

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

P. O. Box 942898

Sacramento, CA 94298-0001

(916) 445-3253

(800) 735-2929 (TT/TDD)

(800) 735-2922 (Voice)

458723



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U. S. Department of Transportation
Docket Management Facility
400 Seventh Street, S.W., Room PL-401
Washington, DC 20590-0001

Re: Docket Number FMCSA-2005-23315 -- 2/

The California Highway Patrol (CHP) submits the following comments regarding the Federal Motor Carrier Safety Administration (FMCSA), Notice of Proposed Rulemaking (NPRM), request for comments, FMCSA-2005-23315.

The safe condition of intermodal equipment, operated on highway, has been an area of concern in California for many years. A systematic inspection, repair and maintenance program is essential to ensure such vehicles are maintained in safe and proper operating condition. For this reason, CHP applauds the FMCSA for promulgating regulations to ensure intermodal equipment is subject to a systematic inspection, repair and maintenance program.

Since 1989, the CHP has enforced the requirements of the Biennial Inspection of Terminals (BIT) Program on the registered owners or lessees of intermodal chassis. This program mandates biennial inspections, by CHP personnel, on California terminals of persons owning or leasing regulated vehicles, including intermodal equipment. The BIT Program also requires these owners or lessees, as part of their systematic inspection, maintenance, and lubrication services, to conduct periodic inspections of each chassis at least four times a year, with retention of associated reports.

This FMCSA NPRM requests comments on several issues regarding intermodal equipment providers (IEP) and intermodal equipment. To ensure clarity I will reproduce the passage pertinent to the comment under the corresponding section and Federal Register page number in the NPRM, and then provide our comments.

Part 385—Safety Fitness Procedures

Page 76799, column 3, line 28: "In addition to IEPs that are identified in SafeStat, a roadability review may be conducted on an IEP that falls into one of the following categories: (1) The provider is the subject of a complaint that FMCSA determines to be non-frivolous; (2) the provider has equipment involved in a pattern of recordable crashes or hazardous materials incidents. . ."

Page 76800, column 2, line 37: “Intermodal equipment providers would not be required to maintain the accident register required of motor carriers in Sec. 390.15(b), but any accident information they do retain must be made available to investigators upon request.”

Comment: The two statements above seem incongruous. If an IEP is not required to maintain an accident register, a nexus could not be established between the IEP and intermodal chassis involved in collisions. The records of collisions would be diffused among various motor carriers. Without a regulatory requirement to report the collision to the IEP, no means would exist to determine the provider has intermodal equipment involved in a pattern of recordable collisions or hazardous materials incidents.

Additionally, although motor carriers and drivers will be required to report damage and defects upon return of the equipment, there is no incentive for a motor carrier involved in a collision to look too closely at a chassis which may have sustained collision damage and which is not immediately obvious. In the absence of a collision reporting requirement, the IEP may not be informed of the collision, and collision damage to a chassis may go unnoticed until the next systematic or periodic annual inspection.

The CHP recommends including a requirement for motor carriers involved in a recordable collision, while operating intermodal equipment, to forward a copy of the report required pursuant to §390.15(b) to the IEP, and for the IEP to retain the reports in the same manner as required of the motor carrier. This would result in a minimal amount of additional work for the motor carrier or IEP, and provide a means for FMCSA or other enforcement personnel to determine if an IEP exhibits a pattern of recordable collisions or hazardous materials incidents.

Page 76799, column 3, line 61: “Under proposed Sec. 385.503, if FMCSA finds violations of parts 390, 393, or 396, the agency would cite the IEP for those violations. The agency may also impose civil penalties according to the civil penalty structure contained in 49 U.S.C. 521(b). FMCSA may prohibit an intermodal equipment provider from tendering any intermodal equipment from a particular location or multiple locations if the provider’s FMCSRs compliance is so deficient that its continued operation constitutes an imminent hazard to highway safety.”

Page 76802, column 1, line 42: “However, if FMCSA were to subject an intermodal equipment provider to an operations out-of-service order, the order would prevent that provider from tendering equipment to motor carriers.”

Comment: California has experienced situations with *intrastate* motor carriers of property where, once having their permit for intrastate transportation of property suspended, the motor carrier leases the equipment to other motor carriers who have an active intrastate permit. This would have the effect of enabling the same unsafe equipment to be used by another motor carrier, who may not be aware of the imminently hazardous condition of the equipment.

California has established statute to prevent this from occurring.

The CHP recommends a provision in regulation where IEPs, who have been prohibited from tendering intermodal equipment in interstate commerce for reasons related to unsafe condition of equipment, are prevented from leasing or selling the equipment to other IEPs or motor carriers.

Page 76800, column 3, line 5: “FMCSA seeks comment on what other unique identification numbers could serve the same purpose as the USDOT number.”

