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Intermodal Truck Equipment Safety: Legislation in the 108th Congress

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Intermodal Truck Equipment Safety: Legislation in the 108th Congress

Summary

As part of its proposed reauthorization of highway and transit programs, the House has passed H.R. 3550. This bill contains a provision that would require the Secretary of Transportation to establish a program intended to improve the safety of intermodal equipment (trailers and container chassis) used to haul intermodal cargo and reduce conflicts between trucking companies and companies that provide the intermodal equipment. The Senate-passed reauthorization bill (S. 1072) does not contain a similar provision.

Current arrangements for the exchange of intermodal equipment have raised three public policy issues. The first issue is the condition of intermodal equipment that travels public highways and the impact of equipment condition on safety. Data collected by the Federal Motor Carrier Safety Administration suggests that trucking companies hauling intermodal equipment receive out-of-service notices at highway safety inspections more frequently than trucking companies in general. Responsibility for equipment maintenance is not clearly defined between the trucking company and the provider of the equipment. The second issue is the regulation of the interchange contract to specify an efficient and fair distribution of repair costs between equipment providers and trucking companies. The third issue is consistency between federal and state safety regulation of intermodal equipment.

If enacted, Sec. 4128 of H.R. 3550 would direct the Secretary of Transportation to establish rules to require that intermodal equipment have a unique identification number that links the intermodal chassis or trailer to its provider; that equipment providers maintain a system of maintenance and repair records for intermodal equipment that they control; and that equipment providers that are found to pose an imminent hazard would be prohibited from placing equipment on a public highway. H.R. 3550 also requires that the rules establish civil penalties for intermodal equipment providers that fail to attain satisfactory compliance with applicable Federal Motor Carrier Safety Regulations.

The provisions in H.R. 3550 would provide DOT with a clear legal and congressionally-specified basis for issuing regulations regarding intermodal equipment, including penalties for equipment providers. Passage of this legislation could have four implications for intermodal transportation. First, implementing regulations could improve compliance with the Federal Motor Carrier Safety Regulations depending on the inspection effort and penalties imposed. Second, regulation could raise the focus of equipment providers on maintenance as inspections would occur while intermodal equipment was in the possession of an equipment provider, not just the possession of motor carriers. Third, regulations may shift maintenance costs to equipment providers as they improve their maintenance record keeping and make repairs in response to inspections of equipment in their possession. Finally, Federal regulations could reduce conflict between state regulations, if states are required to enforce the regulations as a condition for receiving funding under the Motor Carrier Safety Assistance Program. H.R. 3550 awaits a conference committee to reconcile differences with S. 1072. This report will be updated as warranted.

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Intermodal Truck Equipment Safety: Legislation in the 108th Congress

Current arrangements for the exchange of intermodal equipment (chassis and trailers) have raised three issues about the safety of such equipment, interchange agreements to fairly and efficiently allocate repair costs between equipment owners and trucking companies, and the consistency of federal and state safety regulations for intermodal equipment.

The first issue is the condition of intermodal equipment that travels public highways and the impact of equipment condition on safety. Data collected by the FMCSA suggests that trucks hauling intermodal equipment receive out-of-service notices more frequently than heavy trucks in general.¹ Under the Federal Motor Carrier Safety Regulations, the trucking company or motor carrier must ensure that all equipment that they operate are in compliance with the Federal Motor Carrier Safety Regulations and other applicable regulations.² The motor carrier's responsibility is the same for the tractor that they own or lease and trailer or intermodal chassis for which they are contracted to haul. The division of financial responsibility for intermodal equipment maintenance between the trucking company and the provider of the equipment is less clearly defined.

The second issue is the regulation of the interchange contract to specify efficient and fair distribution of repair costs between equipment providers and trucking companies. Under the standard equipment interchange agreement, trucking companies bear all the costs of repairs required while equipment is under their control. Trucking companies can refuse to haul equipment that they believe might require repairs. They can also negotiate different terms that include reimbursement of repair expenses but often do not do so. Trucking firms believe that mandating reimbursement would improve both equipment maintenance and the financial stability of intermodal truckers. Equipment providers believe that intermodal agreements should remain strictly subject to private sector negotiations and that the

¹ Out-of-service notices are given to a trucker when there is a serious violation of the Federal Motor Carrier Safety Regulations. Data on trucks in general can be found at [http://ai.volpe.dot.gov/ProgramMeasures/RI/National_Reports/NationalInspectionActivitybyInspectionTypeH/NationalInspectionActivitybyInspectionTypeH.asp?cpy=2000&reporttype=Table]. Data on intermodal equipment is in Office of Motor Carriers, *Motor Carrier Management Information System Report on 1998 Combined Interstate and Intrastate Level 1 Non-Hazmat Inspections for 100 Intermodal Carriers*, June 1, 1999, filed as part of Docket No. FMCSA-1998-3656 on August 5, 1999.

² Entities subject to governmental regulation should not rely on this report, but instead should directly consult official regulatory documents.

ready supply of truckers to haul intermodal equipment indicates that current contract terms are sufficient.

