



AAPA Marine Terminal Management Training Program

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Federal Regulation of the Liner Shipping Industry: Selected Topics

- **U.S. Shipping Act: Background and Recent Developments**
- **Intermodal Chassis: Safety Regulation, Pools, and Perhaps a Changing Operating Paradigm**

Presented by

Jeffrey F. Lawrence
Chairman, Maritime and Logistics Group
Cozen O'Connor
Washington, DC

Agenda

- Part One: U.S. Shipping Act
 - Background on Regulatory System
 - Recent Proposals for Change
 - International Status of Liner Agreement Regulation
 - Some Thoughts on Implications for Carriers and Ports

- Part Two: Chassis
 - Role of OCEMA
 - FMCSA Regulatory Requirements of Chassis
 - The CCM Chassis Pool System
 - Possible Changes to Chassis Operating Paradigm



Part One: U.S. Shipping Act

Regulation and Policy: Impact on Ports and Carriers

Brief History of the U.S. Shipping Act

- U.S. was the first country to adopt antitrust laws when it enacted the Sherman Antitrust Act in 1890.
- Limited antitrust immunity and regulation for the liner shipping industry has its U.S. origins in the Shipping Act, 1916
 - 1916 Act acknowledged benefits of “conferences,” then in use worldwide, to ameliorate destabilizing and destructive economic forces inherent in the industry
 - Also broadly exempted other cooperative agreements (MTOs)
 - Congress recognized antitrust regulation did not work for liner industry
 - Need for service stability and investment to ensure adequate service and competitive alternatives
- Further revisions with the enactment of the Shipping Act of 1984 and Ocean Shipping Reform Act of 1998 (“OSRA”)
 - OSRA retained immunity for all types of carrier and marine terminal agreements and strengthened regulatory oversight of the U.S. Federal Maritime Commission.
 - OSRA gained broad support from carriers, shippers, ports, MTOs, and maritime labor who all participated in legislative process.

Current Shipping Act/FMC Regulation of Marine Terminal Operators

- Agreements between or among one or more MTOs and one or more ocean common carriers must be filed with FMC if they authorize parties to:
 - (i) discuss, fix or regulate rates or other conditions of service;
 - (ii) engage in exclusive, preferential or cooperative working arrangements in foreign commerce of U.S.
- Agreements for lease of terminal facility or provision of terminal services generally exempt from agreement filing requirement.
- Antitrust laws do not apply to activities under filed agreements and certain agreements exempt from filing.
- MTOs may, but are not required, to publish schedule of rates, regulations and practices. Published schedules are enforceable as contracts.



MTO Prohibited Acts

- MTOs may not agree with another MTO or carrier to boycott or discriminate in provision of terminal services
- Unlawful to give undue or unreasonable preferences or unreasonably prejudice any person (not all preferences are prohibited—only “undue or unreasonable” ones)
- Unlawful to refuse to deal or negotiate
- More limited prohibitions than for carriers



Current Shipping Act/FMC Regulation of Ocean Common Carriers

- Most agreements between carriers dealing with rates, sharing of vessels or chartering of space must be filed with FMC (rate agreements, vessel sharing agreements, space charters, equipment pools).
- U.S. Antitrust laws do not apply to activity covered by filed agreement.
- A variety of prohibited acts to protect against unfair or certain anticompetitive impacts
- Carriers must publish tariffs setting forth rates, charges, rules and conditions of service applicable to shippers.
- Carriers can deviate from tariffs in service contracts, but must file service contracts with FMC.

