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REPLY TO: SAN FRANCISCO

53943

Via Federal Express

Docket Clerk
U.S. DOT Dockets
Room PL-40 1
400 Seventh Street, SW
Washington D.C. 20590-0001

Re: Proposed Amendments to 40 CFR Parts 390 and 396
FHWA Docket No. FHWA-98-3656-34

DEPT. OF TRANSPORTATION
RECEIVED
99 APR 19 AM 9:45

Ladies and Gentlemen:

This firm represents the Through Transport Mutual Insurance Association, Ltd, a mutual indemnity insurance association, and its Members (insureds) that comprise major ocean common carriers, equipment leasing companies, terminals and other intermodal equipment owners and lessees. The TT Club's insureds are equipment providers who utilize in excess of 160,000 chassis and approximately two-thirds of the world's container fleet for intermodal cargo movements. The equipment lessor companies generally lease chassis and containers on a long-term basis to the ocean common carriers. These carriers transport containerized cargo on ocean vessels between ports of the United States and foreign countries.

The TT Club and its members incorporate, by reference herein, the opposition of the International Container Lessors to the Joint Petition by the American Trucking Association, Inc., et al. For Lawmaking, and the Equipment Interchange Discussion Agreement comments on the Federal Carrier Safety Regulations-Responsibility for Roadway Equipment Used In Intermodal, filed with the Department of Transportation, Docket Section on February 18, 1999, Docket No. FHWA-98-3656-2; Maher Terminal, Inc.'s comments filed April 10 (Docket No. FHWA-98-3656-23); and Con-Surve comments filed April 2, 1999, (Docket No. FHWA-98-3656-13). The points made in these filings are well stated and are fully supported by the TT Club and its Members who also submit the following supplemental comments.

To facilitate the movement of containerized cargo in the United States, the ocean carriers typically interchange the equipment to highway motor carriers for inland drayage. This interchange of equipment is usually pursuant to an equipment interchange agreement between

the highway motor carrier and the ocean carrier. Although there are various styles, all equipment interchange agreements require the motor carriers to (i) defend, hold harmless and indemnify the equipment provider for claims arising out of the use of the equipment during the interchange period; and (ii) maintain public liability insurance insuring the equipment provider for such claims and also covering the motor carrier for its contractual indemnity obligations to the equipment provider. The interchange agreements are short-term leases which allow the motor carrier limited days of no-charge use of the equipment, after which the motor carrier must pay a per diem rate. Attached as Exhibit A are copies of the Uniform Intermodal Interchange And Facilities Access Agreement ("UIIA") and one ocean carrier's addendum to the same, which set forth the typical contractual responsibilities between the parties.

The motor carrier's drayage of intermodal equipment is either to or from the premises of consignees or shippers and the ocean terminal or railroad terminal, or between the ocean terminal and the railroad terminal. In the first instance, the motor carrier is usually hired by the shipper or consignee. The shipper, upon receipt of an empty container on a chassis at its premises, will stuff the container with cargo and return it to the terminal through the services of a motor carrier for export from the United States. The consignee will receive a full imported container at its premises, unload the cargo and return the equipment to the terminal by means of a motor carrier.

The motor carriers must, under the equipment interchange agreement, inspect the equipment, including the tires, lights and brakes, at the time of interchange. This inspection is evidenced by an equipment interchange receipt completed and signed by the motor carrier during inspection, which documents the interchange of the equipment. A sample of an equipment interchange receipt is attached hereto as Exhibit B. This receipt, which must be signed by the motor carrier's driver, not only certifies the roadability of the equipment but also allows for notation by the motor carrier of any damage to the equipment at the time of interchange. The same type of inspection and preparation of a receipt occurs when the motor carrier returns the equipment to the provider. These receipts are required by the equipment interchange agreement and not only serve the function of establishing responsibility for damage to the equipment as between the equipment provider and motor carrier, but they also perform the important safety function of certifying the roadability of the equipment by the motor carrier when it receives interchange of the equipment. An interchange receipt is a very important piece of evidence for the equipment provider in any regulatory action or civil litigation arising out of a roadway accident involving the interchanged equipment. Please note that the motor carrier has complete discretion to refuse the interchange of equipment. If the equipment is not roadable or adequate facilities or time to perform the required inspection are not provided, then the motor carrier should refuse interchange of the equipment until the equipment is roadable or adequate facilities and time are provided for a proper inspection. Thus, the motor carrier is the last safety check for

roadability of intermodal equipment prior to its use on highways. This provides extremely important safety protection for the public.

Should the proposed amendments be enacted, not only would this very important last safety check protection to the public be compromised, but the amendments would seriously interfere with the contractual duties and obligations between the motor carrier and the equipment provider under an equipment interchange agreement. The amendments are therefore not good public policy.

The typical inspection time required of a motor carrier is about ten minutes, at equipment terminals, which have more than adequate room for such inspections. The proper operation of the brakes, including brake adjustments and proper air pressure, can be quickly ascertained, as can the functioning of the lights and the condition of the tires on the equipment.

