

program amendment, we need not decide at this time whether any or all portions of the bill are inconsistent with SMCRA or the Federal regulations. As such, we need not respond to these KRC comments at this time.

However, the KRC also argues that we cannot defer our decision on the consistency of HB 556 with SMCRA until actual harm, *i.e.*, surface coal mining within the 300 foot buffer zone or within the viewshed of the Park, becomes imminent. We disagree. Neither SMCRA nor the Federal regulations place time limits on decisions as to whether State laws or regulations are inconsistent with SMCRA, and therefore must be set aside. Rather, 30 CFR 730.11(a) merely requires us to “publish a notice of proposed action * * * setting forth the text or a summary of the text of any State law or regulation *initially determined * * * to be inconsistent with the Act or this chapter.*” (Emphasis added) We have yet to make such an initial determination, nor do we need to do so at this time. However, should the State or others initiate actions that would warrant our addressing the consistency question, there will be ample time during the State’s administrative processing of these actions for us to address the question and, if warranted, to institute set-aside proceedings pursuant to 30 CFR 730.11(a). We also note that the KRC is free to seek injunctive relief against the State or any mining applicant, to prevent mining within 300 feet of the Park, while our set-aside determination is pending, should KRC believe such mining would be inconsistent with the approved Kentucky program.

Federal Agency Comments

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) submitted a letter dated July 22, 2003, that it had no comments (Administrative Record No. KY-1591).

The U.S. Department of the Interior, Fish and Wildlife Service submitted comments dated July 31, 2003, (Administrative Record No. KY-1594) in which it indicated concern for the waiver of the 300 foot buffer zone.

As discussed in our findings, above, we have determined that HB 556 is not a program amendment. We will consider the buffer zone waiver issue only if and when it is ripe for a decision.

Dated: December 2, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03-32106 Filed 12-30-03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[WC Docket No. 02-269; CC Docket No. 00-199; CC Docket No. 80-286; CC Docket No. 99-301; FCC 03-326]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document seeks comment on recommendations by the Federal-State Joint Conference on Accounting Issues (Joint Conference).

DATES: Comments are due on January 30, 2004, and reply comments are due on February 17, 2004.

FOR FURTHER INFORMATION CONTACT: Jane E. Jackson, Associate Chief, Wireline Competition Bureau, (202) 418-1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking adopted on December 17, 2003, and released on December 23, 2003. The full text of the document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission’s duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, e-mail qualexint@aol.com.

Synopsis of Order

In this Notice of Proposed Rulemaking, comment is sought on recommendations of the Joint Conference. The Commission convened the Joint Conference on August 27, 2002, as a Federal-State partnership to reexamine regulatory accounting requirements, and recommend additions and modifications thereto. On October 9, 2003, the Joint Conference submitted the result of a year-long study of the Commission’s accounting rules and on-going proceedings related to the Commission’s accounting requirements. Here, comment is sought on those recommendations. Comment also is sought on further delaying the implementation of four accounting and reporting rule changes, to allow time for receipt and consideration of comments responding to the Joint Conference’s recommendations with regard to the four rule changes.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03-32148 Filed 12-30-03; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 396

[Docket No. FMCSA-98-3656]

RIN 2126-AA38

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

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

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM).

SUMMARY: FMCSA withdraws its February 17, 1999, ANPRM relating to responsibilities for the inspection, repair, and maintenance of intermodal container chassis and trailers. After reviewing the public comments received in response to the ANPRM, transcripts from three listening sessions held in November 1999, comments submitted in response to the agency’s November 29, 2002, notice of intent to consider a negotiated rulemaking, and the neutral convenor’s final report, the agency has determined that it would be inappropriate to move forward with a Notice of Proposed Rulemaking at this time. FMCSA believes there is insufficient data concerning the relationship between the mechanical condition of intermodal container chassis and trailers, and commercial motor vehicle accidents to quantify the extent to which the condition of container chassis or trailers contributed, in whole or in part, to accidents. Furthermore, the neutral convenor hired by the agency to interview individuals or organizations that might represent interests that are most likely to be substantially affected by a rulemaking concerning this subject, has concluded that a negotiated rulemaking process seeking to produce a set of consensus recommendations to FMCSA should not be undertaken. Therefore, no further consideration will be given to conducting a negotiated rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Chief of the Vehicle and Roadside Operations Division (MC-PSV), (202) 366-4009, Federal Motor Carrier Safety Administration, 400

Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The electronic file of this document is available from the DOT public docket at <http://dms.dot.gov>, docket number FMCSA-98-3656. It is also available from FMCSA's Web site at <http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings>; or the **Federal Register** Web site at <http://www.gpoaccess.gov>. If you do not have access to the Internet, you may request a copy of this document from the person identified above under **FOR FURTHER INFORMATION CONTACT**. You must identify the title and docket number of the document.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Privacy Act: Anyone is able to search the electronic form of all comments

received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Background

On February 17, 1999 (64 FR 7849), the Federal Highway Administration (FHWA) published an ANPRM to consider whether 49 CFR parts 390 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) should be amended to shift the responsibility for ensuring that intermodal container chassis and trailers comply with the applicable motor carrier safety regulations from motor carriers operating such vehicles, to entities (ocean carriers, rail carriers, intermodal terminal operators, ports) that offer these vehicles for transportation in interstate commerce. This action was in

response to a petition for rulemaking filed by the American Trucking Associations, Inc. (ATA) and the ATA Intermodal Conference (the Petitioners). The Petitioners argued motor carriers have no opportunity to maintain this equipment and that the parties who do have the opportunity often fail to do so. The Petitioners requested the FMCSRs be amended to require rail carriers, ocean carriers, and other entities that offer intermodal container chassis for transportation in interstate commerce to ensure chassis meet applicable Federal safety requirements.

Discussion of ANPRM and Listening Session Comments

The agency received 104 comments from 71 interested parties in response to the ANPRM and 102 individuals spoke at one or more of the three listening sessions. Most of the commenters to the docket and speakers during the listening session were motor carriers, ocean carriers, rail carriers or terminal operators. The following table identifies participants by industry sector.

Industry sector	Docket	Chicago	New York	Seattle
Motor Carriers/Motor Carrier Industry	39	15	16	6
Port/Marine Terminal/Ocean Carrier/Representatives	24	8	12	12
Railroad/Representatives	2	11	8	6
Shipper	1			
State Agency	1			
Intermodal Association of North America (IANA)/Consultant/Other	3	2	3	1
Maritime Union Members	1			2
Total	71	36	39	27

Stakeholder opinions about potential resolutions were largely polarized into one of two basic positions:

- Motor carriers agreed with Petitioners and expressed concerns about the lack of attention to chassis maintenance on the part of the equipment providers.
- Terminal operators and equipment providers were opposed to amending the FMCSRs to shift responsibility from motor carriers to equipment providers. The major issues raised and stakeholder perspectives are discussed below.

Lack of Data To Determine Safety Impacts Current Maintenance Practices

While the Petitioners and those in favor of the petition argued the lack of adequate maintenance by equipment providers is a safety issue, there appeared to be no data available to support this assertion. There was a lack of data presented in both the docket submissions and in the information offered at the listening sessions. The available data show a significant

number of chassis dispatched from intermodal terminals are later shown to have safety defects during roadside inspection, but the relationship between these defects and accidents has not been substantiated. Overall, most of the information presented during the public meetings was anecdotal.

The responses to the questions presented in the ANPRM and questions asked by U.S. Department of Transportation representatives (Office of the Secretary, Office of Motor Carrier Safety (prior to the establishment of FMCSA), FHWA, Federal Railroad Administration, Maritime Administration) during the listening sessions produced no meaningful data to either define the problem or evaluate potential solutions. Commenters to the docket and participants in the meetings appeared to be in agreement that better data should be developed before a decision is made by the agency to pursue this issue.

Adequacy of Chassis Maintenance and Inspection

The comments submitted to the docket and the remarks of participants in the public meetings suggest there is a need to clarify industry practices concerning the maintenance of intermodal container chassis. Commenters and participants indicated most ocean carriers, rail carriers, terminal operators, and motor carriers take seriously their responsibility to operate only roadworthy equipment. However, they acknowledge other members of the intermodal transportation industry are doing only the minimum necessary to "get by."

Commenters and participants fundamentally disagree on the adequacy of preventive maintenance and inspection practices at many terminals. Terminal operators indicated they have effective maintenance and inspection programs in place. Equipment Interchange Discussion Agreement (EIDA), an association of nine ocean common carriers, stated its members

have literally hundreds of facilities employing over a thousand mechanics and inspectors and that equipment maintenance is their single largest expense. American President Lines (APL) spends over \$36 million annually on 63,000 chassis; Maersk spends \$17 million on 32,000 chassis, a rough average of \$500 per year per chassis. A representative of an ocean carrier explained that this attention to maintenance and comprehensive equipment inspection is driven by the market realities of customer expectations.

