



INTERMODAL ASSOCIATION OF NORTH AMERICA

Chairman
Frank J. Sonzala
Pressure Systems International, Inc.

President & CEO
Joanne F. Casey

**DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration
49 C.F.R. Parts 385, 386, 390, 392, 393 and
Appendix G to Subchapter B of Chapter III**

Requirements for Intermodal Equipment : Docket No. FMCSA-2005-23315
Providers and Motor Carriers and Drivers : RIN 2126-AA86
Operating Intermodal Equipment :

**COMMENTS OF THE
INTERMODAL ASSOCIATION OF NORTH AMERICA**

The Intermodal Association of North America (IANA), the leading voice of the multimodal freight industry, appreciates the opportunity to comment on the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) regarding "roadability" published on December 21, 2006, in the Federal Register.

IANA is the only organization that represents the combined interests of motor, ocean, and rail carriers, third party logistics companies, suppliers and related businesses that are responsible for some 26 million intermodal loads every year.

The FMCSA's effort to address the complex issue of intermodal equipment "roadability" is commendable. Intermodal freight movement, by its nature, can be more complicated than the transportation of a motor carrier shipment between a solely domestic origin and destination with U.S. carrier-owned, single entity controlled equipment.

IANA believes that without certain review and clarifications, the proposed rules may not accurately portray the current intermodal business environment, and, therefore, cannot ensure that the final regulations reflect the goals of the NPRM or preserve the inherent efficiencies of intermodal transportation.

To achieve those goals, IANA respectfully offers the following comments:

The Uniform Intermodal Interchange and Facilities Access Agreement (UIIA).

Inasmuch as the proposed regulations will directly impact the interchange of equipment between motor carriers and intermodal equipment providers, IANA would like to ensure that the final rules are consistent with the standard contract employed by the intermodal industry for the purposes of equipment interchange, the Uniform Intermodal Interchange & Facilities Access Agreement (UIIA). IANA administers this contract that currently governs the interchange of more than 90 percent of intermodal loads. This Agreement, as has been modified to meet the changing needs of the intermodal industry, has been in effect for three decades, during which time the intermodal industry has become one of the fastest-growing forms of freight transportation in the United States.

On the surface, there appear to be gaps between definitions as they are shown in FMCSA's NPRM, and the definitions in the UIIA under which the industry currently operates.

The UIIA definitions identify some of the industry's key business terminologies such as: "Interchange"; "Equipment"; "Agreement", and "Provider". Attachment A to these comments sets forth the Definition of Terms, as they appear in Section B. of the UIIA. In comparing these definitions to those contemplated under the proposed regulations, the following observations are made:

- The definition of "Interchange" differs between the UIIA and the NPRM, with the proposed regulations encompassing a broader activity under their application;
- The definition of "Intermodal Equipment Agreement" under the proposed regulations appears to be more narrowly defined than under the comparable definition of "Agreement" in the UIIA;
- The definition of "Provider" under the UIIA and "Intermodal Equipment Provider" (IEP) under the proposed regulations differs in that the inclusion within the NPRM definition as an alternative "or has contractual responsibility for the maintenance of the intermodal equipment" could create some confusion as to which Party to the interchange is the actual IEP of record at any specific point in time and at particular geographic location.

Review and clarification of these definitional gaps are important because the NPRM itself recognizes that the UIIA is the standard industry contract whose "primary purpose is to establish the responsibilities and liabilities of both parties with respect to the interchange of the intermodal equipment." Because it is an industry developed and administered Agreement, discrepancies between the definitions that are in place in the UIIA versus those that are proposed in the rules, could have an impact on the interchange process.

Finally, it should be noted that the UIIA is a "living" document, which is subject to interpretation and revision based on the constantly evolving state of the intermodal business environment. Consequently, IANA requests that the existing standard industry procedures and definitions that have been established by the parties to the process be considered in the final rules by reference to the UIIA, but not through the inclusion of specific, static language that does not accommodate the dynamic and changing intermodal industry.

Other Issues Requiring Clarification

Unique Identifying Number

The NPRM indicates that the FMCSA may require a new form of equipment marking called a Unique Identifying Number (UIN). Prior to final adoption of this requirement, IANA suggests that consideration be given to the current system of equipment identification and how this system might be integrated, in whole or in part, with the assignment of a UIN.

Equipment Reports/Training

Further clarification is needed with regard to the proposed requirement that an Intermodal Equipment Provider (IEP) provide an Identification Report to FMCSA through the MCS-150C form. The alphanumeric designation, or another system, for identifying equipment does not appear to satisfy the proposed reporting requirement unless the IEP provides dynamic fleet inventory updates directly to the FMCSA. IANA suggests that the creation of an industry-maintained equipment registry, accessible to appropriate public entities, could alleviate the potential reporting burden and help to ensure the timeliness and integrity of the required information.

A related issue involves the training of roadside inspectors and enforcement personnel to be cognizant of the fact that the container and the chassis, as separate components of intermodal Vehicle #2, may have been provided from different sources and have different owners. No capabilities exist at FMCSA to cite, segment and report the specific piece of trailing equipment that may be in violation of the FMSCA's regulations, either on the roadside inspection forms or the hand-held devices.

