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March 10, 1999

DEPT. OF TRANSPORTATION
OFFICE OF SAFETY

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Docket Clerk
U. S. DOT Dockets, Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: FHWA Docket No. **FHWA-98-3656 - 7**



Gentlemen:

On behalf of **Falcon Express, Inc., Pennsauken, NJ**, a trucking company involved in over the road movements of containers and/or container chassis tendered from steamship lines, and railroads we support the petition for rulemaking filed by the **American Trucking Associations, Inc. (ATA)** and the **ATA Intermodal Conference (the petitioners)**. That petition asks the **FHWA to require parties that tender intermodal equipment to motor carriers to ensure the "roadworthiness" of that equipment.**

Historically, it has been the position of the DOT to hold the trucker totally responsible for meeting the requirements of parts 390 and 396 of the Federal Motor Carrier Safety regulations (**FMCSRs**) that place upon motor carriers the responsibility for maintaining intermodal container chassis and trailers. The petitioners present the just argument that poor maintenance of intermodal equipment is a serious safety problem and their request to make the owner or operator of this equipment responsible for the roadworthiness of the vehicles it tenders to motor carriers, should be supported in the interest of safety.

We have read the opposing comments by representatives of the Equipment Interchange Discussion Agreement (**EIDA**) and the Institute of International Container Lessors (**IICL**) and find their arguments less than convincing. Indeed, the position of the EIDA states it would be completely impracticable for anyone other than the truckers to be responsible for pre-drive equipment inspection. They further state that the requirement for equipment owners, operators, et al, to perform inspections would create the need to hire inspectors which would create delays and drive up costs for all concerned. If they **were doing their job properly** to begin with, no additional costs would be necessary. They should already have in place the necessary personnel to perform annual inspections required by the FHWA and to make necessary repairs on defects noted on trailer interchange reports (**TIRs**).

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The EIDA position that a 5 to 10 minute pre-trip inspection by the driver is all that is needed to ensure safety is totally incomprehensible. A driver is not a trained mechanic and may miss something on his walk-around inspection that won't be missed by trained personnel, including FHWA or State Police inspectors at roadside inspections. **In many instances,** the driver doesn't get any further than 15 minutes from the pickup point before he is pulled over and issued violations on roadside inspections, including putting the container chassis out of service. It may have a very recent FHWA annual inspection decal applied. The trucker doesn't even get the opportunity to bring the unit back to the **company terminal to do a full inspection before it gets pulled over.** The trucker gets hit with the monetary fines imposed by the Police citations while the pier operators get off **scot** free. That is only one scenario. There are many others.

When a driver **does his pre-trip inspection on a chassis with a fresh decal,** and obvious defects are noticed, it is quite clear the FHWA decal was merely slapped on without any actual inspection being done. This is **a clear example where safety is jeopardized,** by irresponsible operators.

Another scenario is when a driver does his pre-trip inspection as required by the rules **and regulations in the FMCSRs,** he notices defects **and brings it to the attention of the pier operator(s) or railroad line personnel,** and they refuse to make repairs. The steamship line(s) and/or the railroad(s) **unload containers from steamships or rail cars and mount them on container chassis.** These chassis may belong to **anyone of the nine major ocean carriers referred to in the EIDA or they could belong to any other entity.** It may be a chassis not directly under their control for which they will **not take the responsibility for maintenance and/or repairs.** Who does the repairs and when does it get fixed, if ever? This is certainly not in the best **interests of safety.** The only **alternative for the driver in a situation like this is to get the container dismounted and remounted to a different chassis,** but if **no other chassis are available,** the result is he leaves without receiving anything resulting in down time for the carrier.

The truckers not only get clobbered with the expenses of driver downtime, **monetary fines from citations issued as a result of faulty intermodal equipment,** and blemishes on its safety records from roadside inspections, but it also is clobbered by the steamship lines, et al, **for supposedly making repairs to equipment returned to the lines and noted as defective on the return TIRs.** There are many instances **where a driver picks up intermodal equipment and signs a clear TIR out, delivers the merchandise and returns the equipment on the very same day.** However, **on the return trip, defects are noted on the return TIR and perhaps as much as 5 months later,** the trucker receives a maintenance and repair bill from the line for making repairs. The trucker has no recourse but to pay the bills or the line(s) will shut them off from doing further business with them. In some cases, **the driver failed to make an adequate inspection when picking up the equipment, and the**

defects should have been noticed **on pickup**. The point is, however, in cases like this, it becomes obvious the defects were there to **begin with and poor maintenance or no maintenance caused the problem**.