Generally, motor carriers agreed that some terminal operators made significant efforts to improve. However, they continue to have concerns about the equipment providers' inbound inspection process. Motor carriers believe it is in the financial interest of equipment providers to let chassis leave the terminal without noting defects or deficiencies and then pointing out mechanical problems when the container chassis is returned. The mechanical problems then are blamed on motor carriers and the costs for repairs are subsequently passed on to them.

Motor carriers argue chassis repair and maintenance should be done before motor carriers arrive at the terminal. They believe roadability lanes offered by some equipment providers are a good idea, but preventative maintenance would be better. Chassis maintenance is too often undertaken on an as-needed basis rather than as part of a scheduled preventative maintenance program.

Adequacy of Roadability/Walk-Around Inspections

Commenters and participants recognize that roadability lanes are available in some terminals, but they appear to be used by only a small percentage of drivers. If roadability lanes or similar facilities are available, the time involved in using them makes this option problematic since most drayage drivers are paid by the trip, not by the hour. It was observed company drivers who are paid by the hour take advantage of roadability lanes more often than owner-operators who are paid on a per trip basis.

Motor carriers argued that at many rail terminals drivers cannot get out of their trucks to do chassis inspection and they claim that there is no staff available to assist them. However, EIDA members and other terminal operators asserted that they provided drivers with ample opportunity to perform the required walk-around inspection prior to departure.

Commenters emphasized that some vehicle components cannot be inspected by one person working alone. For example, checking brake adjustment typically requires one person to apply the brakes while another person measures the push-rod travel. Motor carriers argue significant mechanical defects typically cited by roadside inspectors cannot be identified during a walk-around inspection. They assert walk-around inspections cannot substitute for routine inspection and maintenance by the terminal operator's mechanics.

Owner-operators agreed walk-around inspections do not typically reveal all the defects that Federal or State inspectors may find during a more thorough inspection. Also, if a defect is found during the walk-around inspection it is likely to generate a costly delay in leaving the terminal. Owner-operators argue the driver's walk-around inspection should be considered a back up to the routine and detailed inspection by the equipment provider, not the primary means to detect defects.

Impacts of Changing Responsibility for Chassis Roadability

EIDA estimates that the incremental cost of shifting this responsibility to the terminal operators would be about \$200 per chassis per year. This would represent a 40-percent increase in operating costs. These increased operating costs would be ultimately borne by the transportation system and by consumers. These estimates do not include increased equipment, facility, and other capital costs. AAR estimates that it would cost the railroads over \$200 million annually if maintenance responsibilities are shifted to terminals.

Since the current Federal regulations make the chassis' roadability the responsibility of motor carriers, violations concerning chassis defects become part of the motor carrier's safety record. Roadside violations are entered electronically directly into the FMCSA's database of safety performance information about motor carriers. Consequently, motor carriers are concerned about how the chassis violations may affect their safety profiles because: (1) FMCSA's Safety Status Measurement System (SAFESTAT) scores are available to the public and can be used by insurance companies and shippers as a basis for business decisions; and (2) the FMCSA's potential use of the violation data for selecting motor carriers for compliance reviews. Regardless of whether the chassis owner accepts responsibility for the violation and pays for the repairs,

the violation remains on the motor carrier's safety record. As a result, the issue of assignment of responsibility is of importance to motor carriers.

Institutional Issues

Motor carriers involved in port drayage operations estimate their drivers spend 25 percent or more of their time waiting in line at terminals, without compensation. Motor carriers believe that because of the highly competitive nature of the drayage industry, they have no leverage. If a motor carrier or driver insists on improved business terms he will simply be replaced.

The National Association of Waterfront Employers (NAWE) acknowledged the economic pressures force drivers to leave the terminal as soon as possible. Some of the commenters to the docket and participants in the public meetings believe the situation would change significantly if drivers were paid by the hour.

The Uniform Intermodal Interchange Facilities Access Agreement (the Uniform Agreement) governs the relationship between equipment providers and motor carriers. The Uniform Agreement was initiated 20 years ago, and is continually reviewed by a multimodal committee. IANA estimates that its participants include more than 4,700 motor carriers, 6 railroads and 55 ocean carriers.

A nine-member board administers the agreement: 3 motor carriers; 3 rail carriers, and 3 ocean or water carriers. Participants in the public meetings indicated there is a willingness to re-negotiate terms of the Uniform Agreement but not to shift responsibility from motor carriers.

The Uniform Agreement states:

The user, while in possession of interchange equipment, releases and agrees to hold harmless the owner from and against any and all loss, damage, liability, cost or expenses suffered or incurred arising out of or connected with injuries or death of any persons arising out of the user's use, operation, maintenance or possession of interchange equipment.