Many state and federal information systems are unable to separate different components of Vehicle # 2, the trailing equipment, such as designating the difference between the ID numbers on containers versus the ID numbers on chassis. Specifically, confusion arises when citing defective components on a chassis that is owned/provided by one company, but is carrying a container that is being used by another one. This situation

has become quite common as the industry moves towards the use of efficient neutral and cooperative chassis pools.

To address this issue, IANA suggests that the FMCSA consider revising the NPRM to ensure proper training for inspectors and the correct reporting of defects in order to fortify the integrity and accuracy of future statistical data.

Systematic Inspections

Current timeframes for systematic inspections in Section 396.3 are not cited in the regulations. However, the NPRM on page 76814 implies that there is an expectation of quarterly inspections and maintenance of chassis. That inference of quarterly inspections and the lack of clarity of FMCSA's intention, should be addressed and should be consistent with the existing regulations.

Unclear Terminology

The determination of an event that could trigger a roadability review is ambiguous. The NPRM states that a review will begin if an IEP "is the subject of a complaint that FMCSA determines to be non-frivolous". However, FMCSA does not define what constitutes a "non-frivolous" complaint, or how FMCSA would decide that it is "non-frivolous". The agency also should clarify what constitutes a "pattern" of recordable crashes or how it would determine, in the absence of safety ratings for the IEPs, that compliance is "so defective" as to warrant enforcement actions.

IANA therefore suggests that FMCSA define what constitutes a frivolous complaint, and identify the filing and review process that will govern such determinations, as well as specify what constitutes "pattern" actions.

In addition, beginning on page 76800 of the NPRM, the phrases "timely manner" and "limited timeframe," as they relate to repairs or replacement equipment, may require definition and specificity. The FMCSA should consider clarifying what these phrases mean to avoid discrepancies in interpretation and application.

Conclusion

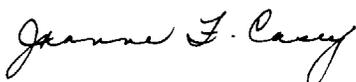
For a decade or longer, equipment condition and safety fitness have been important issues for the intermodal industry. The NPRM's proposals represent a viable effort to oversee and regulate intermodal transportation, which by its nature, can be more complex than the typical "over the road" truck movement of cargo.

In conclusion, IANA submits that the matters addressed above require further consideration and/or clarification by FMCSA before it issues its final regulations on "roadability." The definitions used by FMCSA in its regulations should be compatible and consistent with those commonly used and understood in the intermodal industry, specifically as those terms are defined in the UIIA. Failure to do so will only create confusion in the intermodal industry and complicate compliance with the regulations.

Moreover, as identified above, certain processes and terminology contained in the proposed rules require additional consideration by the FMCSA prior to the issuance of the final rules.

IANA appreciates the opportunity that has been provided to make its views known on behalf of the Association's members in this proceeding, which is of critical importance to the intermodal industry. It is recognized that the proposed regulations are intended to benefit the public and the intermodal industry as well. IANA is ready and willing to assist FMCSA in the achievement of those goals.

Respectfully submitted,



Joanne F. Casey

Developed By:

Effective: November 1, 2006

**The Intermodal Interchange
Executive Committee**

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

Administered By:

**The Intermodal Association of North America
11785 Beltsville Drive, Suite 1100
Calverton, Maryland 20705-4048
Phone: Toll-Free (877)438-UIIA (438-8442) or (301)474-8700
Fax:(301)982-3414 or (301)982-5478 Email: www.uiia.org**

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

A. Purpose

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.

B. Definition of Terms

1. Actual Cash Value: Replacement cost less depreciation as referred to on Equipment Owners' or Providers' Books.
2. Addendum/Addenda: Providers' schedule of terms and conditions of Equipment use.
3. Agreement: This Agreement or amendments thereto and Addendum/Addenda.
4. Equipment: Equipment commonly used in the road transport of intermodal freight including trailers, chassis, containers and associated devices.
5. Equipment Owner: The holder of beneficial title to the Equipment, regardless of the form of the title.
6. 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.
7. Facility Operator: Party whose Premises are accessed for the purpose of effecting an interchange between signatories to this Agreement. **[Revised 2/24/06]**
8. Indemnitees: Provider, Equipment Owner and/or Facility Operator, as their interest may appear.
9. Interchange: The transfer of physical possession of Equipment under the Agreement.
10. Interchange Period: The period, commencing upon Interchange to Motor Carrier and concluding upon Interchange to Provider.
11. 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.
12. Notice: A communication between Parties of this Agreement required by the terms of the Agreement.
13. Premises: The property operated by Equipment Provider or Facility Operator for the purpose of Interchange.
14. Provider: The Party authorizing delivery and/or receipt of physical possession of Equipment with a Motor Carrier.
15. Parties: The Provider, Motor Carrier and/or Facility Operator who are signatories to this Agreement. **[Revised 2/24/06]**
16. Wear and Tear: Damage or deterioration of Equipment incident to its usual and customary intended use.
17. Contamination: Damage resulting from release of a hazardous material or other substance in Equipment which prevents subsequent use of the Equipment without removal of the material or substance. **[Revised 10/22/04]**

C. 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.
2. 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) business days of the event causing such refusal.