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Interagency Conflict and Its Effect on Intermodal Shipping

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INTERAGENCY CONFLICT AND ITS EFFECT ON INTERMODAL SHIPPING

by

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I Introduction and Background

The movement of goods by more than one mode of transportation in a single container has been viewed by some in the marine component of the transportation industry as a transformation as important as the coming of steam. The benefits of containerization accrue to the shipper, the inland carrier and the ocean carrier with equal effect, and the development of containerized packaging cargo was instituted, in part, in reaction to the disproportionate costs attributable to handling of cargo, as against the costs attributable to its actual movement. Such port handling costs, when using break-bulk methods, contributed to the 60%-40% ratio between costs incurred at sea and those which were port-related, the latter being those mainly involved in linking the marine movement with other transportation modes. The use of the term "break-bulk" refers to packaged, non-fungible cargo and should not be confused with bulk cargo which is usually homogeneous and stowed loose in a ship's hold.
Stevedoring time and costs per measurement-ton using containers are estimated at 20% of those involved in handling break-bulk. The containers referred to in this discussion are standardized, metal containers which are reusable, do not have wheels, have an expected life in excess of one year, and a minimum capacity of 640 cubic feet. Most commentators refer to TEU's or "twenty-foot equivalent units", the variable measurement being the length, while the other dimensions are 8' x 8'.

For the shipper, the benefits of containers include the costs of foregone special export packaging, protection against pilferage, and smaller volume (less packaging) resulting in the payment of fewer measured tons of cargo for shipping a given quantity of goods. For the inland carrier, terminal expenses (especially for rail carriers using "flexivans", non-wheeled containers which are stuffed on the shippers' premises) can be lowered by 15%. Ocean carriers benefit from reduced labor costs and savings in time, with stevedoring expenses of containers being 20% of the stevedoring costs required for break-bulk; turnaround times in port amount to
25% of total trip time for containerships compared to 60% for conventional liners; all of which result in the containerized vessel being able to increase the number of voyages and to reduce the amount of contribution freight must pay as against investment. Society generally has recognized, and with proper incentive, can increase, benefits which devolve from more efficient routing of cargo and a resultant remarkable reduction in both fuel usage and environmental damage which became possible as a result of containerization.

Whatever the benefits of containerization, the greatest saving in total resources results from the development of the transport concept which only uniform, interchangeable containers could advance—intermodalism. Intermodalism can and has been defined in many ways, but for the purpose of establishing a discussion benchmark, Sunkel's definition serves well:

"Intermodalism is . . . a single common carrier of any mode, which:

1. Quotes a single-factor, point-to-point, through rate from a tariff it has filed with a single regulatory agency

2. Assumes common carrier liability for the entire, point-to-point through movement regardless of
the number or kinds of carriers, other than itself, it must use to effect the through movement

3. Issues its own, single bill of lading covering the entire through movement

4. Utilizes two or more different modes of transportation to get the cargo to destination."

The obvious intent of the concept of intermodality is to improve transportation services and to reduce transportation costs, by simplifying the documentation and unitizing the responsibility for a carriage which necessarily must involve multiple carriers. Complexity in modern-day shipping exists in domestic as well as foreign trade; however, when the multivariate system of regulation (including nonregulation) extant in foreign ocean transportation is superimposed on relatively tight, totally regulated domestic transportation systems, the quest for simplification and the resultant economic benefit to be derived may indeed be frustrated.

Some observers look at our international transportation policy as a determinant in our effort to extricate the United States from an imbalance in payments. While the United States continues to be the major world trader, United States exports have
lagged, and improving our merchandise trade depends, to a considerable degree, upon a smoothly operating intermodal shipping system which is, at least, not confusing.

While intermodalism involves all shipping methods, where the unit package to be transported is in the form of a standardized container (most likely one of 8x8x20) the modes employed will invariably involve land and water, rather than air, movement. Unfortunately for the sake of intermodalism, the control of the carriage of goods by land and ocean common carriers has been the province of different agencies, each of which views its legitimate responsibility as encompassing the province of the other where an intermodal movement is involved. Not only do the two key agencies, the Interstate Commerce Commission (ICC) and the Federal Maritime Commission (FMC) view their respective jurisdictions as legitimately including the total intermodal shipment, but they view their postures from differing and sometimes inconsistent regulatory philosophies.

Only with the Congressional initiative directed towards the development of a unique international transportation policy, will the container-intermodal shipping technology which was developed mainly in the
United States become the benefit to shippers (and ultimately the consumer) which was, and still is, its promise. The practice of depending upon agency or administrative initiative for the submission of legislation expressing new policy thrusts cannot be utilized by a Congress which has itself delegated responsibilities within the government to diverse interests whose parochial concerns cannot but interfere with the development of the type of ocean and intermodal transportation policy which is urgently needed.

