



TOTEM OCEAN TRAILER EXPRESS, INC.

INTERMODAL SAFE CONTAINER TRANSPORTATION ACT (AMENDED)

OVERWEIGHT LOADS

All TOTE Customers and Drayage Contractors

All of us involved with the shipment and delivery of goods to and from Alaska have legal obligations in keeping overweight loads off the streets and highways.

TOTE is using the gate scales at our Tacoma terminal to assist in identifying rear axle weights for road legal limits to ensure we are handling safe loads for our terminal and vessel operations.

As loads come into our terminal, rear axle weights will be recorded and any trailers that exceed road legal limits will be identified. Customers will be notified of potential weight problems as soon as practical by a TOTE representative for possible corrective action prior to ship loading. If time does not permit notification and/or correction prior to loading, Lower 48 and Alaska customers will be notified that their trailer has been loaded on the vessel but a possible axle weight problem exists for delivery in Alaska.

Carriers providing their own delivery service from our Alaska terminal will determine what further course of action may be necessary.

For those customers for whom TOTE provides the pick-up or delivery service, TOTE will work directly with you and the delivery contractors to determine the best corrective action to take depending on the actual weight, trailer configuration, and delivery agent policies.

If any corrective action is required, TOTE will provide the labor and/or material to accomplish the work and bill the customer accordingly at cost. Any additional drayage necessary will also be billed at cost.

Any questions regarding road legal limits can be addressed by our Fleet Management staff in Federal Way and Anchorage or your TOTE Sales Representative.

Jeff Keck
V.P. Operations

The Intermodal Safe Container Transportation Act and Amendments - Summary

The key Amendments to the Act are:

- The Amendments raise the minimum actual gross cargo weight requiring a certification from 10,000 pounds to 29,000 pounds. For any container with an actual gross cargo weight of 29,001 pounds or more, the person tendering the container is required to provide a certification to the first carrier in the intermodal chain. 5202(b)(1)
- The certification must contain five pieces of information: the actual gross cargo weight; a reasonable description of the contents of the container or trailer; the identity of the certifying party; the container or trailer number; and the date of certification or transfer of data. 5902(b)(2)
- This information does not have to be on a separate document, but can be part of the bill of lading or other shipping document. 5902(b)(4)
- The term “Freight All Kinds” or “FAK” may not be used for certification purposes as a commodity description if the weight of any commodity in the trailer or container equals or exceeds 20 percent of the total weight of the contents. 5902(b)(5)
- A copy of the certification is not required to accompany the trailer or container. 5903(b)(2)
- If no certification is received by the originating motor carrier or by a subsequent intermediate carrier prior to receiving the cargo, that carrier may presume that the gross weight of the cargo is less than 29,001 pounds and that no certification is required. 5902(c) and 5903(b)(1)
- An intermediate carrier has a duty to accurately transfer the information on a certification. If it inaccurately transfers the information or fails to transfer it, and a motor carrier incurs a bond, fine, penalty or cost (including storage) as a result of that failure, the intermediate carrier is liable to the motor carrier or beneficial owner, whichever incurs the costs, for those costs, and the motor carrier has a lien in the amount of those costs until they are paid. 5902(c), 5902(d), 5905(a)(3), and 5905(a)(4)
- If a motor carrier is required, because of a violation of a state’s gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty or cost (including storage), because of the failure of the party tendering the container to certify it or to accurately certify it, then the person posting the bond has the right of recovery against the party responsible for the failure to certify or to accurately certify. §5905(a)(1) and (2)
- A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator is deemed not to be the person tendering the container or trailer unless that person assumes legal responsibility for loading property into the container. 5902(3)(3)