Comment: The CHP does not believe a unique identification number is necessary. According to the NPRM, there are 2008 entities (steamship lines, railroads, common-pool operators, and motor carriers) which would become subject to the requirement to mark the intermodal equipment. Roughly 95 percent of these entities are motor carriers, already required to obtain and display identification markings on their power units. Requiring a unique and different identification for these motor carriers could cause confusion and mismatch errors regarding identification of intermodal equipment.

Page 76801, Column 1, line 29: “Proposed Sect. 390.46 would address preemption by the FMCSRs of State and local laws and regulations concerning inspection, repair, and maintenance. Generally, a law, regulation, order, or other requirement of a State, a political subdivision of a State, or a tribal organization relating to the inspection, repair, and maintenance of intermodal equipment is preempted if such law, regulation, order, or other requirement exceeds or is inconsistent with a requirement imposed by the FMCSRs.”

Comment: The CHP is opposed to the preemption of state laws on the basis that the law “exceeds or is inconsistent with” a requirement imposed by the FMCSRs. This language is vague. Is the intent of the regulation to prevent states from promulgating rules which are *more stringent* than the FMCSRs? For many years the states have asserted their right to regulate safety of commercial vehicles operating on their own highways. Federal regulation has always permitted a variance between state and federal laws, providing the state law is not *less stringent*, and compliance with the state law does not interfere with compliance regarding the federal law.

California law, in the BIT Program, has held IEPs to the requirement to adequately maintain their equipment, including the requirement to perform periodic inspections at least four times a year. The trucking industry is well aware of the difference between the federal requirement for annual periodic inspections and the California requirement for 90-day periodic inspections.

California authorizes certain IEPs who have demonstrated a high level of safety compliance to participate in an intermodal roadability program. Essentially, this program permits the IEP to conduct a roadability inspection (similar to the periodic inspection required under the BIT

Program) on each chassis, every time it leaves a terminal, in lieu of conducting 90 day periodic inspections.

The facts used in the four year analysis bear out California intermodal equipment is in safer condition than other parts of the country. California's "percent difference in out-of-service rate" between intermodal equipment and non-intermodal equipment is less than half that of any other state in the analysis. This, taking into consideration the fact California conducted more than *eight times* the number of intermodal equipment inspections than all the other states *combined*.

The FMCSA has repeatedly determined the BIT Program to be compatible with federal regulation upon regulatory review pursuant to 49 CFR Part 355. Indeed, this very NPRM has acknowledged one inspection per year is inadequate to comply with a requirement to conduct a systematic inspection, repair, and maintenance program. FMCSA has determined four inspections per year to be a minimal number of inspections needed. The CHP has known this, and enforced it in regard to IEPs, for the past 18 years. Any assertion that California's periodic inspection requirement should be preempted because it exceeds a requirement imposed by the FMCSRs will be vigorously challenged.

The CHP recommends increasing the number of periodic inspections required annually from one to four.

Part 393—Parts and Accessories Necessary for Safe Operation

On page 76829, column 2, line 53: "(c) No intermodal equipment provider may operate intermodal equipment, or cause or permit such equipment to be operated, unless it is equipped in accordance with the requirements and specifications of this part."

Comment: IEPs who operate intermodal equipment on highway are, by definition, motor carriers. California recommends changing the language "No intermodal equipment provider may operate intermodal equipment. . ." to "No intermodal equipment provider may tender intermodal equipment for interchange. . ."

Part 396—Inspection, Repair, and Maintenance

Page 76801, Column 2, line 57: "FMCSA would add a new Sec. 396.12 to require intermodal equipment providers to establish a procedure to accept reports of defects or deficiencies from motor carriers or drivers, repair the defects that are likely to affect safety, and document the procedure."

Page 76830 column 1, line 50, under report content: "(2) Motor carrier's USDOT Number. . ."

Comment: Motor carriers reporting damage, defects, or deficiencies to an IEP are often finalizing these reports in a terminal where there are literally hundreds, perhaps thousands of intermodal chassis, virtually indistinguishable from one another. It is also common practice for


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IEPs to share terminal and parking facilities among several other IEPs. There is great potential for wrong identification of a particular piece of intermodal equipment, or mismatching of identification regarding the IEP to whom the piece of intermodal equipment belongs.

The CHP recommends adding two requirements for additional content in subdivision (b) of § 396.12. This additional content should include (1) identification of the IEP by their identification as required under § 390.21; and (2) a unique identifier of the particular piece of intermodal equipment. Such a unique identifier should be either a unit number assigned by the IEP and clearly marked on the equipment, the vehicle license number, or the manufacturer's vehicle identification number (VIN).

We appreciate the opportunity to comment on a very important docket. Should you require further information regarding this issue, please contact me or Captain Rob Patrick, of our Commercial Vehicle Section, at (916) 445-1865.

Sincerely,



S. J. VAUGHN, Chief
Enforcement Services Division