The third issue is consistency between federal and state safety regulation of intermodal equipment. Four states have passed legislation governing intermodal equipment safety and others have passed, or are currently considering, such legislation.

In 2002, the Federal Motor Carrier Safety Administration (FMCSA) initiated a negotiated rulemaking as part of its response to an American Trucking Associations, Inc. petition to facilitate a solution to the issue of intermodal chassis and trailers.³ That rulemaking process was terminated in December 2003, when the FMCSA withdrew its Advanced Notice of Proposed Rulemaking (ANPRM) after reviewing oral and written testimony and a neutral convenor's final report.⁴ While press reports indicate that DOT once again plans to issue rules concerning the safety of intermodal equipment, DOT must first complete a rulemaking on the subject consistent with the Administrative Procedures Act (APA) of 1946 prior to instituting new rules.⁵

The House has passed H.R. 3550, which, among other provisions, would require the Secretary of Transportation to establish a program intended to improve the safety of intermodal equipment (trailers and container chassis) used to haul intermodal cargo and reduce conflicts between trucking companies and companies that provide the intermodal equipment. The Senate transportation reauthorization bill (S. 1072) does not contain a similar provision. Further consideration awaits a conference to reconcile House and Senate versions of the highway bill.

If enacted, Sec. 4128 of H.R. 3550 would direct the Secretary of Transportation to establish rules to require that intermodal equipment have a unique identification number that links it to its provider; that equipment providers maintain a system of maintenance and repair records for intermodal equipment that they control; and that equipment providers that are found to pose an imminent hazard would be prohibited from placing equipment on a public highway. H.R. 3550 also requires that the rules establish civil penalties for intermodal equipment providers that fail to attain satisfactory compliance with applicable Federal Motor Carrier Safety Regulations. The intermodal equipment provisions in H.R. 3550 would provide DOT with a clear

³ Federal Register Vol. 67, No. 230 p. 71127. For the original American Trucking Associations, Inc. petition see Federal Register Vol. 64, No 13, p. 7849. As part of a negotiated rulemaking process, a neutral convenor is an independent party that conducts a conflict assessment. As part of the assessment, they interview interested parties and examine the feasibility of developing a committee to develop regulations through a consensus process.

⁴ The FMCSA cited several reasons including the lack of data concerning the relationship between mechanical condition of intermodal container chassis and trailers and vehicle accidents as well as the conclusion of the neutral convenor that no consensus could be achieved between truckers and equipment owners.

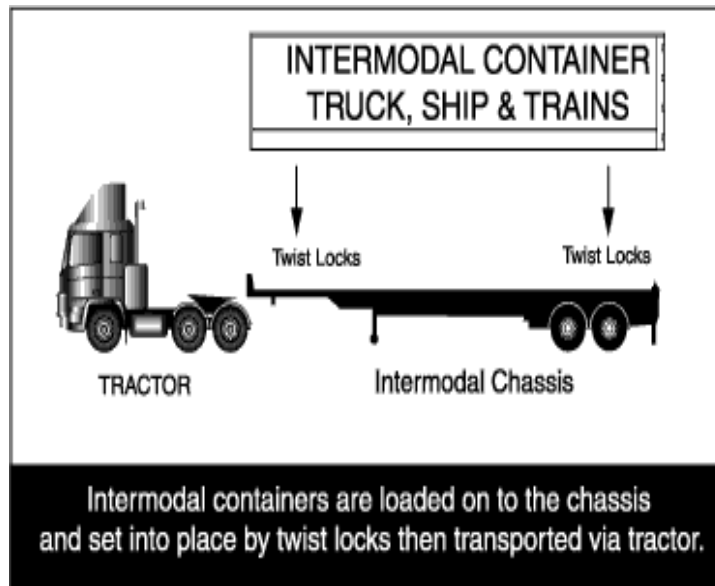
⁵ 5 U.S.C. 551 et seq.

legal and congressionally-specified basis for exercising its authority over intermodal equipment maintenance practices and intermodal equipment providers.

Intermodal Chassis and Intermodal Service

Intermodal containers are hauled by trucking companies (drayage carriers) on intermodal chassis provided by leasing companies, ocean carriers, railroads, port authorities or port terminal operators. (See **Figure 1**). The equipment providers own 750,000 chassis that handled more than 20 million container movements in 2002.⁶ Most of these container movements involve a pick-up or drop-off at a port or rail yard. The remainder are highway only moves. Transportation of intermodal containers on intermodal chassis on public highways has grown as international trade and intermodal rail service have expanded.

Figure 1. Intermodal Tractor, Chassis, and Container



Source: American Trucking Associations, Inc.

Intermodal chassis are part of “pools” of equipment that are available to all trucking companies serving an intermodal yard (port, a container yard or rail yard.)⁷ Chassis pools provide a number of advantages to intermodal transportation. Chassis pools provide equipment providers with substantial flexibility in the choice of

⁶ The estimate of 750,000 chassis comes from American Trucking Associations, Inc., *Roadability Means Intermodal Highway Safety*, 2003. The number of container movements is the sum of containers handled by the United States ports as reported by the American Association of Port Authorities and domestic container movements as reported by the Association of American Railroads. The extent to which the equipment meets safety requirements is the equipment’s “roadability.”