The Act

5901. Definitions

5902. Notifications and Certifications

5903. Prohibitions

5904. State Enforcement

5905. Liens

5906. Perishable Agricultural Commodities

5907. Effective Date

5908. Relationship to Other Laws

5901. Definitions

In this chapter

- (1) except as otherwise provided in this chapter, the definitions in sections 10102 and 13102 of this title apply.
- (2) “beneficial owner” means a person not having title to property but having ownership rights in the property, including a trustee of property in transit from an overseas place of origin that is domiciled or doing business in the United States, except that a carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator is not a beneficial owner only because of providing or arranging for any part of the intermodal transportation of property.
- (3) “carrier” means
 - (A) a motor carrier, water carrier, and rail carrier providing transportation of property in commerce; and
 - (B) an ocean common carrier (as defined in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702)) providing transportation of property in commerce.
- (4) “container” has the meaning given the term “freight container” by the International Standards Organization in Series 1, Freight Containers, 3d Edition (reference number ISO668–1979(E)), including successive revisions, and similar containers that are used in providing transportation in interstate commerce.
- (5) “first carrier” means the first carrier transporting a loaded container or trailer in intermodal transportation.
- (6) “gross cargo weight” means the weight of the cargo, packaging materials (including ice), pallets, and dunnage.
- (7) “intermodal transportation” means the successive transportation of a loaded container or trailer from its place of origin to its place of destination by more than one mode of transportation in interstate or foreign commerce, whether under a single bill of lading or under separate bills of lading.

- (8) “trailer” means a non-power, property-carrying, trailing unit that is designed for use in combination with a truck tractor.

5902. Notifications and certifications

(a) **Prior notification.** If the first carrier to which any loaded container or trailer having a projected gross cargo weight of more than 29,000 pounds is tendered for intermodal transportation is a motor carrier, the person tendering the container or trailer shall give the motor carrier a notification of the gross cargo weight and a reasonable description of the contents of the container or trailer before the tendering of the container or trailer. The notification may be transmitted electronically or by telephone. This subsection applies to any person within the United States who tenders a container or trailer subject to this chapter for intermodal transportation if the first carrier is a motor carrier.

(b) **Certification.**

(1) ***In general.*** A person who tenders a loaded container or trailer with an actual gross cargo weight of more than 29,000 pounds to a first carrier for intermodal transportation shall provide a certification of the contents of the container or trailer in writing, or electronically, before or when the container or trailer is so tendered.

(2) ***Contents of certification.*** The certification required by paragraph (1) shall include

- (A) the actual gross cargo weight;
- (B) a reasonable description of the contents of the container or trailer;
- (C) the identity of the certifying party;
- (D) the container or trailer number; and
- (E) the date of certification or transfer of data to another document, as provided for in paragraph

(3) ***Transfer of certification data.*** A carrier who receives a certification may transfer the information contained in the certification to another document or to electronic format for forwarding to a subsequent carrier. The person transferring the information shall state on the forwarded document the date on which the data was transferred and the identity of the party who performed the transfer.

(4) ***Shipping documents.*** For purposes of this chapter, a shipping document, prepared by the person who tenders a container or trailer to a first carrier, that contains the information required by paragraph (2) meets the requirements of paragraph (1).

(5) ***Use of “Freight All Kinds” term.*** The term “Freight All Kinds” or “FAK” may not be used for the purpose of certification under section 5902(b) after December 31 2000, as a commodity description for a trailer or container if the weight of any commodity in the trailer or container equals or exceeds 20 percent of the total weight of the contents of the trailer or container. This subsection does not prohibit the use of the term after that date for rating purposes.

(6) ***Separate document marking.*** If a separate document is used to meet the requirements of paragraph (1), it shall be conspicuously marked “INTERMODAL CERTIFICATION”.

(7) **Applicability.** This subsection applies to any person, domestic or foreign, who first tenders a container or trailer subject to this chapter for intermodal transportation within the United States.

(c) **Forwarding certifications to subsequent carriers.** A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator shall forward the certification provided under subsection (b) of this section to a subsequent carrier transporting the container or trailer in intermodal transportation before or when the loaded intermodal container or trailer is tendered to the subsequent carrier. If no certification is received by the subsequent carrier before or when the container or trailer is tendered to it, the subsequent carrier may presume that no certification is required.