Concerns with intermodalism and the difficulties faced in addressing the needs presented by the technologically enhanced maritime transportation industry do not start with the invention of the first multi-package container capable of being moved by several modes of transportation without need to repack; they start with an exploration of the perceived need to regulate the several components of the transportation industry, the development of the regulatory process, and the effect of agency parochialism on the development of marine transportation.
II The Federal Maritime Commission's Statutory Authority

In the 19th century, the rapid expansion of world trade, which was the legacy of the development of efficient steamships, led to an overbuilding of ship capacity. Inevitably, heavy competition at the close of the 1800's had destroyed many companies involved in international maritime trade. The remaining companies, representing the interests of many maritime nations and consequently non-regulated by any all-encompassing regulatory entity, formed conferences for mutual protection. Conferences, voluntary associations of liner services operating in a common trade, engaged in self-regulation to restrict trade, establish freight rates, allocate ports and govern other carrier practices. The most effective device employed by steamship liner conferences in their battle with the cost-cutting last survivors of the sailing-ship industry was the "exclusive patronage" system. Under this system, shippers would have been required to agree to ship exclusively with carriers of a given conference under pain of being denied further access to conference vessels if they patronized non-conference carriers. The shippers, however, refused to sign such agreements unless they were accorded some preference, to which
the conferences responded with the "deferred rebate" system. Shippers' agreements to patronize exclusively member lines of a conference carried a contractual obligation by the carriers to refund a stated percentage of freights paid. 15

The system worked well for the carriers, but certain abuses crept into its operation. These problems were addressed by concerned governments with differing results. A British Royal Commission investigating conference rebates found that the conferences and the rebate agreements had worked to establish limited monopolies, and while the Commission called for more disclosure and perhaps a choice by shippers between rebates and negotiated rates, they concluded their study in 1923 (after 17 years) by determining that deferred rebates were necessary, a conclusion to which most maritime nations still adhere. 16

Anticompetitive activities included, in addition to deferred rebates, the use of fighting ships which enabled the conference to place in service a vessel whose sole purpose it was to operate at rates and over routes at times designed to force non-conference carriers out of a trade, and out-and-out rate wars. In the United States, the revelation of these tactics resulted in a review by the House Committee on Merchant Marine and Fisheries.
In 1914, two years after commencement of their study, the Committee released the Alexander Report, (named for the chairman, Rep. Joshua W. Alexander, Dem. Mo.). The Alexander Report led to the Shipping Act of 1916 which, to this day, is the basis for the Federal Maritime Commission's regulatory power. The findings in the Alexander Report which resulted in legislation included recognition that prohibition of conference arrangements could not reasonably restore competition in maritime shipping, but did find deferred rebates and fighting ships and other unfair methods of controlling trade as contrary to public policy. Tacit in the Alexander Report's conclusions was an understanding of the international nature of maritime shipping.

As originally enacted, the Shipping Act, inter alia, prohibited common carriers by water, as defined in Section 1, from paying or allowing "deferred rebates," using a "fighting ship," retaliating against a shipper by refusing or threatening to refuse space accommodations, and making any unfair or unjustly discriminatory contract with any shipper based on volume.

The Federal Maritime Commission, the current regulator of maritime transportation, acquired its
status as a result of Reorganization Plan No. 7 of 1961. The original legislation had vested jurisdiction in the United States Shipping Board; later reorganizations transferred jurisdiction to the Department of Commerce, the United States Maritime Commission, and the Federal Maritime Board.

The Federal Maritime Commission was viewed, by virtue of the authority granted in Section 15 of the Shipping Act, as having primary jurisdiction to determine whether the agreements filed with the Commission, albeit agreements which control, regulate, prevent or destroy competition, are to be excepted from the provisions of the antitrust laws. In other words, with the Congress having given specific authority for exemption to the Federal Maritime Commission, the courts would generally defer to the agency the initial determination of rights and remedies; and for forty years or more, the courts did dismiss antitrust actions which were within the jurisdiction of the Section 15 powers of the Federal Maritime Commission.

With conferences permitted under the regulatory scheme, but rebating prohibited, the primary jurisdiction question became very significant when ocean carriers sought and developed techniques for preventing
rampant and potentially destructive competition. The device employed to circumvent the prohibition against rebating was the use of the dual-rate contract.

In a dual-rate contract, the carrier gave assurance that adequate tonnage at regular intervals will be provided at rates lower than those for non-contract carriage. The shipper in turn agreed to patronize the conference carrier exclusively. The predecessors of the Federal Maritime Commission had no difficulty finding the dual-rate contract consistent with the policy enunciated in the Shipping Act of 1916, so long as the agency retained jurisdiction to determine (in the original language of Section 15) whether agreements filed for approval were fair, not discriminatory and did not operate to the detriment of United States commerce. Attacks on conference activity were repeatedly turned away by the courts, and until 1958, the Commission steadfastly approved conference arrangements which included dual-rate contracts.

