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April 16, 1999

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VIA FedEx

Docket Clerk
U.S. DOT Dockets,
Room PL -401,
400 Seventh Street, SW.,
Washington, DC

Reference: FHWA DOCKET NO. FHWA-98-3656 -31

Dear Sir or Madam:

Birdsall, Inc. appreciates the opportunity to provide comments on the issues raised in the Federal Highway Administration Advance Notice of Proposed Rulemaking, noticed in the Federal Register at 64 F.R. 7849 (February 17, 1999). Pursuant to that notice, Birdsall Inc. (Birdsall) hereby submits its comments to the above referenced proposed revisions to the requirements in parts 390 and 396 of the Federal Motor Carrier Safety Regulations that place upon motor carriers the responsibility for maintaining intermodal containers chassis and trailers.

Birdsall is engaged in the business of providing, among other things, intermodal equipment such as containers and chassis for intermodal moves between the Port of Palm Beach, Florida and points throughout the Continental United States and Canada.

The Advance Notice of Proposed Rulemaking, based apparently on a petition filed by the American Trucking Association and the ATA Intermodal Conference, assumes that motor carriers have no adequate opportunity to inspect the intermodal equipment before taking possession of the equipment. This assumption is in error, at least insofar as our operations are concerned. At interchange, the motor carrier and the equipment providers typically and customarily complete an Equipment Inspection & Interchange Report (EIRR) that provides the motor carrier the opportunity to inspect the equipment provided by equipment provider. Prior to execution of the EIRR, the motor carrier can note and object to any equipment deficiencies, issues or problems to the equipment provider. Once the motor carrier executes the EIRR, it fulfills the function of inspection and interchange whereby the motor carrier assumes the care, custody & control over the equipment provided.

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The Advance Notice also contains an inadequate description of the function and use of the Uniform Intermodal Interchange and Facilities Access Agreement. One of the primary reasons that the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) places no responsibility on the equipment provider is that in an intermodal move an equipment can be interchanged among several intermodal service providers several times before it is returned to the equipment provider. Therefore, because the equipment provider has no control over the care and handling of the equipment once it is turned over to the intermodal service provider the intermodal service provider is in the best position to inspect the equipment, note deficiencies, and accept or reject the equipment.

SECTION 396.7 (b) Unsafe Operations Forbidden

A Motor Carrier should not be placed in a position to accept intermodal piece equipment that has not gone through its yearly inspection. Such inspections are clearly marked on the intermodal equipment. If yearly inspection markings are not evident, at the time the EIIR is completed, the intermodal equipment should be deemed unsafe and the motor carrier has the option to refuse acceptance of the intermodal equipment in question.

SECTION 390.37 Violation and Penalty

Birdsall does not disagree with the language as proposed but believes that additional language also is needed to cover when despite having the opportunity to inspect for the deficiencies, the motor carrier takes the equipment onto a public road. The responsibility should shift to the motor carrier or intermodal service provider once the intermodal equipment is outside the equipment provider's gate by the intermodal provider's acceptance and execution of an EIIR.

SECTION 390.37 Jurisdiction

Birdsall believes that the definition of "Employer" should be expanded to also include "Motor Carrier and Owner Operator" as part of the definition.

SECTION 390.37 Request for Comments

- Birdsall believes that joint responsibility should go as far as the successful completion of the EIIR when care custody and control changes from one entity to the next.
- Also that out-of-service (OSS) should be defined as "the moment an unsafe situation has been identified by any party and the OSS clock should start at that moment"

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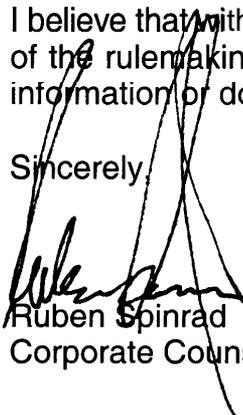
General Comments

With respect to the question posed specifically by FHWA, Birdsall has the following comments:

1. Birdsall's experience with respect to the industry out of service rate (OOS) rate is that it is less than 5%
2. Also, Birdsall's experience with respect to industry violation rate is that There is an extremely low rate of equipment related violations of the FMCSR's found per inspections.
3. As noted above, the Uniform Intermodal Interchange and Facilities Access Agreement disavows all responsibility for the "fitness" of the intermodal equipment because the equipment may be interchanged to several intermodal service providers during a particular move.
4. As noted above, Petitioners have an adequate opportunity to inspect intermodal equipment. We believe there to be no reasonable obstacles to providing drivers with the opportunity to perform a walk-around inspection of containers chassis and trailers.

I believe that with the above submission, Birdsall, Inc. has commented on the relevant portions of the rulemaking and of those portions that it has specific knowledge about. If additional information or documentation is needed, please contact the undersigned directly.

Sincerely,



Ruben Spinrad
Corporate Counsel