Under the proposed amendments, the motor carrier may take the equipment without inspection or completing and signing the equipment interchange receipt if it views the time and facilities inadequate to inspect the equipment. Motor carriers would, no doubt, refuse to honor their contractual indemnity obligations to the equipment provider under such circumstances. A far more prudent and safer procedure is to adhere to the present regulatory scheme under which a motor carrier must inspect the equipment and should refuse interchange of equipment that is not roadable or where there is not adequate time or facilities to do the required inspection.

None of the equipment providers insured by the TT Club are motor carriers subject to motor carrier regulations and jurisdiction of the Federal Highway Administration. They simply provide equipment by means of short-term leases or long-term leases. These leases, such as the UIIA typically recite that the provider makes no express or implied warranty as to the fitness of the equipment. This is a typical lease provision found in nearly all equipment leases, but does not mean that the provider disavows all responsibility for the fitness of equipment. In all jurisdictions in the United States, the equipment provider is legally responsible for injuries to third parties caused by any defects in the equipment existing at the time of the interchange of the equipment to the motor carrier. In a few jurisdictions, such as New York, Washington D.C., Minnesota and Puerto Rico, the owner of the chassis is vicariously liable for the negligent permissive use of the chassis by the motor carrier.

Further, there are no reliable public statistics regarding roadway accidents which are caused by defects in the intermodal equipment as opposed to the trucker's negligence. The TT Club has insured equipment providers for chassis liabilities for over twenty (20) years in North America. In that time, it has defended its members in an excess of four hundred lawsuits concerning roadway accidents involving a motor carrier pulling the equipment provided by the

Members of the TT Club. In virtually all of these cases the accidents were caused by the fault of the motor carrier and its driver or the driver of another vehicle, not the intermodal equipment. Less than one percent of these cases involved a defect in the equipment which arguably contributed to the accident together with the fault of the motor carrier and its driver. In the majority of those cases, the equipment interchange receipt signed by the motor carrier evidenced the equipment to be roadable, suggesting that any equipment defect occurred after the interchange of the equipment to the motor carrier.

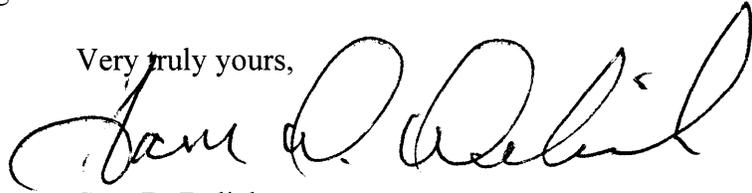
There is no need for the proposed amendments. All inter-modal equipment terminals at ocean terminals or rail yards cover tens if not hundreds of acres, and provide more than adequate facilities for motor carriers to make a full inspection of the equipment as required by regulations. Also, the motor carrier is required by law to take the necessary time to do the required inspection. Proposed section 396.7(c) is ambiguous in its requirement that the person interchanging the equipment provide the motor carrier with adequate equipment to make a full inspection; the inspections required of the motor carrier do not require any equipment. The only potential repairs the motor carrier would undertake would be an adjustment of the brakes on the equipment, which is done with a simple tool that all motor carrier drivers should have in their possession. Any other needed repairs should be done by the equipment provider's terminal, not the motor carrier. In such cases, the motor carrier should reject interchange of the equipment until the equipment is properly repaired.

The long-term and short-term leasing of intermodal equipment by equipment providers has been in effect since the inception of carriage of cargo by inter-modal containers, i.e., in excess of twenty-five (25) years. The present system provides a clear method to determine the condition of the equipment at the time of interchange and also establishes the responsibilities and obligations of the motor carrier and the equipment provider. This system is sound and protects the needs of the shipping public and public safety. The proposed amendments would interfere with the existing sound system and the contractual relationships between the equipment providers and the motor carriers, compromise public safety, result in significant delays at the interchange point, slow the movement of intermodal cargo, grid-lock intermodal facilities and incur unneeded costs of millions of dollars per year. Such costs would, of course, be passed on to the shippers and ultimately the consumers; such cost increase is entirely disproportionate to the benefits, if any, which may be gained.

Docket Clerk
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The TT Club and its Members respectfully request that the proposed regulations not be enacted for the reasons above-stated. Should you have any questions, or would like additional information, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sam D. Delich". The signature is fluid and cursive, with a large, prominent initial "S".

Sam D. Delich
Of
Flynn, Delich & Wise

Attorneys for the Through Transport
Mutual Insurance Association, Ltd,
And its Members

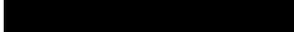
SDD/ledw
Enclosures

Docket Clerk
U.S. DOT Dockets
April 15, 1999
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bcc: Thomas Miller (Americas) Inc. (w/attachments)
Attn: Leo Kirchner

EXHIBIT A

Developed By:

Effective: 

The Intermodal Interchange
Executive Committee

FEB 01 1996

**UNIFORM
INTERMODAL
INTERCHANGE
AND
FACILITIES ACCESS
AGREEMENT
(U I I A)**

Administered By:

The Intermodal Association of North America
7501 Greenway Center Drive, Suite 720
Greenbelt, Maryland 20770-3514

Phone: (301) 474-8700
Fax: (301) 982-3414

Uniform Intermodal Interchange and Facilities Access Agreement

The Uniform Intermodal Interchange and Facilities Access Agreement (hereinafter called the "Agreement") is administered by the Intermodal Association of North America (IANA), which shall maintain a copy of the Agreement in its files as well as any other required documentation. In executing this Agreement the Carrier agrees to pay IANA the Administrative Service Fee established by the Intermodal Interchange Executive Committee. In the event Carrier fails to remain current in its payment of the Administrative Service Fee, IANA may, at its sole discretion, suspend or terminate Carrier's rights under the Agreement.