In 1958, the Supreme Court, in Federal Maritime Board v. Isbrandtsen, ruled that the Commission did not have exclusive antitrust jurisdiction and that dual-rate contracts were illegal and violative of
the overriding antitrust policies of the United States. The reaction from industry, insisting that dual-rate contracts were essential, given the posture of the world shipping market, led Congress to pass legislation maintaining the validity of extant contracts.\textsuperscript{28} Investigations which followed \textit{Isbrandtsen}, undertaken by the Antitrust Subcommittee of the House Judiciary Committee and the House Committee on Merchant Marine and Fisheries, resulted in realignment of the Commission and a strengthening of its regulatory function.\textsuperscript{29}

The 1961 amendments to the Shipping Act of 1916, \textit{inter alia}, legalized the dual-rate contract but directed the agency to "disapprove, cancel, or modify and agreement. . . contrary to the public interest," the concern of the public interest being, in addition to the 1916 trilogy: fairness, non-discrimination, and nondetriment to United States commerce. The promotional activity which had been the responsibility of the Federal Maritime Commission's predecessors was transferred to the Department of Commerce by reorganization\textsuperscript{30} and the Commission was empowered and directed to promulgate rules and regulations.\textsuperscript{31}

It appeared that the recommendations in the Alexander Report\textsuperscript{32} to allow controlled restriction
of competition by way of conference agreements were, after almost a half-century, to be given some effect. The Federal Maritime Commission became a regulator.

Note must be made of the constraints which necessarily must be placed on the Federal Maritime Commission activity. With well over 90% of the United States waterborne foreign commerce in foreign flag carriers, traditional agency licensing and certificate of authority powers are useless, and in fact, no such authority is vested in the Federal Maritime Commission.\(^\text{33}\) Also, the United States remains almost alone among nations in the regulation of anticompetitive activity in international shipping.\(^\text{34}\)

The Federal Maritime Commission, therefore, occupies the position of an accommodator between the interest of a national policy which is concerned with the anticompetitive nature of conferences and conference agreements, and the interests of a constituency which sees United States shipping suffering at the hands of self-regulated foreign-dominated conferences which have little constraint on the ways in which they limit competition.

III The Interstate Commerce Commission's Statutory Authority

The statutory basis for the posture of the Interstate Commerce Commission is to be found in the
Interstate Commerce Act of 1887. Section 1 (1)(a) states that the provisions of the Interstate Commerce Act applied to common carriers engaged in:

"(a) The transportation of passengers or property wholly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment. . .from any place in the United States to an adjacent foreign country".

It is, of course, important to remember that the Interstate Commerce Act at its inception undertook to regulate only rail carriers, to which coverage, motor carriers and water (inland-barge) were added at later dates as each began to successfully compete with the regulated rail industry for the carriage of goods in the domestic trade.

Throughout the agency's early life, the test of multi-modal jurisdiction on the part of the Interstate Commerce Commission, under Section 1, was adjacency. The 1920 Transportation Act amended Section 1 (1)(a), as it related to the subject under discussion, by providing that it applies to carriers engaged in:

"(a) The transportation of passengers or property wholly by railroad, or partly by railroad
and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment,. . . from or to any place in the United States to or from a foreign country, but only in so far as such transportation takes place within the United States." So, the Congress had enlarged on Interstate Commerce Commission jurisdiction by eliminating the adjacency proviso but held the Interstate Commerce Commission's regulatory power over the carriage to the transportation occurring within the borders of the United States. The Shipping Act of 1916 had been enacted by now, and jurisdiction over transportation modes had been clearly apportioned. However, it is fair to note that the apportionment, or division, of regulatory control over transportation was not modal but jurisdictional in nature, i.e. the decisive issue involved in determining agency power was whether the carriage was in domestic or international trade. The Interstate Commerce Commission, however, continued to construe its authority, after the 1920 amendment, as though the adjacency clause were still present, so that only filings for movements between the United States and Canada or Mexico were accepted. There is no record of formal filings
attempted for through movements in the period after 1920 but it was the policy of the Interstate Commerce Commission not to accept such tariffs. 39

The 1935 Motor Carrier Act, 40 which is part II of the Interstate Commerce Act extends the Interstate Commerce Commission jurisdiction to motor carriers and, as such jurisdiction relates to foreign commerce, section 203 (a)(11) defines foreign commerce as: "...commerce, whether such commerce moves wholly by motor vehicle: or partly by motor vehicle and partly by rail, express, or water, (A) between any place in the United States and any place in a foreign country, or between places in the United States through a foreign country; or (B) between any place in the United States and any place in a Territory or possession of the United States insofar as such transportation takes place within the United States...". 41

The Interstate Commerce Commission viewed its power as broadly for motor carriers as it did for railroad, and viewed its posture relative to intermodal, through transportation as even stronger, when considering section 216 (c) of the Motor Carrier Act of 1935:

"Common carriers of property by motor vehicle may establish reasonable through routes and joint rates, changes and classifications with other such
carriers or with common carriers by railroad and/or express and/or water; . . .".