⁷ The chassis pools may be port wide, as in the case of the Virginia ports or be limited to a single railroad, port terminal operator, or ocean carriers.

trucking companies to haul equipment. Trucking companies need not invest capital in equipment and are not limited to hauling the equipment of any particular equipment provider. Finally, equipment pools allow multiple users of a port or intermodal facility to share the set of available equipment thereby minimizing the use of space to store intermodal chassis in crowded rail yards and ports.⁸

When a trucking company picks up a load at an intermodal yard, it draws a chassis from the pool of equipment available at the yard. When a trucking company returns a chassis to an intermodal yard, the intermodal equipment reenters an equipment pool. As trucking companies haul equipment picked somewhat randomly from an equipment pool, they most likely haul a different chassis each time they leave an intermodal facility. The use of pooled equipment also means that multiple trucking companies haul an individual chassis over the course of the year.

Regardless of how long a trucking company has the use of a particular chassis, it is responsible under state and Federal Motor Carrier Safety Regulations that the intermodal chassis complies with the regulations.⁹ The transfer of intermodal equipment and an equipment lease are similar in that they both involve the transfer of equipment between two parties.¹⁰ Following the execution of a lease or an intermodal equipment transfer, the trucking company is legally responsible for the condition of the vehicle, including responsibility for complying with federal and state safety regulations.

Leases can specify a number of conditions that protect a trucking company. It can specify the condition that the equipment will be provided to the trucking company and specify expenses incurred by the trucking company that the trucking company can charge the lessor of the equipment. Reimbursable expenses could include repairs made on the leased equipment and safety violation fines.

The business of leasing trucks is quite competitive. Trucking firms have a choice of lessors for both short and long term leasing of equipment. Given that trucking companies are responsible for equipment that they lease, they have an incentive to ensure that the lease contract protects them from leasing defective equipment and the competitive market allows them to specify charge back provisions that meet their specific requirements. The length of the lease and the size of the trucking company may affect the split of the financial responsibility for repairs and maintenance that are the responsibility of the trucking company and the owner of the equipment.¹¹

⁸ Bonney, Joseph, "Pooling Chassis," *Traffic World*, February 23, 2004, p. 32.

⁹ 49 CFR 396 — Inspection Repair and Maintenance

¹⁰ The difference between a lease and an interchange is that in a lease the owner grants the use of equipment for a specified time for a purpose to be determined by the lessee in exchange for compensation, while an interchange is a transfer of the physical possession of the equipment in order to transport freight on behalf of the equipment provider.

¹¹ Some lessors offer maintenance programs to relieve trucking companies from the need to maintain the fleet that they lease. A recent FMCSA-sponsored study showed that small
(continued...)

An intermodal exchange agreement is similar to a truck lease. The intermodal exchange agreement that is used to exchange most intermodal equipment is governed by the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) administered by the Intermodal Association of North America (IANA), an association that includes both equipment providers and trucking companies.¹² The UIIA includes provisions comparable to written lease requirements specified in 49 C.F.R. 376.12. While the UIIA is the standard agreement for interchanging equipment, trucking companies can sign addenda to the agreement that modify standard provisions. Around 5,400 trucking companies and 60 equipment owners are parties to the agreement.

The UIIA contains four provisions relating to the roadability of the equipment that is interchanged with motor carriers. The UIIA states that equipment provided to a trucking company will have a valid FMCSA sticker.¹³ The UIIA specifies that if the FMCSA sticker will expire while a trucking company hauls the intermodal equipment, the trucking company can demand that the equipment provider reinspect and recertify the equipment before the equipment is transferred to the trucking company. Otherwise, reinspection is the trucking company's responsibility.¹⁴ The UIIA states that the trucker and the equipment owner or their agents shall inspect the equipment and either party can note the condition of the vehicle including defects on the equipment interchange receipt.¹⁵ Finally, the UIIA includes a statement limiting their guarantees as to the condition of the equipment that is interchanged.¹⁶

Warranty: WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.¹⁷ (Bolding and capitalization is as in the contract text.)

While the warranty specifies that both parties affirm their responsibilities under the Federal Motor Carrier Safety Regulations, only the trucking company has legal responsibility for the condition of the vehicle while it is in its possession.

¹¹ (...continued)

trucking companies, similar in size to most carriers hauling intermodal equipment, are the most likely to outsource their truck maintenance. Corsi, Thomas M. and Richard E. Barnard, *Best Highway Safety Practices: A Survey About Safety Management Practices Among The Safest Motor Carriers*, Federal Motor Carrier Safety Administration, March 2003, p. 8.

¹² Intermodal Association of North America, *Uniform Intermodal Interchange and Facilities Agreement*. (UIIA)

¹³ *Ibid*, p. 4.

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ Intermodal equipment includes intermodal chassis as well as truck trailers. Truck trailers represent a smaller proportion of what independent truck companies haul from intermodal yards.

¹⁷ *Ibid*.