If a person inaccurately transfers the information on the certification, or fails to forward the certification to a subsequent carrier, then that person is liable to any person who incurs any bond, fine, penalty, cost (including storage), or interest for any such fine, penalty, cost (including storage), or interest incurred as a result of the inaccurate transfer of information or failure to forward the certification. A subsequent carrier who incurs a bond, fine, penalty, or cost (including storage), or interest as a result of the inaccurate transfer of the information, or the failure to forward the certification shall have a lien against the contents of the container or trailer under section 5905 in the amount of the bond, fine, penalty, or cost (including storage), or interest and all court costs and legal fees incurred by the carrier as a result of such inaccurate transfer or failure.

(d) **Liability to owner or beneficial owner.** If

- (1) a person inaccurately transfers information on a certification required by subsection (b)(1), or fails to forward a certification to the subsequent carrier; and
- (2) as a result of the inaccurate transfer of such information or a failure to forward a certification, the subsequent carrier incurs a bond, fine, penalty, or cost (including storage) or interest; and
- (3) that subsequent carrier exercises its rights to a lien under section 5905, then that person is liable to the owner or beneficial owner, or to any other person paying the amount of the lien to the subsequent carrier, for the amount of the lien and all costs related to the imposition of the lien, including court costs and legal fees incurred in connection with it.

(e) **Non-application.**

- (1) The notification and certification requirements of subsections (a) and (b) of this section do not apply to any intermodal container or trailer containing consolidated shipments loaded by a motor carrier if that motor carrier
 - (A) performs the highway portion of the intermodal movement; or
 - (B) assumes the responsibility for any weight-related fine or penalty incurred by any other motor carrier that performs a part of the highway transportation.
- (2) Subsections (a) and (b) of this section and section 5903(c) of this title do not apply to a carrier when the carrier is transferring a loaded container or trailer to another carrier

during intermodal transportation, unless the carrier is also the person tendering the loaded container or trailer to the first carrier.

- (3) A carrier, agent of a carrier, broker, customs broker, freight forwarder, warehouse, or terminal operator is deemed not to be a person tendering a loaded container or trailer to a first carrier under this section, unless the carrier, agent, broker, customs broker, freight forwarder, warehouse, or terminal operator assumes legal responsibility for loading property into the container or trailer.

(Added Pub.L. 103-272, §1(d), July 5, 1994, 108 Stat. 860)

5903. Prohibitions

- (a) **Providing erroneous information.** A person, to whom section 5902(b) applies, tendering a loaded container or trailer may not provide erroneous information in a certification required by section 5902(b) of this title.

- (b) **Transporting prior to receiving certification.**

- (1) **Presumption.** If no certification is received by a motor carrier before or when a loaded intermodal container or trailer is tendered to it, the motor carrier may presume that the gross cargo weight of the container or trailer is less than 29,001 pounds.

- (2) **Copy of certification not required to accompany container or trailer.**

Notwithstanding any other provision of this chapter to the contrary, a copy of the certification required by section 5902(b) is not required to accompany the intermodal container or trailer.

- (c) **Unlawful coercion.**

- (1) A person may not coerce or attempt to coerce a person participating in intermodal transportation to transport a loaded container or trailer having an actual gross cargo weight of more than 29,000 pounds before the certification required by section 5902(b) of this title is provided.
- (2) A person, knowing that the weight of a loaded container or trailer or the weight of a tractor-trailer combination carrying the container or trailer is more than the weight allowed by applicable State law, may not coerce or attempt to coerce a carrier to transport the container or trailer or to operate the tractor-trailer combination in violation of that State law.