Recent Bill Introduced to Modify Shipping Act

- Sept. 2010: Bill (HR 6167) introduced by House Transportation Committee Chairman Oberstar (D-MN). Proposes radical changes to current regulatory system.
- Background to Bill: problems experienced in early 2010 as the trading economy in the U.S. trades emerged from the recession. Certain shippers or shipper groups complained of:
 - lack of vessel capacity
 - container equipment unavailability (especially Midwest and PNW exports)
 - service contract issues
- Some proponents of the bill have generally opposed antitrust immunity for carriers and others. Sought to tie post recession adjustment problems to Shipping Act immunity system.
- No committee hearings or vote on Bill in House; No similar Bill in Senate. Two sponsors.
- Status/prospects in next Congress (post election) unclear

How the Oberstar Bill Would Change Regulation of Ocean Common Carriers

- Conferences and discussion agreements (e.g. TSA, WTSA) would be outlawed.
- Joint services (two or more carriers forming a carrier that holds itself out in its own name) would be outlawed.
- Any carrier agreement that results in a reduction, stabilization, or limitation in any manner on the size or number of vessels or available space offered to shippers in any trade would be prohibited.
- Changes proposed in this bill would effectively place a legal cloud—or ban outright—many VSAs/space charter agreements.

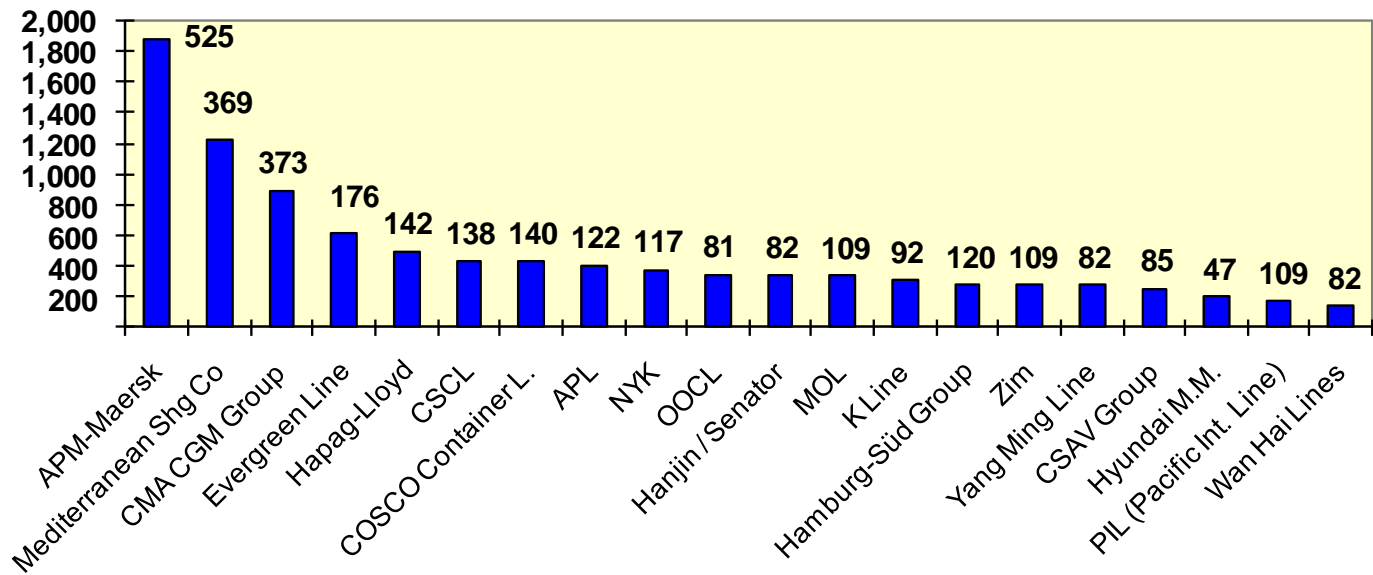
How the Oberstar Bill Would Change Regulation of Ocean Common Carriers (cont'd)

- Agreements would require affirmative FMC approval at end of 90-day review period.
 - Result: Delay in service initiatives for VSAs and other operating agreements.
 - Only agreements that are “efficiency” and “service enhancing” can be approved.
- Onerous new prohibited acts:
 - Unlawful to impose an unreasonable surcharge
 - Violation of a service contract would be a violation of the Act
 - Unlawful to refuse cargo space when available
- Burdensome new reporting requirements (e.g., all rolled or delayed cargo)

