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PACER STACKTRAIN

March 16, 2007

Federal Motor Carrier Safety Administration
Docket Management Facility
US Department of Transportation
400 Seventh St. SW
Room PL-401
Washington, DC 20590

Re: ***Pacer Stacktrain's Comments to***
NPRM Requirements for Intermodal Equipment Providers
Docket No: FMCSA – 2005 - 23315 - 28

Ladies and Gentlemen:

Pacer Stacktrain, a division of Pacer International, Inc. would like to make the following comments regarding the Notice of Proposed Rulemaking, Requirements for Intermodal Equipment Providers and Motor Carriers, and Drivers Operating Intermodal Equipment, (71 Fed. Reg. 9754).

Pacer Stacktrain is the leading provider of wholesale intermodal transportation services in North America. Pacer Stacktrain operates the largest intermodal rail network in North America, and operates the largest fleet of state of the art equipment in the industry, with approximately 29,000 double stack containers, 31,000 chassis, and more than 6,652 doublestack platforms.

While Pacer believes the entire proposed rule is neither necessary nor cost beneficial, several aspects of the rule need to be specifically addressed:

The proposed regulations will directly alter the interchange of equipment between Motor Carriers and Intermodal Equipment Providers, which is currently governed by the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA). The UIIA has become the standard in the industry, and definitions in the proposed regulations should be consistent with the UIIA.

The definitions of "interchange" and "Intermodal Equipment Provider" need to be clarified as they relate to situations involving equipment pools. When the owner of intermodal equipment places its equipment in a pool, and the operator of the pool is contractually obligated to maintain the equipment, the pool operator, as opposed to the equipment owner, should be obligated to ensure compliance with the regulations. Under the proposed rule, it is unclear whether an equipment owner, in this situation, would remain liable for compliance with the regulations, even though the equipment owner had relinquished control of the equipment to the pool operator.

The proposed rule should be amended so that Intermodal Equipment Providers cannot be found in violation of the regulations for defects not reported by the Motor Carrier. Proposed section §390.44 requires the Motor Carrier to report deficiencies to the Intermodal Equipment Provider. If the Motor Carrier fails to report deficiencies to the Intermodal Equipment Provider, the Intermodal Equipment Provider does not have a reasonable opportunity to correct any such deficiencies and should not be held responsible. Thus §390.44 should be amended to state that responsibility for any defects not reported to the Intermodal Equipment Provider remains with the Motor Carrier. As noted by the FMCSA, 93% of deficiencies are items discoverable by visual inspection. This amendment would ensure that Motor Carriers have an incentive to thoroughly pre-trip the equipment, report any deficiencies, and help ensure the safety of the equipment.

The scope of the Roadability Review under §385.501 needs to be clarified. Intermodal Equipment Providers will often have equipment that it is held out of service and not intended for interchange. Any deficiencies in equipment that is at the Intermodal Equipment Provider's facility, but not intended for interchange, should not be considered in a Roadability Review. Section 385.501 should be clarified to exclude equipment not intended for interchange from the scope of Roadability Reviews.

The frequency of inspections required under the proposed rule should be clarified. Section 396.17 of the proposed rule provides for inspections at least every 12 months. Yet the FMCSA's comments at 71 Fed. Reg. 76814, state that the FMCSA believes that the systematic inspection of equipment in Section 390.44(e) would require quarterly inspections. Pacer currently performs inspections at least annually, and believes this is sufficient to properly and safely maintain intermodal equipment. It should also be noted that FMSCA regulations only require annual inspections for non-intermodal equipment. There is no reason that intermodal equipment should be subjected to more stringent requirements. Proposed Rule §390.44 should therefore be amended to clarify that annual inspections satisfy the systematic maintenance requirements.

The items required by the regulations to be inspected are confusing, in that Section 392.7 has a different list of inspection items than in Section 396.11. Moreover the inspection list is different from the list appended to the UIIA. For instance, the UIIA includes as inspection items - conspicuity treatments, mud flaps, landing legs, sand shoes and crank

handles. It would be helpful if the regulation codified the industry consensus list of inspection items, as set forth in the UIIA, rather than creating a potential conflict or ambiguity.

The proposed requirement that Intermodal Equipment Providers mark intermodal equipment with an identification number issued by the FMSCA should be revised to allow Intermodal Equipment Providers to continue to identify the equipment by the industry standard marking which is 4-alphabet letters and 6-numbers. The 4-alphabet letter prefix is exclusive to the particular equipment provider, allowing the FMCSA to know which equipment provider is responsible for the equipment. For instance, each unit of equipment with the PAHZ prefix is a Pacer Stacktrain chassis. It appears that the proposed regulation would require the equipment to be marked with an identification unique to the IEP, similar to the United States motor carrier number marked on an operating power unit. Adding this unique FMSCA number would not add any value, as the 4-alphabet prefix serves the same purpose. Moreover, any motor carrier reporting a deficiency would in any event have to provide the unit's standard marks so that the IEP can determine which unit is the subject of the report. We suggest that the regulation permit continuation of the standard intermodal industry marking format without any further change or identifying marks being added to the equipment.