PART I

GENERAL REQUIREMENTS

I. Purpose

- A. The Parties to this Agreement hereby establish their respective understandings as to their rights and liabilities in one Party's access to the premises of the other for the purpose of interchanging intermodal transportation equipment and further establish the terms and conditions under which such intermodal equipment will be used.

II. Definition of Terms

- A. Addendum/Addenda: Providers' schedule of terms and conditions of Equipment use.
- B. Agreement: This Agreement or amendments thereto and Addendum/Addenda.
- C. Equipment: Equipment commonly used in the road transport of intermodal freight including trailers, chassis, containers and associated devices.
- D. Equipment Owner: The holder of beneficial title to the Equipment, regardless of the form of the title.
- E. Equipment Interchange Receipt (EIR): A document setting forth the physical condition of the Equipment at the time of interchange and executed by the Parties to this Agreement, or their agents.
- F. Facility Operator: Party whose premises are accessed for the purpose of effecting an Interchange.
- G. Interchange: The transfer of physical possession of Equipment under the Agreement.
- H. Interchange Period: The period, commencing upon Interchange to Motor Carrier and concluding upon Interchange to Provider.

- I. Motor Carrier: The Party being granted access to the Provider's facilities and/or having physical possession of the Equipment for the purpose of road transport or its designated agent or contractor.
- J. Provider: The Party authorizing delivery and/or receipt of physical possession of Equipment with a Motor Carrier.
- K. Parties: The Provider, Motor Carrier and/or Facility Operator who are signatories of this Agreement.
- L. Wear and Tear: **Damage** or deterioration of Equipment incident to its usual and **customary** intended use.

III. Terms & Conditions

A. Premises Access

1. Provider and/or Facility Operator grants to Motor Carrier the right to enter upon its terminal facility for the sole purpose of completing an Interchange of Equipment.

B. Equipment Usage

1. Notification of Equipment Availability
- a. If **Provider/Facility** Operator undertakes to notify Motor Carrier of Equipment availability, it represents that the Equipment will be available for Interchange when the Motor Carrier arrives.
- b. Where it is notified, as provided herein, Motor Carrier must Interchange Equipment promptly upon notification. Motor

Carrier will be responsible to Provider for the charges, as may be described in Provider's Addendum hereto, in the event Motor Carrier fails to remove Equipment during the free time provided in the Addendum.

2. Equipment Condition

a. Equipment controlled by Provider shall have a valid FHWA inspection sticker. Provider will reinspect and recertify the Equipment, at Motor Carrier's request, if the existing inspection will expire during the Addendum free time period of the Motor Carrier's use.

b. Motor Carrier will reinspect and recertify the Equipment if the existing inspection will expire prior to the Motor Carrier's return of the Equipment to the Provider.

c. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

(1) In any disputes arising in connection with classification of Wear and Tear, the Association of American Railroads **TOFC/COFC** Interchange Rules, Sections B, G, and F, shall be the controlling document.

3. Receipts

a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt which shall describe the Equipment and any defects observable thereon at the time of Interchange. Each Party shall be entitled to make notations upon such EIR concerning the condition of the Equipment at the time of Interchange.

b. Each Party shall receive a copy of the Equipment Interchange Receipt at the time of Interchange.

4. Restrictions Upon Equipment Use

— **Absent** contrary-Agreement between the Parties, Motor Carrier shall use the Equipment only for the purposes for which it was interchanged and shall promptly return it to the location at which it was received.

5. Condition of Equipment

a. Lost, Stolen, or Destroyed Equipment

(1) In the event the Equipment is lost, stolen from, badly damaged or destroyed by Motor Carrier, the method of settlement shall be the remaining usable life as reflected on the Equipment owner's or Provider's books.

(2) In the event Motor Carrier is compelled to compensate Provider for loss or damage to Equipment due to the acts of third parties, Provider will assign to Motor Carrier its rights against such third party upon receiving payment in full from Motor Carrier.

b. Damage to Equipment

(1) Motor Carrier shall pay to Provider the reasonable and customary costs of the repair of damages done to Equipment during Motor Carrier's possession.

(2) Where the reasonable and customary cost to repair exceeds the casualty loss value as determined in section III 5 a. (1) hereof, the Motor Carrier shall be obligated only for the lesser sum.

c. Tires

(1) Repair of damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier.

(2) Repair of tires unrelated to damage occurring during Motor Carrier's possession is the sole responsibility of the Provider.

d. Disposal of Dunnage

Motor Carrier shall return Equipment with all **dunnage**, bracing, contaminants and debris removed and the floor swept.

6. WARRANTY

PROVIDER MAKES NO EXPRESS NOR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT.

7. Liability, Indemnity, and Insurance

- a. Fines, citations: Motor Carrier shall pay all fines arising out of its acts or omissions in the operation of Equipment during the Interchange Period.