While the Interstate Commerce Commission views the enabling legislation as granting authority for the regulation of modern day intermodal through shipments, they held in Motor Carrier Operation in the State of Hawaii that the commission lacked jurisdiction to permit the establishment of through routes and joint rates on water-motor movements between the mainland and Hawaii, theorizing that ocean carriers subject to the jurisdiction of the Federal Maritime Commission could not be regulated by the Interstate Commerce Commission and that the intent of Congress in using the term "common carriers by. . .water" in section 216 (c), was for coverage of (part III) water carriers subject to the Interstate Commerce Act. The Interstate Commerce Commission's conclusion in Motor Carrier Operation in the State of Hawaii may seem rather strange, since the part III water carrier coverage was not enacted until 1940, or five years after the Motor Carrier Act defined the jurisdictional authority of the Commission. However, Congress later amended Section 216 (c) to include within the definition of common carrier by water, those carriers subject to the Shipping Act of 1916.
In 1940, the Congress amended the Interstate Commerce Act; among the changes was included a statement of the (then) National Transportation Policy which contains the intent that all modes of transportation subject to the Act be fairly and impartially regulated so as to "preserve the inherent advantages of each" and, among other things, to encourage the maintenance of those reasonable charges for transportation services which will not result in unjust discrimination, undue preferences or "unfair or destructive competitive practices". 44

The legislative authority, then, of the Interstate Commerce Commission is to regulate all carriers operating interstate, or in foreign commerce, but only so far as their transportation activities occur within the boundaries of the United States. Specifically as to water-land movements, Part III of the Interstate Commerce Act, the "water" part of the Act, specifically grants to the Interstate Commerce Commission interstate or foreign water transportation authority, but only "(A) insofar as such transportation by rail or by motor vehicle takes place within the United States, and (B) in the case of a movement to a place outside the United
States, only insofar as such transportation by water takes place from any place in the United States to any other place therein prior to transshipment at a place within the United States for movement to a place outside thereof, and, in the case of a movement from a place outside the United States, only insofar as such transportation by water takes place from any place in the United States to any other place therein after transshipment at a place within the United States in a movement from a place outside thereof.  

The limitation on the authority of the Interstate Commerce Commission to purely domestic commercial transportation activity is quite clear, and poses an obvious impediment to the Interstate Commerce Commission in its attempt to regulate intermodal transportation. At the same time, Congress presented to the Interstate Commerce Commission an intermodal "handle". When it delegated the Interstate Commerce Commission the power to approve carrier-established through routes and joint rates among the many modes of surface transportation which may either partially or wholly be subject to Commission jurisdiction. Given specific statutory "joint rate" language, it is
no surprise that the single-rate concept which many view as essential to intermodal transportation is not advanced by the Interstate Commerce Commission.

To complete the parallel between the statutory postures of the Interstate Commerce Commission and the Federal Maritime Commission: just as Section 15 of the Shipping Act of 1916 provides antitrust immunity for agreements between carriers in conferences, so does Section 5a of the Interstate Commerce Act protect the land equivalent of marine carrier conferences (usually rate bureaus) from attack under the antitrust laws of the United States. The same section 5a at (4) states:

"The Commission shall not approve under this section any agreement between or among carriers of different classes unless it finds that such agreement is of the character described in paragraph (2) of this section and is limited to matters relating to transportation under joint rates or over through routes... ." The paragraph (2) referred to, in the main, allows the Interstate Commerce Commission to apply relief from antitrust action where the agreements are in "furtherence of the national transportation policy declared in the Act". The
"carrier classes" include as "different": railroads, including sleeping car companies; pipelines; motor vehicle carriers; freight forwarders; and carriers by water. If we recall that the definition of carrier by water in Section 216 (c) of the Act includes "water common carriers subject to the Shipping Act, 1916, as amended"⁴⁸, it becomes obvious that the Congress contemplated some possibility for an Interstate Commerce Commission-approved arrangement among multimodal common carriers which would permit point-to-point through shipment. Interestingly, the Federal Maritime Commission does not possess the express statutory authority to approve agreements between common carriers subject to its (Federal Maritime Commission) jurisdiction and other common carriers, as seems to be the case when Section 5a. (4) of the Interstate Commerce Act is analyzed.

