

# Rollin' On . . .

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## INTERMODAL REGS

**P**ursuant to the Intermodal Safe Container Act of 1992, the Department of Transportation had previously issued proposed regulations that were scheduled to go into effect on June 27. On May 11 the DOT extended the effective date of these regulations until September 27, to allow further comment, and also indicated that the effective date could be further extended until 1996. These regulations, if enacted in their present form, will have a substantial impact on the movement of containers and trailers, an impact that will be felt by shippers, carriers and third parties.

These regulations were the subject of my presentation at the recent Annual Meeting of the Western Traffic Conference in San Diego. The most significant aspect of the regulations is the required certification by the tenderer of the weight of any container or trailer weighing over 10,000 pounds. This certification must be furnished to the motor carrier in writing prior to movement by the carrier. Carriers frequently complain that they are forced by shippers to transport overweight containers or trailers. This problem should be greatly alleviated if the parties comply with these new regulations which forbid a carrier to transport a container or trailer without the requisite certification.

Shippers are prohibited from co-

### The Obligatory Disclaimer

This newsletter is distributed to shippers, carriers and third party intermediaries. It is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

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ercing carriers to accept a 10,000+ container or trailer without the necessary certification. The coercion provision does not apply to a carrier transferring a loaded container or trailer to another carrier in the course of intermodal transportation. As a protection for owner-operators, this exception does not apply if the carrier is the person tendering the loaded container or trailer.

The tenderer will be required to furnish a certification to the carrier containing the following seven items:

1. The title "Intermodal Certification".
2. The identification number of the container or trailer.
3. The actual gross cargo weight, including the unit of measurement of the contents of the container or trailer, including packing material and pallets.
4. A reasonable description of the contents.
5. The name and company of the person tendering the loaded container or trailer.
6. The date.
7. The signature of the shipper.

These regulations are not without controversy. For example, they apply only if the container or trailer moves by more than one type of carrier. So a shipper-loaded and sealed container or trailer that is tendered to a trucker for over-the-road transportation is exempt from these regulations. Obviously, these containers or trailers, if overweight, will cause the same

amount of damage to the highway as a container or trailer that is not exempt from the regulations.

Another irony is that the regulations apply to any container or trailer weighing in excess of 10,000 pounds, even though it is generally true that there are no overweight problems until you close in on 40,000 pounds. Therefore some shippers, who undoubtedly are competing in the marketplace, will be able to move some or all of their freight exempt from these regulations, while nonexempt shippers will be required to incur the

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Thought for the day:

There is absolutely no substitute for genuine lack of preparation.

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extra expense and effort of weighing their shipments even if they weigh slightly in excess of 10,000 pounds.

The person who loads the container or trailer is presumed to be the person tendering the container or trailer, absent some indication to the contrary. Therefore, a freight forwarder, customs broker or non-vessel operating common carrier (NVOCC) would normally not be the tenderer unless that person consolidates the shipments or has some control over the weight.

That's all for now. To shippers,

Larry Davidson is an attorney admitted to the bars of the states of Oregon, Alaska, Florida and Massachusetts. Larry has been practicing law for over 15 years and emphasizes transportation law, business law and related litigation.