Some Potential Implications of the Oberstar Bill for Ports/MTOs—Food for Thought

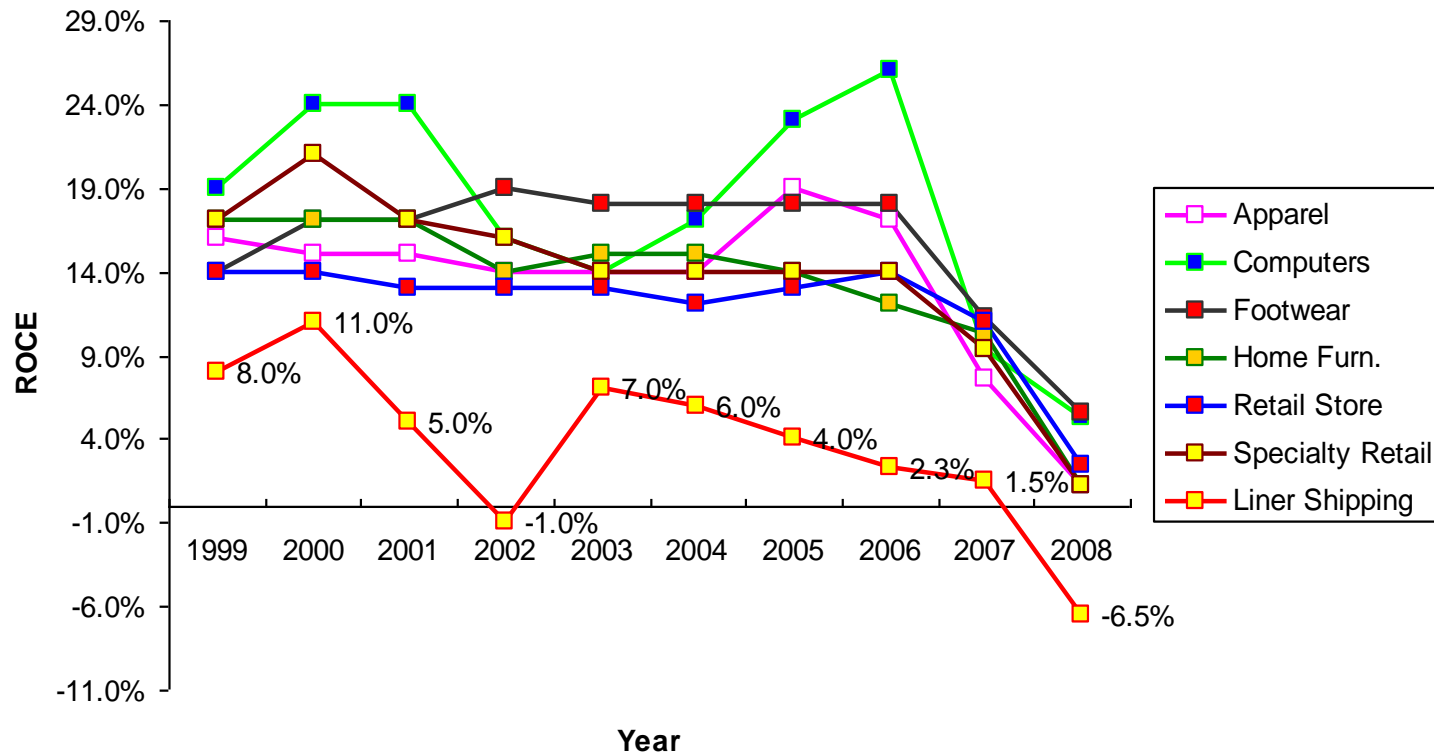
- Bill preserves antitrust immunity for MTOs, but...would port/MTO immunity survive the legislative process...or very long thereafter? (i.e., is it sustainable?)
- Ability of carriers to continue current approach to service put in question
 - impact of loss of voluntary discussion agreements on ability of carriers to earn minimally acceptable returns on investment?
 - most carriers lack financial wherewithal to maintain current level of service without VSAs, and cargo volumes would not support individual service by every carrier
 - would proposed regulatory environment jeopardize ongoing capital investment in ships and equipment to meet future demand?
- Would new regulatory system result in new round of carrier consolidation, downward cost pressure, and/or fewer service options?