With at least implied authority granted the Interstate Commerce Commission to allow agreements between (or among) carriers of different classes (modes) and with broad, loose authority granted the Federal Maritime Commission to approve agreements which are in the public interest and which are fair, non-discriminatory, and not detrimental to United
States commerce, what has stood in the way of the development of true intermodalism? First, the relatively tight constraints placed upon the Interstate Commerce Commission by the Congress do not permit the type of negotiation between modal operators which could result in the setting of a single rate where each mode's portion of the rate would be unknown to the shipper (or to the regulatory body). Section 216 (d) requires; "All charges made for any service rendered or to be rendered by any common carrier . . . engaged in interstate or foreign commerce in the transaction of passengers or property . . . shall be just and reasonable, and every unjust and unreasonable change . . . is prohibited and . . . unlawful."

Section 216 (c) also requires, in the case of joint rates or charges, that the participating carriers divide the charges so that the rates do not unduly prefer or prejudice any of the participants. If the Commission finds divisions to be inequitable, unjust or unreasonable, then it may by order, prescribe "the just, reasonable, and equitable divisions to be received by the several carriers. . . ."49
It is the role of the Interstate Commerce Commission to implement the national transportation policy declared in the 1940 amendments to the Interstate Commerce Act. As the policy relates to divisions of charges, the Commission is mandated to control transportation in the United States so that carriers subject to the Act (all except those subject to the control of the Federal Maritime Commission, the Civil Aeronautics Board and carriers engaged in intra-state commerce) are regulated "so as to preserve the inherent advantages of each" (Interstate Commerce Commission regulated carrier). With the Interstate Commerce Commission viewed as a protector of its carriers and with the requirement that joint rates be divided "fairly and equitably", the ocean carriers have looked with some suspicion on the review of joint rate divisions by the Commission.

IV Antitrust Concerns With Intermodality

Even should the rate division question be modified to allow for compensatory but lower rates than those for comparable transport not involving an intermodal shipment, a more basic issue must
be addressed. The Congress, squarely addressing the antitrust policy of the United States, provided in Section 15 of the Shipping Act, 1916, and Section 5a of the Interstate Commerce Act for the immunizing of agreements in restraint of trade where such agreements are undertaken by carriers whose conduct is supervised by the two agencies.

Since each agency has the power to approve agreements made by groups of carriers, why cannot some combination of agency powers be developed to effect a type of negotiations among different modes which would result in the type of single-rate, through-route transport agreed to be essential for the fullest enjoyment of the benefits of intermodalism? The views of the Antitrust Division of the Department of Justice play as important a role as any in determining the reasons for agency reluctance in achieving improvements in the regulation of intermodal transportation. [At the core of the concern of ocean carriers particularly, is their perception that, given the widespread employment, internationally, of conferences, most of which are closed to the entry of new carriers, the world's shipping fleets can fairly dominate liner practices. Moreover, agreements reached
by members of these conferences for mutual protection must necessarily remain immune from the particular (even if justified) policies of a minority of nations whose national (domestic) interests are well served by open competitive business practices protected by strong well enforced antitrust laws.

The Department of Justice views the extension of antitrust immunity to agreements between multi-modal carriers as an interference with the overriding importance of the nation's competition policy.\textsuperscript{52} Jonathan C. Rose, Deputy Assistant Attorney General, presented the Antitrust Division's position on H.R. 1080, a bill which would have amended section 15 of the Shipping Act, 1916 to, \textit{inter alia}, allow:

"agreements involving the through intermodal transportation of property between points in the United States and points abroad or between points in the continental United States and points in noncontiguous states, territories, and possessions, between a vessel-operating common carrier by water, and a common carrier regulated under part I, II, or III of the Interstate Commerce Act and/or a direct air carrier regulated under the Federal Aviation Act. . .".\textsuperscript{53}
Mr. Rose views the "extension of immunity to intermodal arrangements...a serious departure from...fundamental national economic policy." Apparently the inclusion of Sections 15 and 5a in legislation which plays an important role in determining the economic policy of the nation is not viewed as conferring fundamental status. What Rose implies is that each exception to the organic antitrust policy must be justified uniquely, and that the melding of the justification for Section 5a of the Interstate Commerce Act and Section 15 of the Shipping Act, 1916, will be opposed by the guardians of the antitrust policy, the Antitrust Division.

The following exchange between Hon. Leonor K. Sullivan, (D. Mo), Chairman of the Committee on Merchant Marine and Fisheries, and Mr. Keith I. Clearwaters, Deputy Assistant Attorney General, during the Committee's 1974 hearings on Intermodal Transportation, best illustrates the position of the Antitrust Division.55

The Chairman: When the 1916 Shipping Act was passed, did the Justice Department oppose Section 15?