The UIIA also specifies the responsibility of the equipment provider and the trucking company for certain expenses that a trucking company may incur while the equipment is in its possession.¹⁸ These expenses include repairs for damage to equipment, tire repair or replacement, repairs resulting from citation, and fines. For example, the contract specifies that the trucking company is responsible for the costs of repairing tire damage that occurs when the equipment is in its possession unless the repair is unrelated to damage caused while the equipment was in its possession. Trucking companies do negotiate with equipment providers regarding charging some of these expenses back to the equipment providers. There is no information about what proportion of repair costs, and equipment related fines are charged back to the equipment providers.

Public Policy Issues

The exchange of intermodal equipment has raised three issues. They are 1) the condition of such equipment on the nation's highways and the impact that equipment condition has on safety, 2) the regulation of the interchange contract to ensure an efficient and fair distribution of repair costs between equipment providers and trucking companies, and 3) the consistency of federal and state safety regulations for intermodal equipment.

Equipment Condition and Safety

The question of unsafe intermodal equipment was raised by the American Trucking Associations, Inc. (ATA) in its petition to the DOT for a rulemaking on intermodal equipment roadworthiness in 1997.¹⁹ In answering the question, data has been collected both on the condition of intermodal equipment and the safety record of carriers providing intermodal service.

Data collected from four states — California, Louisiana, South Carolina, and Texas — indicates that intermodal equipment is placed out-of-service at a higher rate than truck trailers in general.²⁰ **Table 1** shows the number of inspections and out-of-service rates for the four states. The Volpe National Transportation Systems Center determined the differences in all four states were statistically significant.

¹⁸ UIIA, p.5.

¹⁹ American Trucking Associations, Inc. and ATA Intermodal Conference, *Joint Petition Requesting Adoption of Rules Requiring Party Tendering Equipment To Be Used In Intermodal Transportation Be Required to Ensure Roadworthiness And Compliance of Such Equipment with FMCSA's Prior To Tendering Equipment to Motor Carrier*, March 17, 1997, p. 2.

²⁰ Thomas Keane Economist, Federal Motor Carrier Safety Administration, *Letter to Nancy Lipper, Associate Counsel, Office of Legislative Services, New Jersey Legislature*, April 15, 2004. The states selected both collected information at roadside inspections that allow for the identification of intermodal equipment and provided the data to the Volpe National Transportation Systems Center in response to a FMCSA request.

Table 1. Vehicle Out-of-Service Rates of Intermodal and Non-intermodal Trailers (2000-2003)

State	Intermodal Trailers		Non-Intermodal Trailers		Difference in Out-of-Service Rates	Percent Difference in Out-of-Service Rates
	Number of Inspections	Vehicle Out-of-Service Rate	Number of Inspections	Vehicle Out-of-Service Rate		
CA	33,523	17.7%	875,881	14.6%	3.1%	21.2%
LA	76	26.3%	27,216	8.8%	17.5%	198.9%
SC	1,982	21.4%	60,674	14.9%	6.5%	43.6%
TX	2,032	24.8%	150,260	16.1%	8.7%	54.0%

Source: Thomas Keane Economist, Federal Motor Carrier Safety Administration, *Letter to Nancy Lipper, Associate Counsel, Office of Legislative Services, New Jersey Legislature*, April 15, 2004.

Notes: California and South Carolina data is for 2000 through 2002 and part of 2003. Louisiana and Texas data is for 2002 only. Percentage difference calculated by dividing the difference between the two out-of-service rates by the non-intermodal out-of-service rate.

Calendar year 2003 data collected by the FMCSA indicated that national data also indicates that intermodal equipment is placed out-of-service by inspectors at a higher rate than the trailers on tractor-trailers in general. The trailer caused the out-of-service violation on 28.5% of the inspections involving self-identified intermodal carriers.²¹ This compares to 25.5% for all inspections involving a tractor and a single trailer.²² The national data indicates that the out-of-service rate for trailers hauled by intermodal carriers is 11.8% higher than the out of service rate for all inspections involving a tractor and a single trailer.

The higher proportion of intermodal equipment out-of-service violations that are observed at roadside inspections raises questions about whether the inspections that trucking companies and the equipment provider are supposed to conduct prior to intermodal equipment leaving the intermodal yard may miss many safety violations. The questions are raised particularly since the inspections occur shortly after intermodal equipment leaves an intermodal yard. Trucking interests contend that obstacles exist for the driver to provide an adequate inspection prior to leaving the intermodal terminal and that some problems that would cause an out-of-service violation cannot be found in a visual inspection.²³ 1998 FHWA data on out-of-

²¹ Federal Motor Carrier Safety Administration, *Computer report titled Intermodal Carriers Inspection and Out of Service Rates Based on Number of Units (1 or 2)*, April 29, 2004

²² *Ibid.*

²³ American Trucking Association and Intermodal Conference, *Comments for the Advance* (continued...)

service violations at inspections involving 100 motor carriers that the ATA identified as handling intermodal equipment supports the trucking industry's contention.²⁴ That data indicated that about 40% of the out-of-service trailer violations involved the trailer's brakes, an item difficult to examine during a visual inspection.²⁵ The ATA states that the inspection the trucker performs before accepting the intermodal equipment often occurs after the driver has waited for a lengthy period of time to pick up a load. If, after the wait, a driver makes a complaint about the condition of an intermodal chassis, a costly delay in the terminal yard could ensue, and require the trucker to wait for another load.²⁶

