrier performs all highway portions of the intermodal transportation or assumes responsibility for any weight-related fine incurred by any other motor carrier that transports the loaded container or trailer.

##### *Notification and Certification*

Any person within the United States who tenders a loaded container or

trailer having a projected gross cargo weight more than 29,000 pounds to a first carrier that is a motor carrier must provide written notification of the projected gross cargo weight and a reasonable description of the contents of the container or trailer to the first carrier before tendering. The notification may be communicated by electronic transmission, telephone, or paper copy. A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation, must provide a certification of its contents in writing or electronically, before or when the container or trailer is so tendered. A copy of the certification is not required to accompany the loaded container or trailer at any time during intermodal transportation.

The elements of a certification are the following:

- (1) The actual gross cargo weight (including packing materials, pallets, and dunnage);
- (2) A reasonable description of the contents of the container or trailer;
- (3) The identity of the certifying party;
- (4) The container or trailer number; and
- (5) The date of certification, or transfer of data to another document for forwarding to the next carrier.

Any shipping document which includes this information (though it need not be in the above order or even in a consecutive format) and is prepared by the person who tenders the container or trailer qualifies as a certification. If a separate document is used as a certification, it must be conspicuously marked "INTERMODAL CERTIFICATION." The use of the term "Freight All Kinds" or "FAK," as a reasonable description of the contents of the container or trailer, is prohibited after December 31, 2000, if the weight of any one commodity is 20 percent or more of the total cargo weight.

#### *Forwarding and Transfer of Certifications*

Carriers and intermediaries that receive a certification must forward it to the next carrier in the intermodal chain. A carrier or intermediary that receives a certification may transfer the information into a different document or convert a paper certification into an electronic format, for forwarding to a subsequent carrier. The party transferring or converting the information must identify itself on the forwarded document and give the date on which the information was converted or transferred.

#### *Liens*

A motor carrier which is fined or required to post a bond for transporting an overweight container or trailer subject to the amended 1992 Act has a lien against its contents equal to the fine (including costs) or bond if the penalty results from (1) failure to provide the initial certification, (2) erroneous information in the initial certification, (3) failure to forward the certification or (4) an error in the conversion of a paper certification to an electronic format or in the transfer of certification elements from one document to another. The lien remains in effect until the motor carrier is reimbursed by the party responsible for the error or failure that caused the overweight fine, or by the owner or beneficial owner of the cargo. If reimbursement is not made within a reasonable time, the motor carrier may sell the cargo to recover the amount of the fine or bond. Liens cannot be exercised against perishable agricultural commodities.

The lien provisions of the amended 1992 Act are especially complicated when an intermediate carrier or party makes an inaccurate conversion or transfer, or fails to forward the certification to a subsequent carrier. If a motor carrier incurs a fine and costs for an overweight violation resulting from such error or failure, the amended 1992 Act provides that the intermediate party is liable to the motor carrier for the fine and costs. The motor carrier, however, is expected to recover its costs by exercising its right to a lien by seizing the cargo. In this case, the owner of the cargo (usually the shipper or consignee) is not responsible for the error or failure that resulted in the fine. The amended 1992 Act, therefore, gives any person who reimburses the motor carrier for its fine and costs (usually the shipper or consignee who wants to get the cargo to its destination) a cause of action for that amount against the intermediate carrier or party whose error or failure caused the problem. The reimbursing party will then have to file suit against the intermediate carrier or party in the appropriate court to recover the amount it paid the motor carrier. The statutory scheme is complex and should be reviewed carefully by all intermodal shippers and carriers. This description is not intended to be an exhaustive analysis.

#### *Notice to Leased Operators*

If a motor carrier knows, because of the certification it has received, that a loaded container or trailer would cause a vehicle combination to be in violation of gross vehicle weight laws, it must

give written notice of the gross cargo weight to an owner-operator leased to the motor carrier. This amounts to a motor carrier certification within the broader shipper certification scheme of the statute. If no such notice is given and the owner-operator is fined for a violation of a gross vehicle weight law or regulation, the owner-operator is entitled to reimbursement from the motor carrier in the amount of the fine and court costs. The motor carrier bears the burden of proof to establish that it gave the required notice to its leased owner-operator.

