

DATES: Comments must be filed on or before March 29, 1999, and reply comments on or before April 13, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp and Scott C. Cinnamon, Esqs., Shook, Hardy & Bacon, 1850 K Street, N.W., Suite 900, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99-45, adopted January 27, 1999, and released February 5, 1999. The text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99-3792 Filed 2-16-99; 8:45 am]

BILLING CODE 6712-01-P

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: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: In response to a petition for rulemaking filed by the American Trucking Associations, Inc. (ATA) and the ATA Intermodal Conference (the petitioners), the FHWA agreed to consider 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 petitioners contend that motor carriers have no opportunity to maintain this equipment and that the parties who do have the opportunity often fail to do so. The FHWA, therefore, is seeking information on the extent of this problem and public comments on the solution proposed by petitioners, i.e., to mandate joint responsibility between the "equipment provider" and the motor carrier for maintaining this type of intermodal equipment.

DATES: Comments must be received on or before April 19, 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, DC 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, HCS-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, DC 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 petition pointed out that:

[t]he motor carrier—or more precisely, the driver—usually does not have the ability or opportunity to do a full and adequate inspection of each piece of intermodal equipment to ensure the equipment's roadworthiness or compliance with the FMCSRs when accepting intermodal equipment at a port or railroad. The equipment is owned or leased by the railroad, steamship line or other party tendering/interchanging it to the motor carrier. If a safety defect in the equipment is not immediately obvious to the truck driver, he/she has neither the time nor facilities to conduct a more in-depth inspection. The standard interchange agreement adopted by most equipment providers, the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA), specifically states that the "(p)rovider makes no express nor implied warranty as to the fitness of the equipment." Further, the typical equipment provider addendum to the UIIA requires the driver to warrant that the equipment is "roadworthy."

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.

Motor carriers must be held responsible for the safety of their own equipment, but when they engage in

intermodal transportation this service often requires them to operate vehicles which they do not own, and rarely control, until just before the highway movement begins. It can be difficult, as the petitioners contend, for motor carriers to comply with the requirements of the FMCSRs without taking intermodal equipment out of service for inspection, which could cause significant delay and disruption in the movement of containers or trailers.

Present Requirement/ATA Proposed Amendments

The petitioners requested that title 49 of the Code of Federal Regulations be amended as follows. Proposed changes are *italicized*:

Section 396.1 Scope

General—Every motor carrier (*and for this part any party who is tendering or interchanging a trailer, chassis, or container to a motor carrier*), its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of motor vehicles shall comply and be conversant with the rules of this part.

Section 396.7 Unsafe Operations Forbidden

(a) General—A motor vehicle shall not be operated in such a condition as to likely cause an accident or a breakdown of the vehicle.

(b) Intermodal—*No person shall tender or interchange a trailer, chassis, or container in violation of section (a) to a motor carrier.*

(c) *No motor carrier shall certify or otherwise guarantee to any person tendering or interchanging any trailer, chassis, or container to a motor carrier that such trailer, chassis, or container complies with this Part unless the person tendering or interchanging the trailer, chassis, or container has provided the motor carrier with adequate equipment, time, and facilities to make a full inspection and necessary repairs to the trailer, chassis, or container prior to the tendering or interchange of the trailer, chassis, or container.*

(d) **Exemption**—Any motor vehicle discovered to be in an unsafe condition while being operated on the highway may be continued in operation only to the nearest place where repairs can safely be effected. Such operation shall be conducted only if it is less hazardous to the public than to permit the vehicle to remain on the highway.

Section 396.9 Inspection of Motor Vehicles in Operation

(a) **Personnel authorized to perform inspections.** Every special agent of the FHWA (as defined in Appendix B to this subchapter) is authorized to enter upon and perform inspections of motor carrier's vehicles in operation *and any trailer, chassis, or container at an intermodal terminal which is intended to be tendered or interchanged to a motor carrier for use on the highways.*

Section 390.37 Violation and Penalty

Any person who violates the rules set forth in this subchapter or Part 325 of Subchapter A may be subject to civil or criminal penalties. *When a motor carrier has been tendered a trailer, chassis, or container that does not meet the standards set forth in Part 393 in violation of section 396.1 of this subchapter, the motor carrier tendered or interchanged such a vehicle shall not be liable for civil or criminal penalties under this subchapter.*