Equipment owners counter by arguing that the current inspection process gives trucking companies sufficient time to examine the intermodal equipment. In support of their argument, they cite numerous pieces of testimony that truckers had adequate opportunity to inspect intermodal chassis.²⁷ An Association of American Railroads witness stated that most out-of-service violations were easily observed visually.²⁸ Equipment providers suggest that inspections could be improved by better driver training.²⁹ Equipment providers also argue that the roadability issue may be caused by the economic pressures of intermodal trucking to the detriment of equipment safety. In support of their argument that economic pressures made truckers reluctant to report equipment safety violations, equipment owners cited six trucking witnesses who testified about the costs that they incurred if they reported safety violations and had to wait for repairs to be made.³⁰

Regardless of why a trucking firm receives a safety violation, the significant proportion of out-of-service violations attributed to intermodal chassis suggests that the current system of joint responsibility for intermodal equipment maintenance may not ensure that all intermodal equipment gets sufficient maintenance. The trucking

²³ (...continued)

Notice of Proposed Rulemaking in Docket No. FHWA-98-3656, August 31, 1999, p.13.

²⁴ The selection of carriers was not made based on any scientific basis.

²⁵ Office of Motor Carriers, *Motor Carrier Management Information System Report on 1998 Combined Interstate and Intrastate Level 1 Non-Hazmat Inspections for 100 Intermodal Carriers*, June 1, 1999, filed as part of Docket No. FMCSA-1998-3656 on August 5, 1999.

²⁶ *Ibid.*

²⁷ Maritime Alliance and Carriers Container Council, pp. 5-6.

²⁸ Dettman, Chuck, *Statement at FHWA Listening Session*, Transcript published as part of the record as document number 99 in FMCSA-1998-3656, November 2, 1999, p. 35

²⁹ Maritime Alliance and Carriers Container Council, p. 25. The witnesses cited are Don Gatchet of West Coast Trucking, Tom Molloy, the Executive Director of the ATA, Archie Hollerman, a trucker with unknown affiliation, Bruce Dahnke, a trucker with unknown affiliation, Will Grotto of International Motor Freight, and John Trenor of Mosaic Trucking.

³⁰ *Ibid.*, pp. 12-14. The problem reported by truckers is that they are paid per load and a delay to make repairs or secure a different chassis would increase the costs for a load, without increasing compensation. For truckers hauling short distances, delays could also reduce the trucker's daily revenue by reducing the number of hauls that the trucker could transport per day.

company that hauls the intermodal equipment is responsible for repairs for damage above and beyond normal wear and tear, repair and/or replacement of damaged tires, and repairs necessitated by safety inspections under the UIIA. As the UIIA does not make the trucking company responsible for normal wear and tear, the equipment provider appears to be responsible for maintenance related to normal wear and tear. Neither party provides the other any assurance as to the quality of the maintenance that they provide.³¹

Regulation of Intermodal Exchange Contracts

DOT does not regulate intermodal exchange agreements, which are similar to truck-equipment leases. DOT does regulate truck equipment leases.³² Even if intermodal exchange agreements were considered leases, exchanges of intermodal equipment would likely be exempt from leasing regulations as most trucking service that intermodal carriers provide falls within two of the exemptions to leasing regulations: service from railyard-to-railyard and service within a commercial zone.³³

The intermodal equipment interchange contract creates potential economic disincentives for truckers, trucking firms, and equipment owners to invest any more than is necessary to insure that the equipment meets basic motor carrier safety requirements. Intermodal exchange contracts place responsibility for repairs on the trucker, who may be financially unprepared to undertake minor or major repairs to a piece of equipment that he does not own and may only use once. For example, a trucking firm has little incentive to buy new tires or invest in major repairs if it never expects to use the same piece of equipment again.

The economic incentive for equipment providers to provide careful maintenance of their equipment is somewhat limited due to the lack of an equipment condition warranty. Warranties, by their nature, provide financial incentives for firms to provide equipment that is less likely to break down. Even without a warranty, equipment providers incur substantial expenses for intermodal equipment maintenance. However, their aversion to including a warranty provision in the exchange contract may reflect the difficulty that they face in attempting to provide maintenance at regular intervals as the equipment is transferred often and may be on the road or beyond the control of the provider for long periods of time.

³¹ A recent FMCSA sponsored study suggests that concerns about intermodal equipment quality may warrant additional study. That study compared the quality of equipment (tractor and intermodal chassis or trailer hauled) used by intermodal truckers with equipment used by the other segments of the trucking industry. In terms of vehicle safety evaluation, the intermodal truck segment ranked as one of the worst segments. This study is indicative rather than conclusive. Keane, Thomas P., William C. Horrace, and Kristine N. Braaten, *Motor Carrier Industry Profile Study: Statistical Inference of Safety Performance Measures*, Analysis Division, Office of Information Management, Federal Motor Carrier Safety Administration, October 23, 2002, pp. v, 12.