(1) Motor Carrier will provide a corrected copy of Equipment-related citations to Provider upon completion of Interchange.

- b. Independent contractor status: No Party or its agent is the employee or agent of any other Party.

- c. If the Equipment is interchanged by Motor Carrier or is otherwise authorized by Motor Carrier to be in the possession of another party, the Motor Carrier shall be responsible for the performance of all terms of this Agreement in the same manner as if the equipment were in the possession of the Motor Carrier, unless the written consent of Provider has been obtained.

- d. Indemnity: Motor Carrier agrees to defend, hold harmless, and fully indemnify Provider, Equipment Owner, and/or Facility Operator, as their interests appear, against any and all loss, damage or liability, including reasonable attorneys fees and costs incurred in the enforcement of this Agreement, suffered by Provider and/or Facility Operator arising out of Motor Carrier's negligent or intentional acts or omissions during an Interchange Period and/or presence on Facility Operator's premises.

- e. Motor Carrier shall provide legal defense to Provider and/or Facility Operator for any claim arising against Motor Carrier under Section III.7.d.

- f. Insurance: To the extent permitted by law, Motor Carrier shall provide the following insurance coverages in fulfillment of its legal liability and contractual indemnities:

(1) Commercial--- Automobile --- Liability with a Combined Single Limit of \$1,000,000 or greater, insuring all Equipment involved in Interchange including vehicles of its agents or contractors; said insurance policy

shall name the Equipment Provider as additional insured.

(2) Commercial General Liability with a Combined Single Limit of \$1,000,000 per occurrence or greater;

(3) Motor Carrier shall have in effect, and attached to its policy of commercial automobile liability, as described in **IIIB7f(1)**, a Truckers Uniform Intermodal Interchange Endorsement. Until such time as the standard endorsement form is amended to cover the indemnity assumed under **IIIB7d**, Motor Carrier shall use UIIE-1 dated December 1993, which is the current form. At such time as an amended form is adopted, Motor Carrier shall, at the time of its first subsequent insurance renewal, have in effect the amended UIIE-1 form. Evidence of the endorsement of the policy and the coverage required by this provision shall be provided to **IANA** by the insurance company.

(4) **IANA** shall receive a minimum of thirty (30) days advance notice of any cancellation of such coverages.

8. Free Days and Use Charges

- a. Interchange of Equipment is on a compensation basis. Provider may permit some period of uncompensated use and thereafter impose use charges, as set forth in its Addendum.

- b. Motor Carrier shall be responsible for use and/or storage charges as set forth in the Addenda.

- c. Provider shall invoice Motor Carrier for use and/or storage charges within sixty (60) days from the date on which Equipment was returned to Provider by Motor Carrier.

- d. Provider shall **provide Motor Carrier with** an established method for the resolution of disputes in connection with invoices which it issues.

- e. Provider shall provide the Motor Carrier documentation as is reasonably **neces-**

sary to support its invoice.

f. Motor Carrier shall respond in writing to Provider's invoices within thirty (30) days.

(1) Motor Carrier will document in writing and with appropriate evidence its disagreement with any of Provider's invoices it believes to be incorrect.

g. Motor Carrier will participate in good faith in Provider's established method of dispute resolution.

C. General Terms

1. Entire Agreement

a. This Agreement and any amendment hereto, when accompanied by Addendum/Addenda, is the entire Agreement of the Parties. It incorporates by reference the Equipment Interchange Receipt referred to in Section I II. 8.3 hereof. It may only be altered or amended by further written agreement of the Parties or amendment of the Agreement by the UIIA Intermodal Interchange Executive Committee.

b. A bilateral written agreement of the Parties may supersede all or portions of this Agreement.

2. Material Breach

a. If it is determined that, at the time of Interchange, the Motor Carrier was not insured in accordance with Section III.B.7.f. of this Agreement, the Motor Carrier shall have been in material breach of this Agreement and the Agreement shall, subject to the survivability provisions hereof, terminate immediately pursuant to Section III.C.3.

b. **With** the exception of Section III.C.2., no breach of this Agreement, either by an individual Motor Carrier or by an individual Provider/Facility Operator, shall affect the rights and obligations of that Motor Carrier or Provider/Facility Operator with all other Parties hereto.

3. Term

a. This Agreement shall be effective for a period of one year from its execution and shall continue in effect thereafter for consecutive one year terms unless cancelled in writing, by consent of the Parties, or by any Party upon thirty (30) days prior notice to the other Party or to the President of IANA.

b. A Party whose participation in the Agreement has been cancelled for nonpayment of the IANA Administrative Service Fee may not assert any rights under this Agreement for any Interchange undertaken during the period of the cancellation.

c. The absence of insurance as required in Section III.B.7. hereof shall effect immediate cancellation of the Motor Carrier's rights under this Agreement until such time said requirements are again satisfied.

d. Nothing in this Agreement shall preclude Provider or Facility Operator from refusing access to a Motor Carrier for good cause shown. Provider or Facility Operator shall exercise this right in good faith, providing to Motor Carrier a written statement of the reason for its action by registered mail or confirmed facsimile transmission within five (5) days of the event causing such refusal.

e. Notwithstanding any other provisions of this Agreement, the obligations and rights of the Parties under Section III.B.7.a.,d.,e., and f. shall survive any cancellation of this Agreement.