Jurisdiction

The FHWA has jurisdiction over "commercial motor vehicles" (CMVs), "employees" and "employers," as defined in 49 U.S.C. 31132(1), (2) and (3), respectively. The vast majority of intermodal trailers and chassis-and-container combinations meet the definition of a CMV—a "towed vehicle used on the highways in interstate commerce to transport * * * property (which) (A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds * * *" An employer is "a person engaged in a business affecting interstate commerce that owns or leases a commercial motor vehicle in connection with that business, or assigns an employee to operate it." An employee is "an operator of a commercial motor vehicle (including an independent contractor when operating a commercial motor vehicle), a mechanic, a freight handler, or an individual not an employer, who (A) directly affects commercial motor vehicle safety in the course of employment * * *"

Railroads, steamship lines, pier operators, or other parties that own or lease intermodal CMVs are thus "employers" subject to the jurisdiction of the FHWA. Any employee of such a business who is responsible for intermodal CMVs "directly affects commercial motor vehicle safety" through the inspection and maintenance program he or she manages and is thus an "employee" subject to the jurisdiction of the FHWA.

Request for Comments

Although FHWA believes it may be prudent to establish joint responsibility between the "equipment provider" and the motor carrier for the maintenance of these intermodal container chassis and trailers, the agency seeks to ensure that it has considered all the pertinent issues that could impact any potential rulemaking changes.

The FHWA specifically requests comments addressing the following questions. However, commenters are also encouraged to include discussion of any other issues they consider relevant to this rulemaking.

1. What is the out-of-service (OOS) rate for intermodal container chassis or trailers inspected at roadside? If that information is not available, what percentage of the intermodal equipment transported by individual motor carriers are placed out of service? What percentage of OOS orders involve intermodal chassis? What percentage involve intermodal trailers? What percentage of OOS orders are issued within 24 hours after the motor carrier takes possession of the intermodal equipment? Within 48 hours? Within 96 hours? State agencies are encouraged to respond to this question with information from their State inspection databases.

2. What is the violation rate (the average number of equipment-related violations of the FMCSRs found per inspection) for intermodal container chassis or trailers inspected at roadside? If that information is not available, what percentage of the intermodal equipment transported by individual motor carriers have defects or deficiencies? What percentage of inspection violations involve intermodal chassis? What percentage involve intermodal trailers? What percentage of violations are discovered within 24 hours after the motor carrier takes possession of the intermodal equipment? Within 48 hours? Within 96 hours? State agencies are encouraged to respond to this question with information from their State inspection databases.

3. Why does the Uniform Intermodal Interchange and Facilities Access Agreement disavow all responsibility for the "fitness" of intermodal equipment?

4. Generally, national accident databases do not provide enough detail for the FHWA to determine the percentage of commercial motor vehicle accidents that can be attributed, in whole or in part, to mechanical defects or deficiencies. If the FHWA decides to proceed with this rulemaking, it would be necessary to estimate the benefits in

terms of accidents and injuries prevented and lives saved. Are State officials and motor carriers aware of accidents attributable to mechanical defects or deficiencies on intermodal container chassis or trailers? If yes, what were the specific mechanical defects or deficiencies and how was (were) the cause(s) of the accident(s) determined? Do the States or industry sources have statistically reliable data on accidents of this type, or on defects or deficiencies that could lead to accidents? If so, please provide the information.

5. If the FHWA were to develop regulations making certain entities who offer intermodal container chassis and trailers for transportation responsible for the mechanical condition of those vehicles, one of the means of enforcement would be through roadside inspections. During a roadside inspection, defects or deficiencies could be identified, but it is uncertain whether inspectors could determine when the defect or deficiency occurred (i.e., before or after the motor carrier took possession of the container chassis or trailer). How could State officials cite the party that tendered the intermodal CMV for defects or deficiencies found at the roadside if there were no proof that the defects or deficiencies were present before the motor carrier took possession of the vehicle?

6. Should the party that tendered the intermodal CMV be held responsible for all defects or deficiencies irrespective of the length of time the motor carrier has been operating the container chassis or trailer? If not, at what point during the operation of the chassis or trailer should the responsibility for ensuring its safe operation be transferred from the entity offering the vehicle for transportation to the motor carrier?

7. The petitioners indicated that drivers usually do not have the "ability or opportunity to do a full and adequate inspection of each piece of intermodal equipment to ensure the equipment's roadworthiness or compliance with the FMCSRs when accepting intermodal equipment at a port or railhead." What are the obstacles to providing drivers with the opportunity to perform a walk-around inspection of container chassis and trailers? With regard to ability, what types of training would drivers need to perform a walk-around inspection of the container chassis or trailers?