³² 49 C.F.R. 376

³³ 49 C.F.R. 376.21

As economic disincentives affect intermodal equipment maintenance, the inspection of equipment when it arrives and leaves an intermodal yard become the primary safeguard to insure that equipment receives necessary maintenance. While important for equipment roadability, these inspections become the primary means of assigning financial responsibilities between equipment providers and intermodal trucking firms for equipment repairs.

For trucking companies, the inspection process offers difficult choices.

When motor carriers receive a container chassis with a defect they may have to expend time addressing the defect — by either waiting to have it repaired or waiting to swap chassis. Because many motor carriers are short-distance drayage carriers paid by the haul, time spent waiting can harm their earning capacity by limiting the number of hauls they make in a given period, particularly with restricted hours of operations in some ports. Many of these carriers, some reported [to an FMCSA contractor], often face a difficult choice of leaving the terminal and risking a ticket for not repairing minor defects or reporting noncomplying conditions, waiting for repairs, losing money, and possibly facing some form of retaliation.³⁴

The trucking company faces an additional financial risk from equipment defects that cannot be observed with a visual inspection.

When trucking companies return equipment to an equipment provider, the trucking company needs to have completed repairs that were noted in safety citations and made repairs for tire damage and equipment damage beyond normal wear and tear. Because the trucking company has no reasonable expectation of using the same chassis again, it has an incentive to spend only the minimum necessary to make repairs due to equipment damage or in response to an out-of-service order.³⁵

The trucking industry supports two proposals to regulate the interchange agreement which would affect the current shared financial responsibility for equipment maintenance.³⁶ One change would modify the existing warranty to specify that equipment interchanges must be roadworthy. The second change would require that the interchange agreement allow a trucker to seek reimbursement for repairs paid by a trucker from the equipment provider. Both of these proposals would reduce the financial responsibility of trucking firms and eliminate the risk that they bear from hauling equipment that might require repairs or fail a safety inspection. As most of

³⁴ Pou, Charles, and Joseph Horn, *Convening Report Concerning The Feasibility of A Negotiated Rulemaking on the Roadability of Intermodal Equipment*, Federal Motor Carrier Safety Administration, May 12, 2003, p. 6.

³⁵ The quality of maintenance that an intermodal chassis has received in the past may increase the risk for the next trucker of incurring additional repair costs and safety violations.

³⁶ See, Osiecki, David J. and Bill Wanamaker, American Trucking Associations, Inc., *Letter to the U.S. Department of Transportation Re: General Requirement; Inspection Repair, and Maintenance; Intermodal Chassis and Trailers; Docket No. FMCSA-98-3656*, January 13, 2003, p. 4 and American Trucking Association, *Instructions & Checklist for All Roadability Grassroots Activists*, [<http://www.truckline.com/legislative/grassroots/>]

the financial risk would then be borne by the equipment provider, those supporting intermodal equipment contract regulations argue that it would then be in the interest of the provider to carefully inspect equipment before it exited their facility and traveled on public highways.³⁷

Equipment providers have opposed changes in the standard interchange agreement. They have stated that interchange agreements should remain the result of bilateral agreements, to which both sides willingly agree, as to the terms of the equipment interchange contracts.³⁸ Equipment providers contend that a warranty would increase their costs and these costs would be passed on to their customers.³⁹ Equipment providers have indicated that shifting the financial responsibility to the equipment providers has both insurance and risk management implications.⁴⁰ In addition, equipment providers indicate that thousands of intermodal chassis are interchanged daily without any difficulty due to trucking companies and equipment providers interchanging equipment under the UIIA, the standard interchange agreement.⁴¹

Conflicting State Regulations

California, Illinois, Louisiana, and South Carolina have “passed laws shifting some of the financial responsibility for the roadworthiness of intermodal chassis from the motor carrier to the party tendering the intermodal equipment. Interviewees reported that most of the states are not enforcing their laws specifically affecting intermodal chassis.”⁴² These laws do not change the responsibility of the motor carrier regarding the condition of the equipment that it hauls under Federal and state safety regulations. These laws define the responsibility of an equipment provider as to the roadability of intermodal chassis or trailers that are tendered to a trucking company; establish requirements for the reimbursement of fines, penalties, and repair costs; and address the validity, liability or other terms of equipment interchange

³⁷ American Trucking Associations, Inc., *Roadability Means Intermodal Highway Safety*, 2003. Equipment providers could face problems arising from their inability to inspect equipment unless truckers hauled it back to the equipment provider’s facility for inspection.

³⁸ Ocean Carrier Equipment Management Association (OCEMA), *Background Notes on Inspection, Repair, and Maintenance Issues for Intermodal Container Chassis and Trailers*, 2004, p. 3.

³⁹ The FMCSA reported that both EIDA and the AAR presented statements indicating that shifting the responsibility would increase their costs substantially. Federal Register Vol. 68, No. 250 p. 73478. Higher costs born by the equipment providers could also reduce what they are willing to pay for trucking services.

⁴⁰ OCEMA, p. 3. States are enforcing safety regulations that apply to all trailers transported over the highway whether used in intermodal or other service.