A copy of the Uniform Agreement is included in the Through Transport Mutual Insurance Association, Ltd. (TTClub) comments. The agreement specifically states that the equipment provider makes no warranties as to the fitness of the equipment. A common addendum to the Uniform Agreement requires that the driver warrant that the equipment he is receiving is roadworthy.

Equipment providers argue that making motor carriers responsible for

the chassis is necessary because the equipment may be interchanged among several motor carriers after leaving the terminal. EIDA believes equipment providers accept responsibility for the equipment while it is in their possession and will repair any deficiencies prior to turning the equipment over to motor carriers. However, once a motor carrier accepts the chassis, the motor carrier must assume the duty of maintaining the equipment up to safety standards. The equipment providers believe the disclaimers in the agreement merely eliminate any strict liability that might otherwise be assumed.

State Regulations

Commenters expressed concern about a growing number of potentially conflicting State roadability laws. They believed the result would be a patchwork of inconsistent regulations negatively impacting the ability of the United States to operate a national intermodal transportation system.

Marine terminal operators, ocean carriers, and railroads emphasize the importance of taking action to preempt current and forthcoming State regulations concerning intermodal equipment inspection and interchange that will negatively impact interstate and international commerce, intermodal transportation, and the authority of the United States Department of Transportation.

Consideration of the Negotiated Rulemaking Process

On November 29, 2002 (67 FR 71127), the FMCSA published a notice announcing that the agency would study the feasibility of using the Negotiated Rulemaking process to develop rulemaking options concerning the maintenance of intermodal container chassis and trailers.

On February 24, 2003, FMCSA extended the comment period based upon a request by the counsel for the American Association of Railroads to allow additional time for filing comments after a planned meeting of IANA and the Ocean Carrier Equipment Management Association (OCEMA).

The IANA/OCEMA working group subsequently failed to develop a private-sector solution to the assignment of responsibility for maintaining intermodal chassis and trailers.

Results of the Convenor's Interviews

Typically, the first step in examining the feasibility of conducting a negotiated rulemaking is to conduct a "convening," or conflict assessment. During this process the convenor

identifies and interviews the interests that would be substantially affected by the proposed policy change and individuals or organizations that might represent those interests. Based upon the interviews, the convenor identifies issues of concern that may warrant addressing, and explores whether the establishment of a committee is feasible and appropriate in the particular situation. The following are the issues the convenor identified in his report to FMCSA concerning the feasibility of conducting a negotiated rulemaking on container chassis maintenance. A copy of the report is in Docket No. FMCSA-98-3656.

Extent of the Chassis Roadability Problem

The interviewees that supported moving forward with the rulemaking believe equipment defects on container chassis are a serious safety problem. As with the case of commenters to the public docket, and participants in the public meetings, interviewees also indicated many of the serious defects on container chassis are not visible during a walk-around or visual inspection.

When motor carriers leave the port terminal, according to interviewees, they are supposed to certify that the equipment is roadworthy and that there is no damage. Many motor carriers said that some terminals do relatively little about inspecting outbound chassis, but considerably more about inspecting inbound ones. Therefore, motor carriers may be held responsible for damage that was not reported outbound, even if it was pre-existing. Some interviewees suggested the solution includes holding the equipment provider responsible for inspecting and certifying a chassis before releasing it to the motor carrier.

Interviewees that were opposed to continuing the rulemaking believe there is a lack of data to support the Petitioners' argument that a safety problem exists with container chassis maintenance. While a number of them agreed that equipment violations are numerous, they argue that it is difficult to show the violations have caused accidents. These interviewees said that in many instances motor carriers receive citations for violations concerning equipment conditions that could not be detected during a walk-around or visual inspection. However, they do not believe such violations warranted additional Federal regulations. Some indicated they believe private-sector solutions would offer greater flexibility and be less costly and more effective than new Federal regulations.

State Laws and Regulations

Almost all of the interviewees expressed concern about a recent trend toward States enacting roadability laws. They indicated that in the late 1990s, Illinois, Louisiana, and South Carolina legislatures passed laws shifting responsibility for roadworthiness of intermodal chassis from motor carriers to the party tendering the intermodal equipment. Interviewees reported that most of the States are not enforcing their roadability laws.

Interviewees expressed concern the State laws have taken differing, sometimes inconsistent regulatory approaches to coverage. The State laws were viewed as a means of dealing with vehicles that were not being properly maintained, and assigning inspection, repair and maintenance responsibilities to ensure the proper and safe operation of the chassis. Nearly all interviewees reported that a growing patchwork of inconsistent State laws would adversely impact intermodal transportation.