But it doesn't end there. The trucker may receive a bill for repair services, but **it's** just that, a bill for repairs but the **trucker doesn't really know repairs were actually performed**. All the trucker knows is he better **pay it or risk getting cut off from doing further business**. There are known instances of **fraudulent billings** where it became known no actual repairs were ever done, and several truckers got billed for the **same repairs over and over again**. In the State of New Jersey, two lawsuits are currently pending against lines for this fraudulent practice. It is hardly in the **best interests of safety to continue** to use the equipment over and over again without repairs being made, and to **fraudulently bill for something that was never done**.

For the most part, drivers who pull container chassis from **steamship lines and/or railroads are owner-operators who receive a portion of the total revenue of the dray**. Their **time is very valuable** to them and **they certainly do not want to take excessive time at piers and/or railroads to get a roadworthy piece of equipment**. The **excessive time comes from situations where they notice a defect, such as inoperative bulbs, or a torn mud flap, or basically minor defects**. They want to make the repairs themselves to **hasten their departure, but are not allowed to by the pier operators who tell them to take the equipment to their repair facility, which generally is a Union shop**. Of course, the **Union personnel will not allow anyone other than Union personnel to perform repairs**. However, the **Union facilities are totally undermanned and delays of several hours are inevitable**. So the owner-operator gets frustrated, takes his chances and signs a clear **TIR and leaves with a defective piece of equipment**. He may want to **fix it himself when he clears the point of pickup, but oftentimes he doesn't get anymore than 15 minutes away when he is pulled over**. The **restrictive rule placed on the pier operators by Union shop personnel is certainly not in the best interests of safety**.

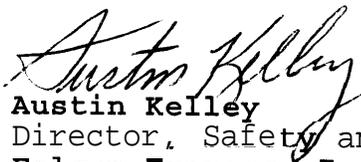
Is there a better way to ensure the safety of intermodal container chassis on the highway? We believe there is. Motor carriers must be held responsible for the safety of their own equipment, but when they engage in intermodal transportation, should not be held accountable for vehicles which they do not own and seldom control, **until just prior to the highway movement**. Unless there is shared responsibility as the petition seeks, it is our position that the trucker should provide their own container chassis and be completely responsible for the safety of its own equipment. If the pier operators, railroad personnel, et al, don't want to share responsibility, then take them out of the picture completely. Make them responsible for the maintenance and repair of the container only, not the chassis. The container is primarily just a box with no brake system, lights, tires, etc. and the

maintenance cost would be **extremely minimal**.

Obviously, in a situation like this, there would be no delays picking up containers. With the trucker providing his own chassis, he is thoroughly prepared to arrive at the pick-up point with a pre-checked chassis and needs only to have a container mounted on it. Instead of increasing costs as the EIDA position implies, it would reduce their costs tremendously which would allow them to pass the savings on to their customers. In a situation like this where the carriers have the knowledge and expertise to maintain its equipment properly, the beneficial impact it would have on overall safety could not be overlooked. Obviously, to make it palatable to the motor carrier, the drayage costs would have to be increased because of the carriers additional expense in procuring and maintaining intermodal container chassis. However, we do not think it would increase the costs to the shippers as their rates would be reduced by the steamship lines, et al.

We have not specifically addressed all of the 14 areas the FHWA seeks comments on, because some of those areas are beyond our scope, and may not be available until the various State and/or Federal agencies conduct studies on them. We also realize that our position that carriers supply their own container chassis may not be a feasible option for many motor carriers due to financial limitations they may have, but it is something we strongly believe in and one we feel would contribute greatly to overall safety. If that cannot be achieved, we certainly need something to prevent us from taking all the blame for poorly maintained intermodal equipment. The petition for shared responsibility is a step in the right direction.

Respectfully submitted,



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