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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 49 CFR Parts 390 and 396

[FHWA Docket No. FHWA-98-3656]

RIN 2125-AE40

#### General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

**SUMMARY:** The FHWA is extending the comment period for its February 17, 1999, advance notice of proposed rulemaking (ANPRM) in which the agency announced that it was considering revisions to the requirements in parts 390 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) that place upon motor carriers the responsibility for maintaining intermodal container chassis and trailers. The rulemaking was initiated in response to a petition filed by the American Trucking Associations, Inc. (ATA) and the ATA Intermodal Conference (the petitioners). In the petition, the petitioners contend that motor carriers have no opportunity to maintain this equipment and parties who do have the opportunity often fail to do so. The petitioners now request that the FHWA extend the comment period to allow them additional time to collect and analyze certain data needed to respond to the specific questions asked in the ANPRM. In response to the petitioners' request for an extended comment period, the National Association of Waterfront Employers (NAWE) and the National Maritime Safety Association (NMSA) also requested an extension of time to file their comments, but 30 days beyond anytime the FHWA may grant to the petitioners. The FHWA has determined that granting an extension is appropriate given the types of questions asked in the ANPRM and the need for informed responses from potential commenters. The FHWA also has determined that granting the NAWE and the NMSA a further 30-day extension beyond that afforded to petitioners is not appropriate.

**DATES:** Comments must be received on or before August 30, 1999.

**ADDRESSES:** Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, D.C. 20590-0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard H. Singer, Office of Motor Carrier Research and Standards, HMCS-10, (202) 366-4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. [TDD number for the hearing impaired: 1-800-699-7828] Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL-401, by using the universal resource locator (URL): <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the **Federal Register's** home page at <http://www.nara.gov/fedreg> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

##### Background

The American Trucking Associations, Inc. and the ATA Intermodal Conference filed a petition for rulemaking on March 17, 1997, to amend 49 CFR parts 390 and 396 of the FMCSRs. The petitioners asked the FHWA to require parties that tender intermodal equipment to motor carriers to ensure the "roadworthiness" of that equipment. The petitioners argue that poor maintenance of intermodal equipment is a serious safety problem and request the FHWA to make the owner or operator of such equipment responsible for the roadworthiness of the vehicles it tenders to motor carriers.

On February 17, 1999, the FHWA published an ANPRM (64 FR 7849) seeking information on the extent of the

problem identified by the petitioners, and public comments on the solution proposed by the petitioners, i.e., to mandate joint responsibility between the equipment provider and the motor carrier for maintaining this type of intermodal equipment. The closing date for comments was April 19, 1999.

On April 2, 1999, the FHWA received a request from the petitioners to extend the comment period. The petitioners indicated that they have been trying to develop current and accurate information to respond to the specific questions the FHWA asked in the ANPRM. The petitioners have submitted a request for roadside inspection data from the FHWA's Office of Data Analysis and Information Systems. The petitioners will analyze inspection data for 100 motor carriers that operate exclusively in the intermodal segment of the trucking industry. The petitioners believe that because of the nature of these motor carrier operations, and the diversity of their geographic locations, the information could be useful in responding to certain questions in the ANPRM. A copy of the petitioners' request for an extension of the comment period is included in Docket No. FHWA-98-3656.

On April 13, 1999, the FHWA received a request on behalf of the NAWE and the NMSA for an extension of time for "opponents" of the rulemaking requested by ATA to file comments. The NAWE and the NMSA believe that the Carriers Container Council, Inc. and the United States Maritime Alliance, Ltd. will also submit a similar request, but it has not yet been received by the FHWA. Furthermore, the NAWE and the NMSA would like "an extension to 30 days beyond any enlarged date which the Agency may grant to the Petitioners." They believe "only under this procedure will opponents of Petitioners' proposed rule be able to examine Petitioners' evidence in any meaningful manner, and be in a position to respond." The NAWE and the NMSA further state "We recognize that the Agency bears the ultimate burden of persuasion should the Agency decide to further pursue a rulemaking. However, under the circumstances, we submit that only an adversarial type proceeding strictly adhering to APA [Administrative Procedures Act] requirements will produce a reliable and factual record." A copy of the NAWE and NMSA request for an extension of the comment period is also included in Docket No. FHWA-98-3656.

**FHWA Decision**

The FHWA has determined that the comment period should be extended for approximately 120 days, given the difficulty that interested parties are, or may be experiencing, in gathering and analyzing roadside inspection and maintenance data necessary to provide meaningful responses to the questions asked in the ANPRM. The FHWA is mindful of the need for all interested parties to have enough time to prepare relevant and useful comments.

Therefore, the FHWA is extending the comment period on Docket No. FHWA-98-3656 to August 30, 1999.

All comments received before the close of business on August 30, 1999, will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will continue to file relevant information in the docket as it becomes available after August 30, 1999, and interested parties should

continue to examine the docket for new materials.

The FHWA will not grant the NAWA and the NMSA an extension of time to file comments that is not afforded to other commenters. This is an ANPRM in which the FHWA notified the public that they were considering an area for rulemaking and requested written comments by April 19, 1999, on the appropriate scope of the rulemaking and on specific topics. The agency believes that the ANPRM rulemaking can be extremely helpful in narrowing the issues during the public comment period on the proposed rule. We have determined that granting an extension of the comment period to petitioners is appropriate, but we cannot extend the comment period for one group beyond a period that is not afforded to others. Informal rulemakings under the APA are not adversarial proceedings, though parties often disagree on the need for, or content of, rules. If the agency decides to publish a notice of proposed rulemaking in the future, interested parties (including the NAWA and the NMSA) will be given an opportunity to respond to comments submitted by the

ATA and others in the ANPRM, and they can submit written data, views, or arguments on the proposal.

Accordingly, the FHWA will not grant the NAWA and the NMSA's 30-day extension request to file comments beyond the date granted to petitioners.

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

Highway safety, Highways and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

*49 CFR Part 396*

Highway safety, Highways and roads, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

**Authority:** 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

Issued on: April 27, 1999.

**Gloria J. Jeff,**

*Federal Highway Deputy Administrator.*

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