Top 20 Carriers by TEU Capacity



Return on Investment: Shipping vs. Other Industries

Liner Return on Capital Employed vs Other Industries



Containerized Trade Growth Has Outpaced GDP

	98 - 07	87- 07
World Real GDP	4.2%	3.8%
World Trade	6.6%	6.9%
World Containerized Trade	10.8%	10.1%
World Trade/Real GDP	1.5x	1.8x
Containerized Trade/Real GDP	2.7x	2.8x



International Status of Antitrust Immunity for Carrier Agreements

- Carrier Agreements are permitted by the vast majority of key trading nations.
- Increasing numbers of countries have adopted competition laws in recent years
- Some countries do not have antitrust laws or do not enforce them.
- China, Singapore, U.S., Japan, Canada, South Korea, Taiwan, Australia all permit such agreements under their competition laws.
- Most of these countries reviewed their policies in last 10-12 years.

International Status of Antitrust Immunity (cont'd)

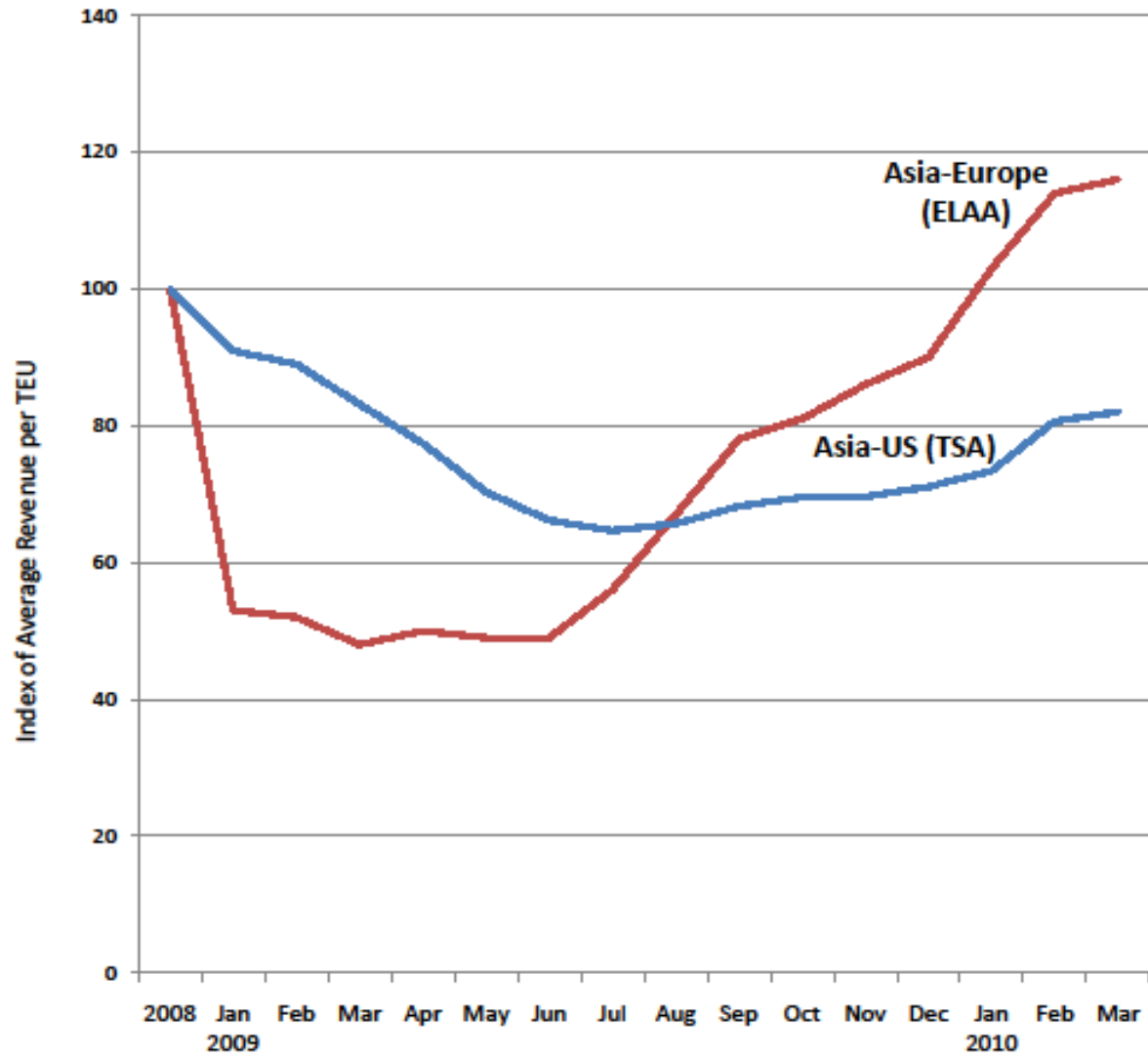
EU has taken a different approach

- Block exemption permits VSAs, but with limited immunity (30% cap)
- Bans conference/discussion agreements

EU “experiment” being watched but not followed thus far by other countries

EU Competition Directorate has taken approach of seeking to generally eliminate exemptions for all industries

Revenue Slide and Recovery in the Asia to U.S. and Europe Trades



The Public Policy Challenge for International Regulation of Liner Shipping

- Each new linehaul string costs \$1 billion to \$1.3 billion (7-10 vessels).
- Four year lead time to order/deliver vessel.
- Uncertain demand and trade patterns.
- Going forward, what happens if carriers invest less?
- No real alternative for most cargoes if container capacity is not available (total market loss).