8. If the FHWA issued regulations to make the entities who offer container chassis or trailers responsible for the mechanical condition of the vehicles, these entities would need to provide maintenance facilities and personnel to systematically inspect, repair, and maintain the vehicles. How many

inspection, repair, and maintenance facilities and mechanics are currently used by these parties to service container chassis and trailers used in intermodal operations? How many additional facilities and employees would be needed to ensure that every intermodal CMV complied with the FMCSRs before being turned over to a motor carrier? What would be the incremental total and per-vehicle cost to these parties of such a rule? What operational impact would the rule have on intermodal transportation?

9. Currently, § 396.17 requires that all commercial motor vehicles operated in interstate commerce be inspected at least once every 12 months. Proof of inspection must be carried on the vehicle. If an intermodal container chassis or trailer or other vehicle being offered for transportation does not have proof of inspection, the carrier should recognize, irrespective of the appearance of the vehicle, that it may not be operated in interstate commerce. How often do equipment providers tender and motor carriers accept container chassis trailers or other vehicles without proof that the periodic inspection was performed?

10. For cases in which vehicles have an inspection decal or other form of documentation indicating that the periodic inspection was performed within 3 months prior to the carrier accepting the container chassis or trailer for transportation, how often are vehicle defects or deficiencies found during roadside inspections?

11. For cases in which vehicles have an inspection decal or other form of documentation indicating that the periodic inspection was performed between 3 months and 6 months of the carrier accepting the container chassis or trailer for transportation, how often are vehicle defects or deficiencies found during roadside inspections?

12. For cases in which vehicles have an inspection decal or other form of documentation indicating that the periodic inspection was performed between 6 months and 9 months of the carrier accepting the container chassis or trailer for transportation, how often are vehicle defects or deficiencies found during roadside inspections?

13. Could the safety objectives of this rulemaking be accomplished by requiring more frequent periodic inspections of container chassis and certain trailers (e.g., every 6 months, or 3 months) with documentation or proof of inspection on the vehicle and an inspection report made available within 48 to 72 hours of a request from a Federal or State official?

14. One alternative to the FHWA issuing new regulations is for motor carriers and/or entities offering the container chassis or trailers for transportation to develop maintenance consortiums or make similar arrangements to ensure that routine maintenance is performed and repairs are made in a timely manner. What has the private sector done to resolve the problem of maintenance of intermodal container chassis and trailers?

Public Meetings

To provide the opportunity for additional input on this rulemaking, the Department intends to hold three public meetings in the coming months. The dates, times, and specific locations of these public meetings have not yet been determined, but will be announced in future **Federal Register** notices and press releases. Persons desiring more details on these meetings can also receive direct notification by addressing their requests to the individuals identified in this **Federal Register** notice under the section entitled "For Further Information Contact."

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this is a significant regulatory action under Executive Order 12866 and under the Department of Transportation's regulatory policies and procedures because of the substantial public interest anticipated in this action. An organization representing ocean common carriers wrote to the agency while this notice was being prepared. It disputes most of the points made by the ATA petition and argues that the cost and delay attendant upon shifting regulatory burdens onto those who tender intermodal equipment to motor carriers is unacceptable. The document will be placed in the public docket. The FHWA expects other commenters to be equally forthright in expressing views

for and against the rule requested by the ATA.

Due to the preliminary nature of this document and lack of necessary information on costs and benefits, the FHWA is unable to evaluate the economic impact of the potential regulatory changes being considered in this rulemaking. Based upon the information received in response to this notice, the FHWA intends to carefully consider the costs and benefits associated with various alternatives proposed. Comments, information, and data are solicited on the economic impact of the potential changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

Due to the preliminary nature of this document and lack of necessary information on costs and benefits, the FHWA is unable to evaluate the effects of the potential regulatory changes on small entities. Based upon the information received in response to this notice, the FHWA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), to carefully consider the economic impacts of these potential changes on small entities. The FHWA solicits comments, information, and data on these potential impacts.

Unfunded Mandates Reform Act of 1995

The FHWA will analyze any proposed rule to determine whether it would result in the expenditure by State, local,

and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

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.

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.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Should future rulemaking action result in more frequent (periodic) inspection requirements, with accompanying increases in documentation and numbers of inspection reports, then an information collection request will be submitted to the Office of Management and Budget for consideration and approval.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National

Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), 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

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: February 10, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–3839 Filed 2–16–99; 8:45 am]

BILLING CODE 4910–22–P