Mr. Clearwaters: It would appear that the Department's views were not requested
and it took no position on the enactment of the Shipping Act.

The Chairman: Did the Justice Department oppose Section 5 of the Interstate Commerce Act. . .?

Mr. Clearwaters: The Department opposed Section 5(a), known as the Bullwinkle Act in 1948 on the ground that it really represented a blessing for cartels to engage in this ratemaking in what would otherwise be a violation of the anti-trust laws. . . President Truman vetoed this immunity and Congress overrode his veto.

The Chairman: Has the Justice Department ever favored Section 15 and Section 5 in the ensuing years?

Mr. Clearwaters: Once you have anti-trust immunity in a grant by Congress . . . it represents a decision of Congress, and whether the Department favors it or not, that does not make much difference.

***

I do not think it is fair to say that the Department has taken a consistent position across the board opposing all forms of immunity. . .[O]nce we get into areas where that immunity is to be extended to cover other forms of transportation, for example, to be grafted onto completely different economics, then we do come to Congress, and we feel it is our duty to come to the Congress and give our view as an advocate for competition, and as an advocate for economic policy, which tries to keep as narrow as possible antitrust immunities in favor of the free enterprise system.

In the 1976 hearings, the nature of the confusion concerning permissible application of
either Section 5(a) or Section 15 immunity to intermodal rate-setting negotiations surfaced. In discussion between Hon. James L. Oberstar, (D. Minn.) and Mr. Rose, it became obvious that a single ocean carrier could negotiate a through rate with a single inland carrier without raising antitrust questions; an (ocean) conference working out a rate with an (inland) rate bureau would constitute the worst case, from a policy standpoint, given the current state of the law. Mr. Rose viewed an ocean conference negotiating a through rate with an individual trucking company as being outside Section 15 immunity, which applies to ocean carrier arrangements only; insofar as Section 5(a) may allow for agreements between a rate bureau (inland) and a single ocean carrier, the view of the Department is that the immunities which the Interstate Commerce Act grants cannot encompass a carrier whose activities are beyond the regulatory control of the Interstate Commerce Commission. Therefore, a unique situation presents itself where a combination in restraint of trade (as the basis for antitrust action) may make a single ocean carrier subject to prosecution while the motor carrier rate bureau with which it negotiated rates would be immunized under Section 5(a).
It is obvious that, faced with the questionable legality of negotiated rates between groups of carriers of different modes and even between groups on one hand and individuals on the other, the transportation industry has moved reluctantly into full-blown intermodalism. Legislation has been offered regularly by each of the regulatory agencies which would grant to the proffering agency "intermodal power", each concluding, for sound and cogent reasons that it should wear the intermodal regulatory hat. The while, the Justice Department calls for deregulation by way of denying antitrust immunity to, at least, this as-yet-unregulated, but confused, transportation system.

The most ambitious proposals have, in addition to the essential (from the carriers' viewpoint) antitrust immunization, defined an "intermodal carrier" subject to a single agency (usually the Federal Maritime Commission) which would assume responsibility and liability for the shipment including arrangements with any and all "underlying carrier" who in turn may be, because of its modal and jurisdictional character, subject to regulation by some other agency.
Various modifications and adaptations have been offered, none of which has achieved any measure of acceptance by all the elements necessary to effectively forge a viable legislative policy.

In the absence of Congressional action, the agencies have, from time to time, ventured into the intermodal forest and have, frequently, because of the protectionist posture of the other affected agencies, had to backtrack.

V Port Policy And Intermodalism

Before examining the efforts of the Interstate Commerce Commission and the Federal Maritime Commission to fill the policy void, consideration must be given the concept of federalism which adds an even further complicating factor to the development of a transportation policy designed to advance the benefits of intermodalism. Carrier practices which discriminate against ports are, under the Shipping Act, 1916, subject to corrective action by the Federal Maritime Commission. There is no doubt that, as a result of containerization and intermodalism, some ports will lose movements while others will gain. The high investment in terminal facilities for the handling of containerized
freight will necessarily limit those ports which compete for container vessels. When the Port of New York, in the late 1960's, expanded its facilities to accommodate the increase in container traffic, the construction was valued in excess of $175,000,000.58 Carrier costs are initially high, with vessel costs ranging from 7 to 50 million dollars.59 New vessels, capable of high speed at sea, depend upon the most sophisticated port facilities so that turnaround time is held to a minimum; consequently, the larger, the more expensive the containership, the fewer ports at which it can profitably call. It is not surprising that the plans of Sea-Land Services, Inc., for its giant SL-7 class containerships contemplate the use of Elizabeth, N.J. (Port of New York), as its sole Eastern seaboard port to serve Rotterdam and Bremerhaven in Europe and Seattle, Oakland and Long Beach on the West Coast, to serve Hong Kong and Yokohama in the Far East.60 The four United States ports identified by Sea-Land as SL-7 terminals now occupy a position of market dominance as the top four ports in terms of containers (TEU's) handled in 1976, with their total being almost 50% greater than the combined totals of TEU's moved through the next 16 ports in North America.61
It is obvious that, unless government intervenes to require different practices, technological advances will necessarily discriminate against some ports whose physical capacity does not permit the expansion necessary to accommodate large volume, high revenue container movements. But the language of Section 17 of the Shipping Act, 1916, prohibits unjust discrimination, and theoretically, only where the discrimination is unjust will the Federal Maritime Commission move to correct malpractices.\textsuperscript{62}