Bottom line:

Each country and its port industry will need to weigh cost/benefits to their economies of general application of antitrust regulation vs “regulated cooperation” for liner shipping industry.



Part Two: Intermodal Chassis

Regulation, Pools, and Perhaps a Changing Operating Paradigm



OCEMA

Ocean Carrier Equipment Management Association Inc.

- 20 leading international containership carriers are members
- Over 50% of “international” chassis fleet or in excess of 400,000 units
- Lead ocean carrier organization on U.S. inland/equipment issues (efficiency, safety, roadability, operational matters)
- Formed nationwide CCM chassis pool system (2003 – Present)
- Agreement filed with the FMC (FMC Agreement No. 202-011284)

SAFETEA-LU August 2005

- Historic compromise on federal chassis roadability regulatory approach
 - Decade long dispute between equipment providers and trucking community in over 20 states and U.S. Congress
 - Grew out of IANA's "Shared Responsibility" working group
 - Negotiated by AAR, ATA, and OCEMA
 - Broad consensus on overall approach
- Negotiating principles
 - Bring intermodal chassis and trailing equipment into FMCSA regulatory framework
 - Recognize that intermodal chassis are unique
 - All intermodal stakeholders share responsibility for safety related processes and operations
 - Motor carrier obligated to inspect and report defects
 - Providers obligated to register and have systematic maintenance



FMCSA Roadability Regulations

- FMCSA published Final Rule: December 17, 2008 implementing SAFETEA-LU
- Effective Date: June 17, 2009
- Compliance Date: December 17, 2009
- Compliance Date (Chassis Marking): December 17, 2010