4. International Trade

Where Equipment is an instrument of international traffic only, Provider shall advise Motor Carrier thereof on the Equipment Interchange Receipt and, thereafter, Motor Carrier agrees to restrict the use of the Equipment to the permitted uses contained in 19 CFR 10.41 a (f).

5. Headings

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or inter-

pretation of this Agreement.

6. Assignability

No Party shall assign this Agreement or any part hereof without the written consent of the other Parties provided that no such consent shall be required in the event of Provider's assignment to a successor-in-interest as a result of a merger or sale of substantially all of Provider's assets.

Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

7. No Third Party Beneficiaries

Except as expressly provided herein, nothing in this Agreement shall entitle any person other than the Parties or their respective successors and permitted assigns to any claim, cause of action, remedy or right of any kind.

8. Severability

Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as enforceable.

9. Survival

Cancellation of this Agreement notwithstanding, Motor Carrier shall remain obligated to return Equipment provided hereunder and otherwise perform its obligations outstanding at the time of cancellation.

10. Compliance with Laws

The Parties shall obey all federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous materials.

11. Force Majeure

In the event the Motor Carrier is unable to redeliver Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment.

IV. Execution Clause

This Agreement shall be binding upon all Parties and of full force and effect upon its signing by a duly authorized official of a Party and its acceptance by IANA. An authorized official's signing constitutes the executing Party's representation that the executor possesses such authorization.

PART II IMPLEMENTATION AND INTERPRETATION GUIDELINES

I. Administration and Implementation

- A. For the purpose of administering the Agreement, there shall be established an Intermodal Interchange Executive Committee, (hereinafter called the "Committee"), which shall be a Standing Committee of the Intermodal Association of North America.

The Chairperson of the Committee shall be the President of the Intermodal Association of North

America, who shall serve without voting privilege. The title "President" is defined as an "Individual" responsible for the Administration and Management of IANA and the Agreement, as stipulated in the former's governing bylaws.

The Committee shall consist of two representatives from each mode or segment of the industry participating in the Agreement. Each representative shall name an alternate from their company or firm. The designated alternate shall

participate in Committee meetings in the absence of the principal representative to assure a quorum as well as continuity on matters which might come before the Committee. In addition, the Chairperson may, at his discretion, appoint another industry representative to the Committee to serve in an advisory capacity.

For the purpose of conducting business on matters involving this Agreement, a quorum shall comprise the Chairman and a least one Committee representative from each involved industry mode or segment.

B. The duties of the Chairperson, shall consist of the following:

1. The Chairperson shall be responsible for the day-today management of the Interchange program, including marketing and promoting the Agreement among the various segments of the industry; collecting the originals of the signed Uniform Intermodal Interchange and Facilities Access Agreements or amendments thereof, submitted by the respective mode for safekeeping; and exchanging information with Committee members concerning new signatories as may be required.
2. The Chairperson shall be responsible for maintaining a current list of the Parties to the Agreement and shall periodically announce to the Parties any new terminated participants.
3. In conjunction with Item 8.2. above, the Chairperson shall also be responsible for disseminating pertinent information on participating Motor Carriers to Providers, in a method mutually agreed to by Providers and the IANA. Entry by new participants to the Agreement shall become effective on the date the Agreement is accepted by the Chairperson as being in compliance.

II. Procedures To Be Used in Requesting Rules Interpretation or Agreement Revisions

A. Requests for Interpretation

1. Requests for interpretation of the Agreement shall be handled initially by informal ruling of ~~the Chairperson in consultation with~~ Committee members representing the industry segments involved. The IANA's General Counsel shall serve as legal advisor for such consultations.

The Party seeking such an interpretation shall submit its request in writing to the Chairperson of the Committee, who, after appropriate recordation and control procedures and within seven (7) working days of receipt, shall disseminate the request to Committee members representing the affected mode(s). The Chairperson also shall send a copy to any other Party involved in the particular instance prompting the request, who shall submit to the Chairman within ten (10) working days a statement of its position on the matter at issue. The Chairperson shall disseminate any statement provided to Committee members representing the involved industry Parties.

2. Should an interpretation rendered by the Chairperson following consultation with Committee members of the affected Parties not be accepted by the Party(ies) participating in the request or commenting on it, upon the request of such a Party for good cause shown, may request an interpretation by the full Committee. The Committee shall either (1) confirm the ruling of the Chairman and the modal representatives involved in the interpretation, (2) render a new or revised ruling, or (3) decline comment.
3. In cases of interpretations which affect Parties other than those involved in a particular request, or whose outcome involves a substantive change in the terms of the Agreement, the Chairperson shall prepare and serve notice thereof on all Parties via first class U.S. mail.

B. Requests for Modifications to the Uniform Intermodal Interchange and Facilities Access Agreement

1. The Committee as described in Section I.A, above, shall be responsible for considering requests for revisions of and additions to the Agreement. Such requests may be filed by any Party who shall submit the request in writing to the Chairperson. After appropriate recordation and control procedures, the Chairperson shall transmit the request to the full Committee for consideration and decision.
2. The Committee shall consider the request within (30) days of its submittal in accordance with these rules and promptly shall advise petitioner of its decision on the modification request. If a change is effected, the Chairperson shall im-

mediately notify all Parties of the change, and its effective date, which shall be not less than 15 days from the date of notice. In the event consideration of a modification to the Agreement results in a tie vote, the proposed modification shall fail.