⁴¹ Equipment Interchange Discussion Agreement, *Comments Regarding Docket No. FHWA-98-3656*, p. 5.

⁴² Pou and Horn, p. 11.

contracts.⁴³ However, “these state laws take differing, sometimes inconsistent regulatory approaches to coverage.”⁴⁴ The California law, for instance, covers only port terminals, effectively excluding from coverage the railroads, distribution centers, and other types of depots.⁴⁵

The enactment of state laws has changed the operations of some marine terminals.⁴⁶ For instance, the change in California law now requires that equipment owners transfer equipment in safe, working order. To ensure that the equipment that they hand to motor carriers meets this requirement, APM Terminals at the Port of Los Angeles has instituted a mechanical inspection prior to trucks exiting the facility. The inspection checks the intermodal chassis brakes, brake lights, mud flaps, tires, and any other chassis component that may concern a trucker. Other terminal operators at the port do similar inspections prior to truck drivers receiving the equipment.⁴⁷

Recent DOT Actions

In 1999, the Federal Highway Administration (FHWA) initiated an advance notice of proposed rulemaking (ANPRM) regarding general requirements for inspection, repair, and maintenance of intermodal container chassis and trailers.⁴⁸ The ANPRM was instituted in response to an ATA petition for a rulemaking. In the ANPRM, the FHWA asserted jurisdiction over the owners / providers of intermodal equipment.⁴⁹ In response to the ANPRM, the FHWA conducted three public meetings and received over 100 comments but did not take any position on issuing regulations.

In 2002, the Federal Motor Carrier Safety Administration (FMCSA) began conducting a negotiated rulemaking in an attempt to facilitate a solution to the conflict between trucking companies and equipment providers regarding the sharing of responsibility for intermodal equipment maintenance agreeable to all parties.⁵⁰ In December of 2003, the FMCSA, after reviewing 104 written comments from 71

⁴³ OCEMA, p. 4.

⁴⁴ Pou and Horn, p. 11.

⁴⁵ Ibid.

⁴⁶ “L.A. Terminal Adds Exit Inspection,” *The Journal of Commerce Online*, January 30, 2004.

⁴⁷ Ibid. Inspections that occur after the equipment is tendered slows down exit from the port and raises the trucker’s cost. Truckers would therefore prefer that equipment providers conduct the inspections prior to tendering the intermodal chassis to the trucker.

⁴⁸ Federal Register Vol. 64, No. 3., p. 7849.

⁴⁹ “Railroads, steamship lines, pier operators, or other parties that own or lease intermodal CMV’s are thus “employers” subject to the jurisdiction of the FHWA.” Federal Register Vol. 64, No. 3., p. 7850.

⁵⁰ Federal Register Vol. 67, No. 230 p. 71127

interested parties and oral testimony from 102 individuals, withdrew its ANPRM and ended its consideration of a negotiated rulemaking when it determined that it would be inappropriate to move forward with a Notice of Proposed Rulemaking at that time.⁵¹ The FMCSA gave two reasons for its decision. First, the FMCSA asserted that there was insufficient data concerning the relationship between the mechanical condition of intermodal 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.⁵² Second, the neutral convenor hired by FMCSA to interview parties that would be affected by a rulemaking concluded that a negotiated rulemaking should not be undertaken given the difficulty of achieving a consensus.⁵³

Shortly thereafter, the DOT announced in a press release that it would “launch a safety inspection program for intermodal container chassis”⁵⁴ From the press release, the DOT indicated that the proposed new program will require providers of chassis to the trucking industry to register their chassis with the DOT and display it on their chassis so that data could be captured when the inspections occur.⁵⁵

A DOT spokesman has reportedly stated that the proposed program will not change current practice and current intermodal equipment exchange contract provisions under which truckers are responsible for paying fines for chassis safety violations and for bearing the economic losses associated with delays and citations that place a chassis out of service.⁵⁶ As such the DOT press release indicates that it is unlikely to follow the initial request of the ATA that it become involved in regulating the intermodal agreement. The DOT spokesman indicated that DOT would not become involved in disputes between truckers and intermodal chassis providers about liability for damaged equipment or responsibility for penalties.⁵⁷ The spokesman indicated that inspections and registration could reduce the instances of liability disputes.⁵⁸ Reports of DOT’s intention to issue an NPRM have generally received a favorable reaction from both sides of this issue.⁵⁹ While the press reports

⁵¹ Federal Register Vol. 68, No. 250 p. 73478.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Department of Transportation, Press release entitled *U.S. Department of Transportation to Begin Safety Inspections of Truck Container Chassis*, January 26, 2004.

⁵⁵ Ibid.

⁵⁶ Gallagher, John, “Chassis Divide Narrows,” *Traffic World*, February 9, 2004, p. 28.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Support for the action proposed in the DOT press release was reportedly expressed by the American Trucking Association, the Teamsters Union, and the Ocean Carrier Equipment Management Association. Cassidy, William B, “DOT to Start Chassis Inspections,” *Traffic World*, February 2, 2004, p. 13. “OCEMA Praises DOT Chassis Plan,” *Journal of Commerce Online*, March 8, 2004.

indicate that DOT plans to issue rules, DOT must first complete a rulemaking on the subject.