A related issue involves the training of roadside inspectors and enforcement personnel to be cognizant of the fact that the container and the chassis, as separate components of intermodal Vehicle #2, may have been provided from different sources and have different owners. No capabilities exist at FMCSA to cite, segment and report the specific piece of trailing equipment that may be in violation of the FMSCA's regulations, either on the roadside inspection forms or the hand-held devices.

Many state and federal information systems are unable to separate different components of Vehicle #2, the trailing equipment, such as designating the difference between the ID numbers on containers versus the ID numbers on chassis. Specifically, confusion arises when citing defective components on a chassis that is owned/provided by one company, but is carrying a container that is being used by another one. This situation has become quite common as the industry moves towards the use of efficient neutral and cooperative chassis pools.

To address this issue, the FMCSA should consider revising the NPRM to ensure proper training for inspectors and the correct reporting of defects in order to fortify the integrity and accuracy of future statistical data.

Pacer would also like to reiterate its position that the entire proposed rule is unnecessary. FMCSA has presented no data to establish any compelling need to increase the regulation of the maintenance of intermodal equipment. In fact, the data presented by the FMCSA is limited to four states in a three-year period, and that data is now four years old. Even

the limited data presented by the FMCSA does not show a significant difference in maintenance related problems for intermodal equipment, compared to non-intermodal. Most notably the total violation rate for intermodal semi trailers, compared to non-intermodal semi-trailers is virtually identical in California and South Carolina, and actually five percent lower in Texas. Only in one state, Louisiana, are the violation rates higher for intermodal trailers (71 Fed. Reg. 76,804 Table 1) and the number of inspections in Louisiana was significantly less than the inspections in the three other test states. A comparatively small percentage difference in violations in one state, Louisiana, in no way justifies a comprehensive, national regulatory scheme.

Moreover, the FMCSA's own data shows that the vast majority of problems can be adequately addressed with existing regulations. Motor Carriers are already required to pre-trip the equipment they haul, and to not haul equipment that is not in compliance with FMSCA regulations. The FMCSA's data shows that 93% of defects or deficiencies in intermodal equipment could have been observed during visual inspection by the Motor Carrier. (71 Fed. Reg. 76806-7) Thus, the answer to insuring that intermodal equipment is not hauled in a defective condition is to enforce existing regulations, not create cumbersome new regulations.

Most importantly, the FMCSA has not identified any actual safety problems with intermodal equipment. The NPRM completely lacks any data to show alleged defects in intermodal equipment are actually causing accidents. Thus, the FMCSA cannot show that the regulations would have any effect whatsoever on accident or fatality rates. The FMCSA merely assumes, without support, that the proposal could increase safety. (71 Fed. Reg. 76818)

The age of FMCSA's supporting data is very significant. In the 4 years since the date of the last data presented by FMCSA, Intermodal Equipment Providers have continued to make improvements in the maintenance and inspection of intermodal equipment. Additionally, amendments to the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) have altered the market incentives affecting maintenance of intermodal equipment. Prior to January 17, 2005, Motor Carriers were obligated to indemnify the Equipment Owner from losses arising from the use of interchanged equipment. The UIIA, as amended effective January 17, 2005, now makes an exception to the Motor Carrier's indemnity obligation for losses caused by defects in the equipment interchanged in items other than those covered by the carrier's inspection obligation. The effect of this amendment is to place substantial liability risk upon Intermodal Equipment Providers if they place defective equipment into service. This liability risk creates a strong market based incentive for Intermodal Equipment Providers to ensure their equipment is properly inspected and maintained. The FMCSA has presented no data regarding intermodal equipment maintenance subsequent to this amendment. A new evaluation to determine whether this market-based solution has, or will, adequately

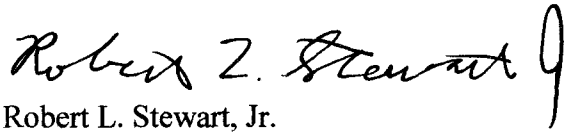
address the maintenance and inspection issue, should be done before a burdensome set of new of regulations is adopted.

While the FMCSA has not established the need or benefits of the proposed rule, the cost of complying with this comprehensive new regulatory scheme is clear. Pacer Stacktrain estimates that the cost of complying with the proposed rule, including additional inspections, the unique numbering system, additional mechanics on call, and record keeping, would exceed $8,000,000.

Pacer submits that the matters addressed above require further consideration and clarification by the FMCSA before it issues its final regulations. Failure to make the regulations consistent and compatible with common industry practices and usage will only create confusion in the intermodal industry and complicate compliance with the regulations.

Given that no compelling case has been presented for the need for the new regulations, and the substantial cost that will result from them, every effort should be made to reduce the cost of compliance with the new regulations. This goal can be accomplished by: 1) rationalizing the regulations with existing UIIA definitions, 2) limiting scope of roadability review to equipment intended for interchange 3) utilizing the existing numbering system for chassis, 4) dovetailing the inspection items to the UIIA inspection list and 5) clarifying that inspections are only required to be performed annually.

Sincerely,



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