C. Prerequisites for Participation

1. Parties seeking to participate in this Agreement, as a prerequisite, shall obtain and provide to **IANA**, an officially-registered Standard Carrier Alpha Code (SCAC) as issued by the National Motor Freight Traffic Association, the cost of which shall be borne by the prospective Agreement participant. Intentional failure of the participant to maintain its officially-registered SCAC shall constitute grounds for immediate cancellation of its participation in the Agreement and related Addendum/Addenda.

2. Parties to this Agreement shall maintain facsimile communications capabilities on a 24 hour per day, 7 days per week, basis. Intentional failure to provide such communication capabilities will result in the cancellation of this Agreement and related Addendum/Addenda.

D. Party's Right to Terminate Participation

1. Any Party who does not desire to participate in this Agreement, as subsequently revised or supplemented, shall so notify the Chairperson, in writing, by Certified mail prior to the effective date of the modification. The absence of such notification will constitute the Party's acknowledgement of its intent to continue to participate in the revised or supplement Agreement.

Revised: March 8, 1995
Last Amended: December 22, 1995

UIIA ADDENDUM TEMPLATE
(For illustrative purposes)

Listed below is the universe of economic issues that the Intermodal Interchange Executive Committee has approved for inclusion in each participating equipment provider's addendum to the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA).

Equipment providers who subscribe to this Agreement will utilize this template in creating their individual addenda. They are not required, nor are they expected, to utilize every component listed below in creating their proprietary addendum. For example, certain of the addendum template provisions are more germane to rail-truck interchange than water carrier-truck interchange, and vice-versa.

The Parties may not use this addendum to obviate or undermine the intent of the Agreement. For example, the Agreement contemplates certain reimbursements for the cost of repairs. The Parties may agree to limit the potential cost of those repairs, but such limitations may not be so restrictive that they would virtually eliminate responsibility for reimbursement.

It will be impermissible for equipment provider Agreement subscribers unilaterally to add other provisions to their individual addendum to this Agreement. Requests for addition(s) to the universe of economic issues that can be utilized in an addendum to this Agreement shall be submitted to the Intermodal Interchange Executive Committee for consideration as set forth in Part II, Implementation and Interpretation Guidelines.

I. Notification and Free Time

- A. **Free Time** Commences
- B. Amount of Free Time
- C. Weekends – interruption of expiry of free time
- D. **Holidays** – interruption of expiry of free time
- E. **Unroadworthy** Equipment – suspension of expiry of free time
- F. Interchange to Inland Carrier – equivalent of termination

II. Origin Storage

- A. **Free Time** Commences
- B. Amount of Free Time
- C. Charges Per 24-hour Period

III. Destination Storage

- A. **Free Time** Commences
- B. Amount of Free Time
- C. **Charges** Per **24-hour** Period

IV. Per Diem and Trailer Detention

- A. Type of Equipment
 - 1. **Free Time** Allowance
 - 2. Per Diem
 - a) Day 1 - _____
 - b) Day _____ - _____
 - c) Day _____ - _____

V. Method of Invoice Dispute Resolution

vi. **Other** charges

- A. Empty to Empty
- B. Crossover
- C. Failure to File Crossover Interchange
- D. Hazardous/Municipal **Waste**
- E. **OTHER**

VII. Damages to Equipment

- A. Method of Determining Cost
- B. Other

VIII. Repairs to Equipment

- A. Tires
- B. Other

IX. Lost, Stolen or Destroyed Equipment

- A. Suspension of Per Diem
- B. **Disposition** of Destroyed Equipment

X. Insurance

- A. Amounts of Additional Required Coverage by Class
- B. Limitations on Rating Level of Insurer
- C. Self-Insurance and Minimum Permissible Deductibles

12/11/95

HYUNDAI MERCHANT MARINE (AMERICA), INC.

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Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement

1. SETTLEMENT FOR LOST, STOLEN OR DESTROYED EQUIPMENT

- 1.1 In the event equipment is lost, stolen or destroyed after interchange to Motor Carrier and before Equipment is returned to Provider, the Motor Carrier agrees to reimburse Provider for the casualty loss value or the new Equipment replacement value as specified in Subparagraph 1.5 of this Agreement for said equipment as of the date it was lost, stolen or destroyed.
- 1.2 The Motor Carrier must provide the Provider with written notification within **five (5)** days of such damage or the discovery of loss or theft. The written notice will specify the cause, nature and extent of damage or the circumstances of the disappearance of the Equipment. Whenever possible, Motor Carrier shall provide Provider with a progress report of damaged or destroyed Equipment and also provide Provider with a reasonable opportunity to inspect the damaged or destroyed Equipment.
- 1.3 The Provider shall, within **fifteen (15)** days of receipt of notice from the Motor Carriers status of destroyed Equipment, provide the Motor Carrier with instructions for the disposition of the destroyed Equipment.
- 1.4 Unless Provider directs otherwise, the Motor Carrier is responsible for returning, and the costs thereof, all Equipment, whether damaged or not and Motor Carrier will protect the Equipment from any further damage.
- 1.5 Provider shall, after receipt of notification provided in Paragraph 1.2, secure and furnish to Motor Carrier a written statement of the casualty loss value of the lost, stolen or destroyed Equipment and component parts provided that Motor Carrier furnishes to Provider the proper evidence documents such as police report for lost or stolen Equipment and **certified** survey report for the destroyed Equipment. Otherwise, Provider shall secure and furnish to Motor Carrier the replacement value of a new Equipment The casualty shall be based on the value of new Equipment with a ten (10) year life depreciated on a straight line basis. In no event, shall the casualty loss value be less than 50% of the new Equipment replacement value.
- 1.6 Payment shall be made within thirty (30) days after the Motor Carrier has been furnished with a statement of casualty loss value or new Equipment replacement value for the lost, stolen or destroyed Equipment. And the Equipment use charge specified in Paragraph 2 shall be continued until the payment is made in full by Motor Carrier for the Equipment replacement value or the casualty loss value.
- 1.7 The Provider shall maintain ownership of lost, damaged or destroyed Equipment even after the casualty loss value has been paid by Motor Carrier.
- 1.8 The failure of Provider to promptly furnish to Motor Carrier a written statement of the casualty loss value or the new Equipment replacement value of the lost, stolen or destroyed Equipment shall not relieve Motor Carrier of its obligation to reimburse Provider for the casualty loss value or new Equipment replacement value.

2. FREE DAYS AND USE CHARGES

- 2.1 For the purpose of this Agreement, a day, including a day of Interchange, is a calendar day commencing at 0001 hours and terminating at 2400 hours or any fraction thereof.
- 2.2 FREE TIME: (with or without chassis)
- 2.3 Regular Equipment: Day of initial interchange plus five (5) working days, i.e., excluding Saturdays, Sundays, and Holidays.
- 2.4 Refrigerated/Tank equipment: Day of initial interchange plus three (3) working days, i.e., excluding Saturdays, Sundays, and Holidays.
- 2.5 Trailers other than flatbeds, all types/sizes leased for special projects: Day of initial interchange plus **five (5)** working days, i.e., excluding Saturdays, Sundays, and Holidays.
- 2.6 CHARGES:
- 2.7 Detention charges shall be charged for the first seven (7) calendar days following free time as follows:

| | |
|--|--------------|
| Regular Equipment: | \$10 per day |
| Refrigerated/Tank Equipment: | \$40 per day |
| Trailers other than flatbeds, all types/sizes leased for special projects: | \$50 per day |

-more-

2.8 Detention charges shall be charged for additional days commencing with the eighth (8th) calendar day **following** free time as follows:

| | |
|--|---------------|
| Regular Equipment: | \$20 per day |
| Refrigerated/Tank Equipment: | \$80 per day |
| Trailers other than flatbeds, all types/sizes leased for special projects: | \$100 per day |

NOTES: Regular equipment includes equipment of all sizes, with or without chassis, among others, 20 and 40 foot dry containers, **highcube** containers, open top containers, flat rack containers, bare chassis, standard flatbed trailers, etc. other than refrigerated equipment, tank equipment and trailers based for special projects.

- 2.9 Motor Carrier Interchanging Equipment with a rail carrier of an OCP movement shall not be assessed Per Diem if the Interchange occurs within the free time permitted, provided that the Motor Carrier has provided Provider with the requisite routing information and a copy of Provider's or the railroad's Equipment Receipt between Motor Carrier and the rail carrier.
- 2.10 When Equipment is damaged in excess of \$100.00 (One Hundred Dollars) and reported to the Provider, the Use charge will be suspended from the date of receipt by the Provider of said notification until the date of receipt by the Motor Carrier of authorization or disposition of repairs.
- 2.11 When Equipment has been reported to the Provider under Provisions of Paragraph 1 to be lost, stolen or destroyed, the Use Charge will be suspended from the date of receipt by the Provider of said notification until thirty (30) days after the statement of casualty loss value has been received by the Motor Carrier, and then will run continuously until payment in full is received by the Provider.
- 2.12 If lost or stolen Equipment is recovered, the casualty loss value, less the cost of returning Equipment to serviceable condition and uncollected Use Charges will be repaid to the Motor Carrier. When the casualty loss value has not been paid by the Motor **Carrier**, the Motor Carrier will be billed for both the cost of returning Equipment to serviceable condition and the uncollected Use Charges. The Use Charge will be adjusted to run continuously from the date of original Interchange to the date Equipment is returned to a **serviceable** condition in the possession of the Provider. In no event will the Use Charge be assessed twice for the same day.
- 2.13 If the Provider requests damaged or destroyed Equipment to be returned, the Motor Carrier will return the Equipment within live (5) days after receipt of notice for return; otherwise, the Use Charge shall be reinstated from the date of Interchange to the Motor Carrier until payment in full for the repairs or the **casualty** loss value is received by the Provider.
- 2.14 If the user elects to send to the Provider damaged Equipment, the Charge shall be readjusted to run continuously from the date of Interchange to the Motor Carrier until payment in full for repairs has been received by the Provider.
- 2.15 If a container moves OCP to an inland point without Hyundai Merchant Marine (America), Inc. approval the customer will pay the following penalty. On a 20 ft. Container it will **cost** \$300.00, on a 40 ft. Container it will **cost** \$500.00. Also the customer will have to bring it back to the port of origin at their **cost**.