FMCSA Regulatory Requirements for IEPS

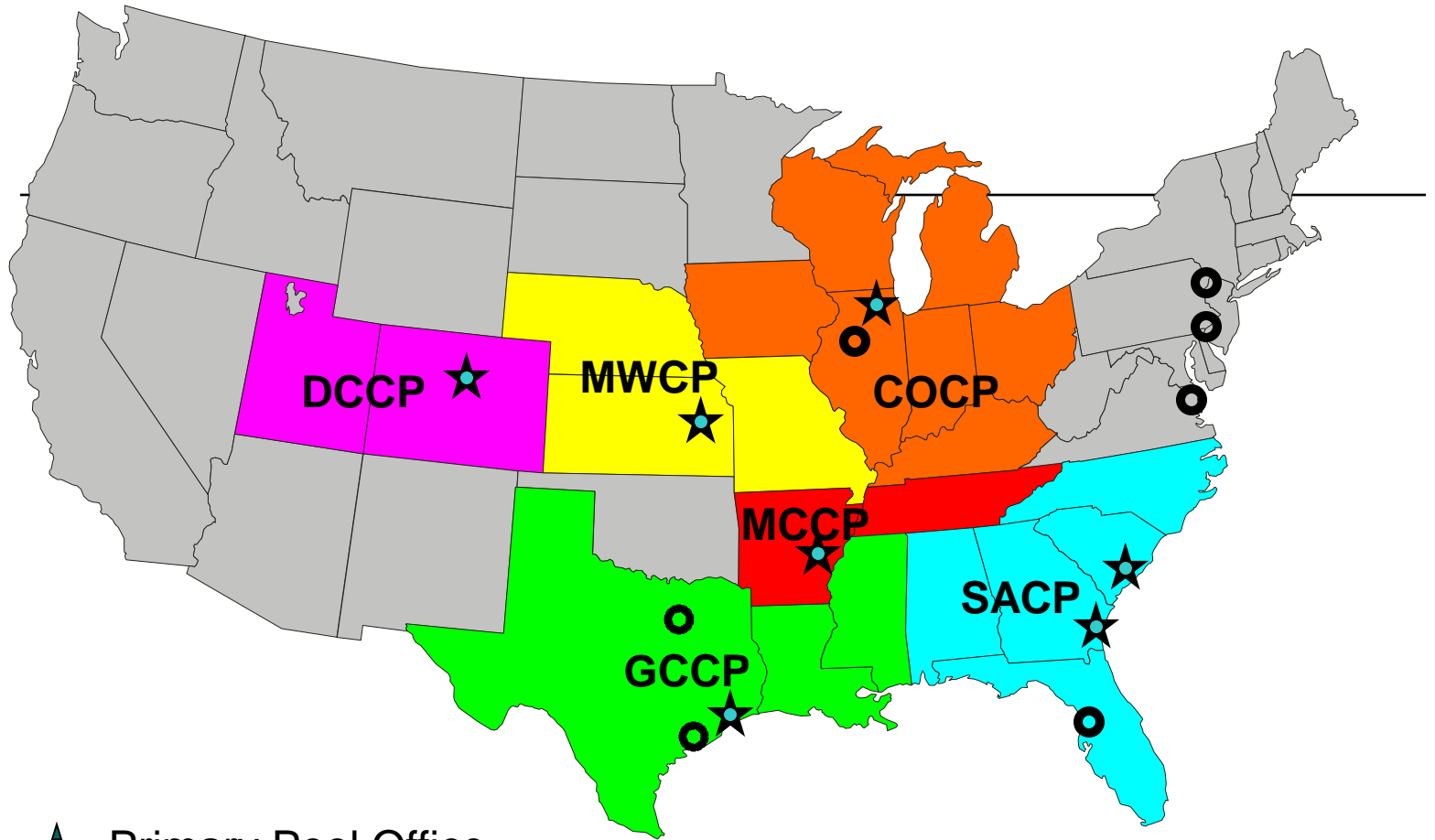
- Registration with FMCSA by Intermodal Equipment Providers (IEPs)
 - IEP is either interchange party with motor carrier or a party that has accepted responsibility for the maintenance and repair of chassis
 - Could be owner, lessee, M&R vendor, pool
- Match chassis to IEP (marking)
 - FMCSA accepted electronic registry in lieu of stenciling (GIER)
- Systematic inspection, maintenance and repair
- Recordkeeping requirements