Legislation in the 108th Congress

Section 4128 of the Transportation Equity Act: A Legacy for Users (TEA-LU) (H.R. 3550) includes a requirement that, within 90 days, the Secretary of Transportation issue a notice of proposed rulemaking to develop regulations establishing a program to ensure that intermodal equipment is safe.⁶⁰ The legislation requires that the rules be instituted not later than one year after the bill is enacted. If enacted, H.R. 3550 establishes a framework for the regulatory proceeding that the DOT press release, of January 26, 2004, indicates may be forthcoming.

H.R. 3550 states, that at a minimum, the proposed regulations must include:

- a requirement to identify providers of intermodal equipment that is interchanged or intended for interchange to motor carriers hauling intermodal equipment;
- a requirement that all intermodal equipment have a unique identifying number that can be used to match the equipment to the provider;
- a requirement that the equipment providers maintain a system of maintenance and repair records for such equipment;
- a provision that establishes penalties for equipment providers that fail to attain satisfactory compliance with applicable Federal Motor Carrier Safety Regulations and prohibits providers from placing intermodal equipment on the road if such provider is found to pose an imminent hazard;
- a process by which motor carriers (trucking companies) can petition the FMCSA to undertake an investigation of a potentially noncompliant provider; and
- an inspection and audit program of intermodal equipment providers.

⁶⁰ Prior to the passage of H.R. 3550, the trucking industry had supported, H.R. 2863, the Intermodal Equipment Safety and Responsibility Act of 2003, and a similar bill in the Senate, S. 1776. In addition to the inspection program specified in H.R. 3550, H.R. 2863 would have mandated that the provider of the intermodal equipment bear financial responsibility for equipment maintenance, inspection prior to transfer of the equipment to a trucking company, and for repairs that a trucking company is required to make to meet federal safety regulations to the owner of the equipment.

The rulemaking that would be mandated by H.R. 3550 appears to be similar to what is described in the DOT press release. H.R. 3550 specifies a deadline that is not mentioned by DOT.

With such regulations, the costs of equipment providers may rise to cover their increased maintenance responsibilities over what is currently specified in the intermodal exchange agreements. As inspections would occur while intermodal equipment is in the possession of equipment providers, they would now also be responsible for repairs in response to out-of-service orders that are given to equipment in their possession. Equipment providers would also be responsible for having a system of maintenance for their equipment and maintaining records on the maintenance of equipment that they provide, regardless of who provides or pays for the maintenance.

Trucking firms would continue to have the legal responsibility for compliance with the safety regulations and financial responsibility for equipment repairs while they haul the intermodal equipment. However, if such regulations are approved and implemented, then trucking firms could face lower costs as the possibility that they would need to make repairs while hauling intermodal equipment might decline.

Federal responsibilities could increase with the implementation of new regulations. The FMCSA would have new responsibilities for monitoring the equipment identification and maintenance programs of equipment providers. Federal inspectors would also conduct inspections both on the highway and within intermodal facilities. While the places where an inspection may occur will likely increase, the total number of inspections may not be affected.

Final regulations could affect state responsibilities if they are added in a manner such that states must incorporate them into state regulations as a condition for receiving funds under the Motor Carrier Safety Assistance Program (MCSAP). It is uncertain whether the FMCSA would include intermodal equipment regulations in its MCSAP requirements.

If the rules to implement Sec. 4128 of H.R. 3550 were issued, at least in part, on the authority of the Motor Carrier Safety Act of 1984 (MCSA) (49 U.S.C. 31136), the FMCSA would be authorized to preempt inconsistent state commercial motor vehicle safety laws or regulations through a notice and comment rulemaking.⁶¹ It seems likely that this could be the case, since a number of the definitions included in the MCSA are clarified or amended by Sec 4128 of H.R. 3550. The FMCSA could then preempt state commercial motor vehicle safety laws or regulations that are less stringent than comparable Federal rules based on the MCSA. More stringent state regulations could also be preempted, provided the agency determined that the state regulation (1) has no safety benefit; (2) is incompatible with the Federal rule; or (3) unreasonably burdens interstate commerce.⁶²

⁶¹ 49 U.S.C. 31141(c)

⁶² 49 U.S.C. 31141(c)(4) (A)-(C)

Sec. 4128 of H.R. 3550 does not specifically address Federal preemption of state regulations.⁶³ Therefore, the Federal preemption of state laws and regulations is uncertain if Sec. 4128 of H.R. 3550 becomes law.

While the Bush Administration has indicated opposition to mandated rulemakings in general,⁶⁴ it has not specifically mentioned opposition to the intermodal equipment rulemaking included in H.R. 3550.

⁶³ A proposal to preempt state regulations was presented as S.Amdt. 2395 to S. 1072, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003(SAFE-TEA). Congressional Record, 108th Cong., 2d sess., 150 (February 11, 2004), S1096-1097. The amendment was not acted upon.

⁶⁴ Office of Management and Budget, *Statement of Administrative Policy: H.R. 3550 — Transportation Equity Act: A Legacy for Users*, March 30, 2004, p. 3.