There was widespread agreement among interviewees that FMCSA could make a major impact by adopting regulations, and preempting State laws and regulations. They noted States may have powerful economic incentives to limit enforcement of roadability legislation, especially given the possibility that they could risk the movement of shipping business and port operations to States with less stringent regulations, or no roadability rules at all. Two interviewees discussed personal stories where direct gubernatorial intervention halted enforcement efforts. Therefore, there is the belief State motor carrier enforcement agencies may face a difficult choice between maintaining major terminal operations that provide jobs and economic stimuli and enforcing their own rules.

Some interviewees favored the rights of States to pass roadability laws because they believe FMCSA has not done enough to improve the condition of container chassis. However, interests were divided over whether preemption should be the end process or merely the beginning. A few interviewees believed FMCSA should preempt the States but do nothing more. Others believed FMCSA should preempt the States only if it is part of a plan or program to resolve a number of issues concerning the intermodal industry.

Jurisdiction and Enforcement Issues

Interviewees expressed widely divergent views as to the limits of FMCSA's legal authority relating to equipment providers such as terminal

operators, rail carriers and ocean carriers that furnish chassis for transportation by motor carriers. Many believed FMCSA lacks statutory authority to regulate non-motor carrier entities.

Uniform Agreement

Some motor carriers expressed concern their interests are not fully represented on the governing board because they are in a minority position relative to the rail and water carriers. These motor carriers believe the Department of Transportation should regulate the interchange agreement and address the unequal bargaining power between rail/water carriers and motor carriers. Others believed the Department of Transportation should not regulate the interchange agreement because it is the result of years of evolution of the commercial relationship between the motor carriers and the equipment providers.

Of concern to many motor carriers is that the interchange agreement states that equipment providers do not warrant the roadability of the equipment. Moreover, an addendum to the interchange agreement requires the motor carrier that picks up the equipment to accept responsibility for the roadworthiness of the chassis.

However, some interviewees did not believe the interchange agreement is the appropriate mechanism to implement changes in the intermodal industry because usage of the interchange agreement is only voluntary. They argue that the use of the interchange agreement is prevalent, but there is no data to indicate how much of the industry is actually covered by it. In contrast, other interviewees believe changes to the uniform agreement would become the industry standard and be sanctioned by DOT.

FMCSA Decision

FMCSA withdraws the ANPRM because there is insufficient data to support moving forward with the rulemaking at this time. While the agency could quantify the costs of regulatory options that could potentially result in improved maintenance practices by equipment providers, there is insufficient data currently to quantify the safety benefits of such a rulemaking. The agency has reviewed information provided by commenters responding to the ANPRM, transcripts from listening sessions, safety performance data concerning motor carriers engaged primarily in intermodal transportation, and the neutral convenor's final report. FMCSA has determined it is unlikely the agency could craft a rulemaking that would resolve the maintenance responsibility disputes between equipment providers and motor carriers, and be supported with sufficient safety data to prove its necessity, and subsequently its effectiveness. The available data show a significant number of container chassis dispatched from intermodal terminals are later shown to have safety defects during roadside inspection. However, the relationship between these defects and accident causation has not been substantiated.

FMCSA recognizes most motor carriers do not have the economic leverage to persuade equipment providers to ensure proper chassis maintenance. It is also true the Uniform Intermodal Interchange and Facilities Access Agreement that motor carriers typically must sign in order to do business has the effect of shifting both the maintenance or repair burden and the liability to motor carriers. Based on the comments to the ANPRM, statements from participants in the

listening sessions, and the interviews conducted by the neutral convenor who examined the feasibility of conducting a negotiated rulemaking on this subject, there is no readily apparent regulatory option that would be well received among the many parties.

There are two data limitations that prevent the agency from proceeding with a defensible rulemaking: (1) chassis inspection and accident data is lumped in among "trailer" data; and (2) relatively few accidents are shown as involving chassis, possibly because the short distances chassis travel work to reduce accident exposure or possibly because the chassis are categorized as "trailers" in the accident reports. The first step toward a Federal rule must be data collection, addressing these data limitations, and possibly identifying chassis owners whose equipment shows a pattern of poor maintenance.

FMCSA is considering options to better capture data about chassis at the point of inspection and at accident scenes. A special study could be conducted if resources become available. However, the time required to complete a comprehensive data collection and analysis effort would prolong the period that the rulemaking is left unresolved, with no certainty regarding the outcome. Therefore, FMCSA believes it is in the best interests of all parties that the agency discontinue consideration of a negotiated rulemaking based on the convenor's final report, and withdraw its 1999 ANPRM.

Issued on: December 1, 2003.

Annette M. Sandberg,

Administrator.

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