FMCSA Regulatory Requirements for IEPS—Terminal Activities

- Have a process to receive driver pre-trip damage reports and track repairs
- Repair or replace equipment with noted defects prior to departure from terminal
- Process to receive post-trip Driver Vehicle Inspection Reports (DVIR)
 - FMCSA accepted e-filing of DVIRs by driver
 - FMCSA accepted elimination of no-defect DVIRs (pending NPRM)

Growth of Co-op Chassis Pools In U.S.-- Consolidated Chassis Management (CCM)

- CCM is a subsidiary of OCEMA
- It is comprised of CCM and six subsidiary regional co-op pools operating in 29 port and metropolitan area transportation hubs
 - Denver Consolidated Chassis Pool
 - Mid-South Consolidated Chassis Pool
 - South Atlantic Consolidated Chassis Pool
 - Midwest Consolidated Chassis Pool
 - Gulf Consolidated Chassis Pool
 - Chicago-Ohio Valley Consolidated Chassis Pool
- Over 130,000 chassis under co-op pool management
- Support from all stakeholders: carriers, railroads, ports, truckers, shippers



★ - Primary Pool Office

● - CCM Staff Location



Co-op Pool Basics

- Chassis contributed by Lines (users)
- Interchange by Line with trucker
- M&R controlled by pool (common standard)
- Shared costs for M&R, repositioning, etc
- Reduces fleet size, repo cost, and environmental impact
- Major benefits to terminals (congestion, gate activity, space, velocity, flips)



Current Chassis Paradigm

- In place for the last 50 years
- Ocean carriers own or lease chassis
- Trucker hired by ocean carrier or shipper
- Ocean carrier interchanges chassis to trucker (UIIA) for particular moves
- Trucker delivers or picks up empty, or delivers or picks up loaded, container/chassis setup and moves between port/rail terminal and shipper facility (DC, factory).
- Different chassis used by a trucker for different moves in same day

Current Chassis Paradigm (cont'd)

- A chassis is a road vehicle: Are shipping lines best suited to provide over-the-road vehicles?
- Inherent inefficiencies in current interchange process
- Environmental gains unrealized
- U.S. is anomaly – In rest of world, motor carriers or others provide chassis

Developing Future Paradigm ?

- System is evolving as some ocean carriers explore alternative approaches to providing chassis
- Direct Chassis Link, Inc.
 - Initiative by Maersk as alternative to ocean carrier provision of chassis
 - Directs motor carriers and shippers to obtain chassis from DCLI or other source
- Several other carriers have individually announced initiation of variant of programs (usually limited to specific locations) not to provide chassis
- Limited effect thus far: relatively few locations identified and implemented
- No effect on CCM

Some Potential Benefits of Change

- Benefits may vary based on location and operating parameters of terminals and carriers
- Reduced administration (e.g. fewer interchanges)
- Better equipment utilization/Reduced repo moves/
Reduced turn time
 - Multiple moves per interchange
- Environmental benefits from each
 - Fewer moves
 - Reduced truck idling
 - Reduced congestion
- Lower overall cost to consumer through more efficient operating paradigm potential

How Will the System Evolve ?

- This is an individual carrier decision based on commercial and operational considerations
- Chassis are not disappearing – they remain in same locations
- Chassis pools are not disappearing
- What may change is the process by which chassis are provided
- OCEMA focus on:
 - Stable equipment supply
 - Minimal disruptions
 - Communication with all stakeholders
 - Increasing knowledge base of carriers and other stakeholders
- Ongoing communication with ports and MTOs welcomed and essential
- **Stay tuned...**



THANK YOU

Jeffrey F. Lawrence
Cozen O'Connor
Washington, D.C.

jlawrence@cozen.com
(202) 463-2504