

the chassis is necessary because the equipment may be interchanged among several motor carriers after leaving the terminal. EIDA believes equipment providers accept responsibility for the equipment while it is in their possession and will repair any deficiencies prior to turning the equipment over to motor carriers. However, once a motor carrier accepts the chassis, the motor carrier must assume the duty of maintaining the equipment up to safety standards. The equipment providers believe the disclaimers in the agreement merely eliminate any strict liability that might otherwise be assumed.

State Regulations

Commenters expressed concern about a growing number of potentially conflicting State roadability laws. They believed the result would be a patchwork of inconsistent regulations negatively impacting the ability of the United States to operate a national intermodal transportation system.

Marine terminal operators, ocean carriers, and railroads emphasize the importance of taking action to preempt current and forthcoming State regulations concerning intermodal equipment inspection and interchange that will negatively impact interstate and international commerce, intermodal transportation, and the authority of the United States Department of Transportation.

Consideration of the Negotiated Rulemaking Process

On November 29, 2002 (67 FR 71127), the FMCSA published a notice announcing that the agency would study the feasibility of using the Negotiated Rulemaking process to develop rulemaking options concerning the maintenance of intermodal container chassis and trailers.

On February 24, 2003, FMCSA extended the comment period based upon a request by the counsel for the American Association of Railroads to allow additional time for filing comments after a planned meeting of IANA and the Ocean Carrier Equipment Management Association (OCEMA).

The IANA/OCEMA working group subsequently failed to develop a private-sector solution to the assignment of responsibility for maintaining intermodal chassis and trailers.

Results of the Convenor's Interviews

Typically, the first step in examining the feasibility of conducting a negotiated rulemaking is to conduct a "convening," or conflict assessment. During this process the convenor

identifies and interviews the interests that would be substantially affected by the proposed policy change and individuals or organizations that might represent those interests. Based upon the interviews, the convenor identifies issues of concern that may warrant addressing, and explores whether the establishment of a committee is feasible and appropriate in the particular situation. The following are the issues the convenor identified in his report to FMCSA concerning the feasibility of conducting a negotiated rulemaking on container chassis maintenance. A copy of the report is in Docket No. FMCSA-98-3656.

Extent of the Chassis Roadability Problem

The interviewees that supported moving forward with the rulemaking believe equipment defects on container chassis are a serious safety problem. As with the case of commenters to the public docket, and participants in the public meetings, interviewees also indicated many of the serious defects on container chassis are not visible during a walk-around or visual inspection.

When motor carriers leave the port terminal, according to interviewees, they are supposed to certify that the equipment is roadworthy and that there is no damage. Many motor carriers said that some terminals do relatively little about inspecting outbound chassis, but considerably more about inspecting inbound ones. Therefore, motor carriers may be held responsible for damage that was not reported outbound, even if it was pre-existing. Some interviewees suggested the solution includes holding the equipment provider responsible for inspecting and certifying a chassis before releasing it to the motor carrier.

Interviewees that were opposed to continuing the rulemaking believe there is a lack of data to support the Petitioners' argument that a safety problem exists with container chassis maintenance. While a number of them agreed that equipment violations are numerous, they argue that it is difficult to show the violations have caused accidents. These interviewees said that in many instances motor carriers receive citations for violations concerning equipment conditions that could not be detected during a walk-around or visual inspection. However, they do not believe such violations warranted additional Federal regulations. Some indicated they believe private-sector solutions would offer greater flexibility and be less costly and more effective than new Federal regulations.

State Laws and Regulations

Almost all of the interviewees expressed concern about a recent trend toward States enacting roadability laws. They indicated that in the late 1990s, Illinois, Louisiana, and South Carolina legislatures passed laws shifting responsibility for roadworthiness of intermodal chassis from motor carriers to the party tendering the intermodal equipment. Interviewees reported that most of the States are not enforcing their roadability laws.

Interviewees expressed concern the State laws have taken differing, sometimes inconsistent regulatory approaches to coverage. The State laws were viewed as a means of dealing with vehicles that were not being properly maintained, and assigning inspection, repair and maintenance responsibilities to ensure the proper and safe operation of the chassis. Nearly all interviewees reported that a growing patchwork of inconsistent State laws would adversely impact intermodal transportation.

There was widespread agreement among interviewees that FMCSA could make a major impact by adopting regulations, and preempting State laws and regulations. They noted States may have powerful economic incentives to limit enforcement of roadability legislation, especially given the possibility that they could risk the movement of shipping business and port operations to States with less stringent regulations, or no roadability rules at all. Two interviewees discussed personal stories where direct gubernatorial intervention halted enforcement efforts. Therefore, there is the belief State motor carrier enforcement agencies may face a difficult choice between maintaining major terminal operations that provide jobs and economic stimuli and enforcing their own rules.

Some interviewees favored the rights of States to pass roadability laws because they believe FMCSA has not done enough to improve the condition of container chassis. However, interests were divided over whether preemption should be the end process or merely the beginning. A few interviewees believed FMCSA should preempt the States but do nothing more. Others believed FMCSA should preempt the States only if it is part of a plan or program to resolve a number of issues concerning the intermodal industry.

Jurisdiction and Enforcement Issues

Interviewees expressed widely divergent views as to the limits of FMCSA's legal authority relating to equipment providers such as terminal