EFFECTIVE: FEBRUARY 1, 1996

EXHIBIT B



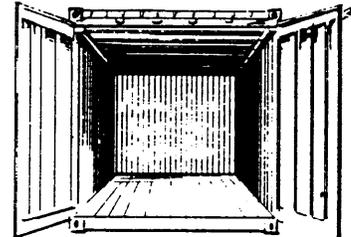
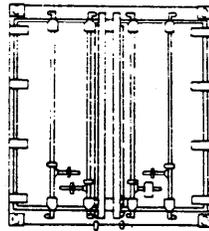
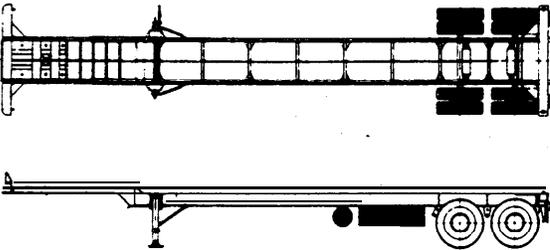
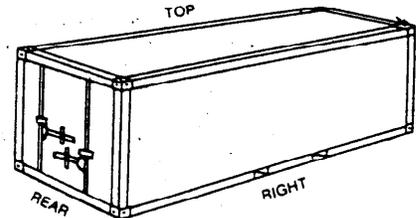
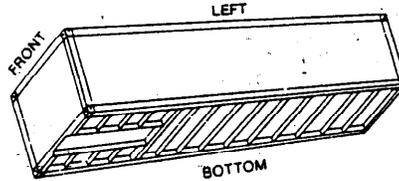
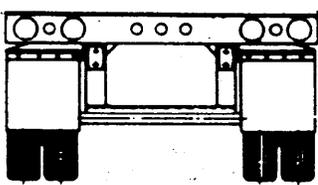
TRANS PACIFIC CONTAINER SERVICE CORPORATION
 BERTHS 136 - 134 PORT OF LOS ANGELES

EQUIPMENT INTERCHANGE RECEIPT AND SAFETY INSPECTION REPORT

THIS INTERCHANGE IS MADE SUBJECT TO THE TERMS AND CONDITIONS OF THE EQUIPMENT INTERCHANGE AGREEMENT ENTERED INTO BETWEEN ME CARRIER AND THE BELOW NAMED STEAMSHIP LINE.

| | | | | | | | |
|--|-----------------------------|---|-------------------|-------------|------------------------------------|---|----------------------------|
| E.I.R. NUMBER 398332 | NO. OF E.I.R.S. 2 | STEAMSHIP LINE NEDLLOYD LINES | | | DATE/TIME 03/02/95 11:01 | MISSION EMPTY OUT | BLK. DEL NO. |
| CONTAINER NUMBER KNLW3186060 | SIZE 20 | TYPE SD | HIGH 86 | SEAL NUMBER | GROSS WT. | TRUCKING COMPANY'S CODE/NAME XRT EXPRESS REEFER | LICENSE 9C 21732 |
| CHASSIS NUMBER TPP2 0001240 | SIZE 20 | CHASSIS LICENSE NO./STATE/EXPIRATION DATE 1VH4482 CA 08/10/93 | | | MG SET NUMBER | DESTINATION | |
| FUEL LEVEL | HUBOMETER MILEAGE | GENSET HOURS | | | | | |

| CARGO INFORMATION | | | | | | |
|-------------------|----------------|-----------------------------|--------------|-------------------|--------------|------|
| VESSEL/VOYAGE | DISCHARGE PORT | BOOKING-B/L NO.-RELEASE NO. | CARGO WEIGHT | BOOKED TEMP. | ACTUAL TEMP. | VENT |
| | | LAX500547 | | | | |
| HAZARDOUS | | SPECIAL REMARKS | | COMMODITY/SHIPPER | | |
| | | | | | | |



| | |
|---|--|
| CONTAINER DAMAGE | |
| CHASSIS DAMAGE | |
| I HEREBY CERTIFY THAT ON THE DATE STATED ABOVE, I CAREFULLY INSPECTED THE EQUIPMENT DESCRIBED ABOVE, THAT THIS IS A TRUE AND CORRECT REPORT OF THE RESULTS OF SUCH INSPECTION AND THAT POSSESSION OF SUCH EQUIPMENT WAS TAKEN ON BEHALF OF THE CARRIER OR THE STEAMSHIP LINE AT THE PLACE AND DATE INDICATED ABOVE. | |
| DRIVER'S SIGNATURE <i>A. Rubio</i> | CLERK/INSP SIGNATURE <i>[Signature]</i> |

- EMPTY - OUT (Stacked)**
- Job 1 Go to wheeled Row **L06**.
Hook-up to 20 ft. chassis.
 - Job 2 Inspect chassis for damages.
 - Job 3 Go to transtainer Lane **A83**.
 - Job 4 Inspect equipment for damages.
 - Job 5 If damage is found, go to repair garage.
GO to outgate.