

**DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration**

Requirements for Intermodal
Equipment Providers and Motor
Carriers and Drivers Operating
Intermodal Equipment

Docket No. FMCSA-2005-23315

**COMMENTS
OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

The Public Utilities Commission of Ohio (PUCO) submits these comments pursuant to the request for comments issued by the Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation in this docket. Intermodal transshipment is an extremely important issue for Ohio and the carriers and shippers within its borders. Since the U.S. highway system is at or near capacity and six million tons of cargo are currently moving within the country's borders, intermodal capacity is a significant economic and safety issue.

The PUCO is the lead motor carrier safety enforcement agency in Ohio and as such has adopted an extensive body of rules to govern the conduct of motor transportation companies. The PUCO has an active interest in the safety of the motoring public and the ability of regulated motor carriers to conduct their business successfully and safely within the state. The PUCO is pleased to submit comments in response to this FMCSA Notice.

COMMENTS

The PUCO agrees that intermodal equipment providers and motor carriers and drivers of intermodal equipment should be monitored and regulated more closely in order to ensure safety and to ensure that container chassis and trailers comply with the Federal Motor Carrier Safety Regulations (FMCSRs). As intermodal traffic in the state increases, safety concerns obviously arise with greater frequency. The PUCO agrees with the premise of the rules and concurs that the proposed rules will enhance safety and ensure greater compliance. The PUCO offers herein some specific comments on the proposed rules.

1. The FMCSR has proposed in 49 CFR 385 that 49 CFR 385.503 Intermodal Equipment Providers (IEPs) undergo road ability reviews. It is our understanding that these rules would be much like a compliance review and would consist of an on-site examination of an IEP's records to determine compliance with the FMCSRs. However, FMCSA has additionally proposed in 49 CFR 385.503 that: "FMCSA will not assign a safety rating to an intermodal equipment provider" and that such IEPs would not be issued safety ratings. It is further indicated that the "SAFESTAT" system would be used to identify and prioritize which IEPs would receive a road ability review. It is unclear how the agency arrived at this proposal. It seems logical that safety ratings applicable to motor carriers would also be applicable to IEPs. The PUCO would urge the agency to reconsider this approach and include IEPs in safety ratings and use those safety ratings to include the IEP in the safetstat system.

2. In its rulemaking, the FMCSA has indicated that it is seeking comments on what other unique identification numbers could serve the same purpose as the US DOT number. Although other unique identifiers such as the federal employee identification number or the motor carrier number could be used, we believe the use of a US DOT number is the best choice. The PUCO would further recommend that the FMCSA use the US DOT number across all programs and identification systems, e.g. MC numbers. As noted in the Agency's NPRM, The US DOT number is used to identify all motor carriers in the FMCSA resitration systems. It is likewise used by States as the key identifier in the Performance and Registration Information Systems Management (PRISM) project. Since this identifier is already well known to the regulatory agencies and the industry, it would be advantageous to continue its use.

3. The FMCSA has proposed in 49 CFR 390.44 that drivers report damage or deficiencies discovered in pre-trip inspections. We agree and support this provision. However, we also believe that for this to be effective, more is required. Under these proposed rules it appears that only the IEP would be held responsible if defective equipment is discovered during a roadside inspection. It would be our recommendation that all parties share responsibility for ensuring that vehicles are safe and are operated on the roadways safely. Motor carriers and drivers should also be held responsible for their actions and therefore the new rule should include these participants as well.

Once a driver conducts and inspection of a vehicle, responsibility for the vehicle should be shared by the driver and the carrier and not just the IEP. This would ensure that both carriers and drivers have an incentive not to operate an unsafe vehicle. If, on

the other hand, there is no shared responsibility, the carrier and driver will have an incentive to ignore problems. Including all of them will create a greater incentive to work together.

4. Most of the compliance reviews conducted in Ohio are completed by employees of the PUCO. In addition, all safety audits are done by PUCO personnel. The PUCO is enthusiastic about including road ability reviews and anticipate that responsibility for these will fall within our jurisdiction as well. However, we are concerned that the amount of money available to undertake these additional tasks may not keep pace with the increased workload. Consequently, we urge the FMCSA to carefully examine the budgetary needs of those conducting the reviews and ensure that sufficient funds are made available. In order for the PUCO to continue its present volume of work and also undertake additional audits, it would need more staff, equipment and training. It would be optimal to implement a first class program that produces results and saves lives.

5. The PUCO urges the FMCSA to phase this new program into place over a period of months or more. In the past, the FMCSA has implemented new rules with an effective date coinciding with publication in the Federal Register. Thereafter, from time to time, the FMCSA has submitted "policy memorandums" requesting states to "phase in" enforcement or delay implementation of certain sections of new rules. The PUCO has no authority to implement federal policies or procedures. It is our obligation to enforce the federal code or regulations as adopted. Therefore we request that the

FMCSA consider which aspects of the rule may require delayed implementation or enforcement and build those actions into the effective dates of the rulemaking.

6. In 49 CFR 390.19(f)(x) it states: “The intermodal equipment provider must display its assigned number on each unit of interchanged intermodal equipment.” Additionally, 49 CFR 390.21 (c)(i) provides that the identification number “Appear on both sides of the self-propelled CMV or inter changed intermodal equipment.” The PUCO agrees with this provision however, we would recommend, for consistency that the FMCSA provide further guidance in the rule as to where such numbers should be placed and that the numbers be readily visible and not hidden beneath a container or on parts that are not within easy sight. This would facilitate actions taken by enforcement personnel and the public.

CONCLUSION

The PUCO appreciates the opportunity to submit these comments and requests that FMCSA give them careful consideration in designing and implementing its proposed rules regarding the proposed audit process for intermodal equipment providers.

Respectfully submitted,

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Dated at Columbus, Ohio this 21st day of March, 2007.

NOTIFICATION REQUEST

The PUCO respectfully requests notification of any additional forums or proceedings involving this docket.