- (d) **Notice to leased operators.**

- (1) **In general.** If a motor carrier knows that the gross cargo weight of an intermodal container or trailer subject to the certification requirements of section 5902(b) would result in a violation of applicable State gross vehicle weight laws, then

(A) the motor carrier shall give notice to the operator of a vehicle which is leased by the vehicle operator to a motor carrier that transports an intermodal

container or trailer of the gross cargo weight of the container or trailer as certified to the motor carrier under section 5902(b);

- (B) the notice shall be provided to the operator prior to the operator being tendered the container or trailer;
- (C) the notice required by this subsection shall be in writing, but may be transmitted electronically; and
- (D) the motor carrier shall bear the burden of proof to establish that it tendered the required notice to the operator.

(2) **Reimbursement.** If the operator of a leased vehicle transporting a container or trailer subject to this chapter is fined because of a violation of a State's gross vehicle weight laws or regulations and the lessee motor carrier cannot establish that it tendered to the operator the notice required by paragraph (1) of this subsection, then the operator shall be entitled to reimbursement from the motor carrier in the amount of any fine and court costs resulting from the failure of the motor carrier to tender the notice to the operator.

5904. State enforcement

(a) **General.** A State may enact a law to permit the State or a political subdivision of the State

- (1) to impose a fine or penalty, for a violation of a State highway weight law or regulation by a tractor-trailer combination carrying a loaded container or trailer for which a certification is required by section 5902(b) of this title, against the person tendering the loaded container or trailer to the first carrier if the violation results from the person's having provided erroneous information in the certification in violation of section 5903(a) of this title; and
- (2) to impound the container or trailer until the fine or penalty has been paid by the owner or beneficial owner of the contents of the container or trailer or the person tendering the loaded container or trailer to the first carrier.

(b) **Limitation.** This chapter does not require a person tendering a loaded container or trailer to a first carrier to ensure that the first carrier or any other carrier involved in the intermodal transportation will comply with any State highway weight law or regulation, other than as required by this chapter.

5905. Liens

(a) **General.** If a person involved in the intermodal transportation of a loaded container or trailer for which a certification is required by section 5902(b) of this title is required, because of a violation of a State's gross vehicle weight laws or regulations, to post a bond or pay a fine, penalty, cost (including storage), or interest resulting from

- (1) erroneous information provided by the certifying party in the certification to the first carrier in violation of section 5903(a) of this title;

- (2) the failure of the party required to provide the certification to the first carrier to provide it;
- (3) the failure of a person required under section 5902(c) to forward the certification to forward it; or
- (4) an error occurring in the transfer of information on the certification to another document under section 5902(b)(3) or (c),

then the person posting the bond, or paying the fine, penalty, costs (including storage), or interest has a lien against the contents equal to the amount of the bond, fine, penalty, cost (including storage), or interest incurred, until the person receives a payment of that amount from the owner or beneficial owner of the contents, or from the person responsible for making or forwarding the certification, or transferring the information from the certification to another document.

(b) Limitations.

- (1) A lien under this section does not authorize a person to dispose of the contents of a loaded container or trailer until the person who tendered the container or trailer to the first carrier, or the owner or beneficial owner of the contents, is given a reasonable opportunity to establish responsibility for the bond, fine, penalty, cost (including storage), or interest. The lien shall remain in effect until the lien holder has received payment for all costs and expenses described in subsection (a) of this section.
- (2) In this section, an owner or beneficial owner of the contents of a container or trailer or a person tendering a container or trailer to the first carrier is deemed not to be a person involved in the intermodal transportation of the container or trailer.

5906. Perishable agricultural commodities

Section 5905 of this title does not apply to a container or trailer the contents of which are perishable agricultural commodities (as defined in the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a et seq.)).

5907. Effective date

- (a) This chapter shall take effect 180 days after the date of enactment of the Intermodal Safe Container Transportation Amendments Act of 1996.

5908. Relationship to other laws

Nothing in this chapter affects

- (a) chapter 51 (relating to transportation of hazardous material) or the regulations promulgated under that chapter; or
- (b) any State highway weight or size law or regulation applicable to tractor-trailer combinations.