#### *Unlawful Coercion and State Enforcement*

The 1996 Act did not substantially amend 49 U.S.C. 5903(c) which contains prohibitions regarding coercion. Coercing a person to transport a loaded container or trailer subject to the amended 1992 Act without a certification (or a shipping document that qualifies as such) or with a weight that would make the combination vehicle illegally overweight under applicable State law, remains prohibited. However, if no certification is provided to a motor carrier when a loaded container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight is less than 29,000 pounds. This should significantly reduce instances of alleged coercion.

The 1996 Act did not amend 49 U.S.C. 5904 which addresses State enforcement. States retain the authority to fine the motor carrier for all overweight violations, but they may also impound the intermodal container or trailer and levy the fine on the shipper when the violation was caused by inaccurate information in the certification. The absence of certifications from commercial motor vehicles, however, will hinder the ability of State enforcement officials to determine at roadside whether an overweight violation was caused by incorrect information in a certification. This may influence their choice of enforcement options.

#### *Rulemaking Analyses and Notices*

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this rulemaking action only withdraws a previously

issued rule, it is anticipated that the economic impact of this action will be minimal; therefore, a full regulatory evaluation is not required.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this action on small entities and has determined that, since this action withdraws regulations previously issued, it will not place a significant economic burden on a substantial number of small entities.

**Executive Order 12612 (Federalism Assessment)**

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This withdrawal of a recently published final rule will not preempt any State law or State regulation and no additional costs or burdens will be imposed on the States. This action will not affect the States' ability to execute traditional State governmental functions.

**Executive Order 12372 (Intergovernmental Review)**

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**Paperwork Reduction Act**

The information collection requirements contained in the final rule previously issued on December 29, 1994, were approved by the OMB in accordance with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520 and assigned the control number of 2125-0557 which expires on June 30, 1997. This action reduces paperwork burdens previously established and results in the FHWA no longer conducting or sponsoring a collection of information to implement 49 U.S.C. chapter 59. The FHWA, therefore, will not seek extension of the OMB's approval of the information collection assigned control number 2125-0557.

**National Environmental Policy Act**

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action would not

have any effect on the quality of the environment.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 390**

Highway safety, Highways and roads, Motor carriers, Recordkeeping requirements.

In consideration of the foregoing and under the authority of 49 U.S.C. 31132, 31133, 31502, and 31504, the FHWA hereby amends title 49, Code of Federal Regulations, parts 382, 383, and 390 as set forth below.

Issued on: December 31, 1996.  
Rodney E. Slater,  
*Federal Highway Administrator.*

**PART 382—[AMENDED]**

1. The authority citation for Part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

**§382.103 [Amended]**

2. Section 382.103 is amended by revising paragraph (c) to read as follows:

**§382.103 Applicability**

\* \* \* \* \*

(c) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

\* \* \* \* \*

**PART 383—[AMENDED]**

3. The authority citation for Part 383 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

**§383.3 [Amended]**

4. Section 383.3 is amended by revising paragraph (b) to read as follows:

**§383.3 Applicability**

\* \* \* \* \*

(b) The exceptions contained in §390.3(f) of this subchapter do not apply to this part. The employers and drivers identified in §390.3(f) must comply with the requirements of this part,

unless otherwise provided in this section.

\* \* \* \* \*

**PART 390—[AMENDED]**

5. The authority citation for Part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504, and Sec. 204, Pub.L. 104-88, 109 Stat. 803, 941; 49 U.S.C. 701 note, and 49 CFR 1.48.

**§390.3 [Amended]**

6. Section 390.3 is amended by removing paragraph (b), and redesignating paragraphs (c) through (g) as (b) through (f), respectively.

**Subpart C [Removed]**

7. Subpart C of part 390, (§§ 390.50-390.60) Intermodal Transportation, is removed and reserved.

**Appendix H to Subchapter B [Removed]**

8. Subchapter B is amended by removing appendix H.

[FR Doc. 97-384 Filed 1-8-97; 8:45 am]  
BILLING CODE 4910-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 227**

[Docket Number 950407093-6298-03; I.D. 012595A]

**Endangered and Threatened Species; Threatened Status for Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU); Correction**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correction to final rule.

**SUMMARY:** NMFS is making a technical correction to the final rule (61 FR 56138, October 31, 1996) determining that the Central California Coast Coho Salmon Evolutionarily Significant Unit (ESU) is a threatened species. The correction specifies that the ESU consists of all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, CA, and the San Lorenzo River in Santa Cruz County, CA.

**EFFECTIVE DATE:** December 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Craig Wingert, NMFS, Southwest Region, (310) 980-4021; or Marta