Ports have complained to the Federal Maritime Commission that discrimination, growing out of containerization and intermodal movement, has occurred. Portland, Oregon, whose activities dropped off sharply after Seattle, Washington became the preferred port for the Pacific Northwest and which was ultimately abandoned by container liners, forced an accommodation by way of a Section 17 complaint, the result being, the steamship line now calls at Portland every other voyage.\textsuperscript{63}

The thrust of the Portland case was that existing Federal Maritime Commission practice forbade ocean carriers from assuming the costs of overland shipping between the port at which intermodal
transfer is made and the port through which the cargo would have moved. To drop a port, and move cargo overland, a carrier would have to demonstrate lack of adequate service in the by-passed port. This "rate absorption" (of the overland costs) into a rate based on an equalization with the rates which would have been available to shippers given all-water service, represented a clear departure from the principle of non-discrimination among ports, which it is the Federal Maritime Commission's responsibility to uphold.64 While the port of Portland may have succeeded in this case, the problem addressed has not been solved and remains a major issue for the future of intermodalism.

Testimony in the Sea Land/United States Lines merger case indicated that cargoes which had traditionally passed through United States ports were being diverted by rail to Canada. There, that nation's simpler regulatory structure allows for a true intermodal shipment. This activity and its accompanying favorable rate structure was viewed as being prompted by a decline in Canadian port activity. The ability of the Canadian regulatory structure to allow for adjustments in single-rate/
through-routing as an accommodation to port need is, to say the least, not insignificant as a United States port concern.65

How intermodalism, as practiced today, affects ports is best evidenced by a dispute over the mini-landbridge which surfaced in 1978. Minibridge (or mini-landbridge) describes transportation from Atlantic or Gulf ports by rail to Pacific coast ports where the container (having never been opened) continues by way of ocean common carrier to the Far East; from the West Coast, containers loaded on rail cars are directed to Gulf and Atlantic ports where they continue their voyage to Europe via water common carriers.

Tariffs for mini-landbridge through rates are, in the absence of concern with larger policy issues, relatively simple to construct, since existing all-water rates (for the same through transport) establish a point of departure for the creation of a multimodal through rate. The problems faced thus far in establishing a mini-landbridge have been to so divide the rate that each carrier receives satisfactory compensation. What is satisfactory for carriers may not, however, meet with the approval of regulatory bodies. For intermodalism
to flourish contemplates point-to-point rates with shipments originating or terminating at some inland (non-port) location. The construction of tariffs combining the rates of the multimodal carriers cannot rely on any existing all-single-mode rate for comparison. Even with the relative ease of adapting rates to the partial intermodalism known as minibridge, the advancement of this improved, speedier, more energy-efficient means of transportation has encountered difficulty.

Gulf ports, addressing squarely the internecine warfare among agencies regulating different transportation modes, have long claimed that minibridge intermodal rates are disadvantageous to the ports' interests, primarily because the rail rates for such minibridge movements are substantially lower than those charged for moving the same traffic a shorter distance. Because of the rail rate disparity, the Interstate Commerce Commission regulations must be waived. The rail portion of the minibridge rate had been unknown since the ocean carrier filed its rate as the agent for the railroad, collected a single rate and paid the rail carrier a portion of the total bill. While the rates are agreed to between the carriers, no data
had been provided the Interstate Commerce Commission to indicate that the rail rate is "compensatory", a finding which is necessary if relief from the existing rail rate structure is to be granted. Arguing only that the rates must be lower to meet "water competition", both the railroads and steamship companies oppose any regulatory requirement that the railroads initiate a petition for relief. The Interstate Commerce Commission, therefore, required the railroads to provide steamship companies with sufficient information so that the companies, as agents, could file with the Interstate Commerce Commission the justification for lower rates which must include evidence that the rates are compensatory to the railroad. In a March 6, 1978 order, the Interstate Commerce Commission ordered that the justification must include, at a minimum, ton-mile and car-mile expenses. 66 In a follow-up article, the Journal of Commerce reported that, in over a month following the March 6 order, only two intermodal rates had been filed with the Interstate Commerce Commission and these two failed to include the cost data ordered by the Commission. 67 The same issue, but involving the Federal Maritime Commission and its role in protecting the Gulf ports, was raised when Trailer
Marine Transport was ordered on March 15, 1978 to publish the ocean portion of its intermodal tariff for Puerto Rico within one month, or be subject to Federal Maritime Commission-imposed fines. Trailer Marine Transport, who, prior to the deadline, filed a motion to stay and a petition for judicial review of the Federal Maritime Commission's order with the D.C. Court of Appeals, had previously sought to file a new intermodal tariff with the Interstate Commerce Commission asserting Puerto Rican intermodal rates to be interstate and not foreign commerce, an assertion adopted by the Interstate Commerce Commission in November of 1977 when the Commission accepted the filing. The Gulf ports and the Federal Maritime Commission objected, to no avail, and the Federal Maritime Commission subsequently issued its March 15 order. In its motion to stay, Trailer Marine Transport states:

"Disclosure of the divisions accruing to the respondent, of course, necessarily results in disclosure of the divisions accruing to the participating rail carriers. Various of the participating rail carriers have advised respondents of their extreme reluctance to continue to participate in the joint through service, to varying degrees, if the divisions are disclosed."
Should port-inspired action by the Federal Maritime Commission and the Interstate Commerce Commission become endemic, it is obvious that even the minibridge type of intermodalism will suffer.

VI Regulatory Initiatives

The response of the United States regulatory bodies involved in the bulk of activity surrounding containerization and intermodalism has been, in the main, reactive. That is, there is nothing in the literature to indicate that the Interstate Commerce Commission or the Federal Maritime Commission laid any foundation in anticipation of the effect the "container revolution" would have on regulated common carriers. At the outset, each agency apparently assumed it possessed sufficient statutory authority to adequately address the needs of at least its own transportation constituency. The agency conflicts which grew to the proportions which yielded the maneuverings exhibited in the recent Gulf ports mini-landbridge controversy has its roots in the original assumption of each agency that intermodalism (and containerization) came into being to serve that segment of the transportation system which each regulates.
The battle was formally joined when the Federal Maritime Commission promulgated its General Order 13, which is the agency's implementation of section 18 (b) of the Shipping Act, 1916, which "...requires every common carrier by water in foreign commerce and every conference of such carriers to file with the Federal Maritime Commission, and keep open to public inspection, tariffs showing all the rates and charges of such carrier or conference for transportation to and from United States ports and foreign ports between points on its own route and on any through route which is established. It is further required that such tariffs shall plainly show the places between which freight will be carried, and shall contain the classification, in force, of freight, and shall also state separately each terminal or other charge. ...rules or regulations. ...specimens of any bill of lading, contract. ...or other document evidencing the transportation agreement." (See Appendix A) General Order 13, when first published in early 1969, addressed the issue of intermodal transportation, by requiring common carriers (or conferences) to file any through rates, et al. "...governing the through transportation between
ports or points in the United States and ports or points in a foreign country. . ." The tariff, in addition to the normally required documents must "...clearly indicate the division, rate, or charge. . ." which the water carrier will collect for the port-to-port portion and this "division, rate or charge" is to be treated as a proportional rate.72 The definitions in the regulation are consistent with generally accepted descriptors of intermodalism, i.e.,

"Through route: An arrangement for the continuous carriage of goods between points of origin and destination, either or both of which lie beyond port terminal areas;

"Through rate: A rate expressed as a single number representing the charge to the shipper by a carrier or carriers holding out to provide transportation over a through route;"73

"Proportional rates: rates or charges for water transportation which are conditioned upon a prior or subsequent movement of the cargo. . ."74

From the language of the Federal Maritime Commission regulations, it is apparent that common carriers by water engaged in foreign commerce did have the means to move shipments intermodally, and, more significantly, to operate over through
routes from and to points "which lie beyond port terminal areas". The technique for accomplishing this movement is suggested in the permissive Federal Maritime Commission regulation for the filing of agreements between common carriers, more particularly, for "transshipment agreements" between carriers serving ports of destination and ports of origin who establish a joint through rate in which both carriers participate:

(f) Transshipment agreement.

Agreement No. ______

(Name of Agreement - if any)

This agreement was entered into by and between the parties on _____. The undersigned are common carriers of freight by water in the foreign commerce of the United States.

1. This agreement, between ______ (hereinafter referred to as the initial carrier) and ______ (hereinafter referred to as the delivering carrier) covers and is restricted to transportation of cargo under through bills of lading from ports of call of the initial carrier in ______ with transshipment at _____;

2. The parties to this agreement shall establish through rates, rules and regulations and shall file a tariff containing such rates, rules, and regulations with the Federal Maritime Commission in accordance with the provisions of section 18(b) of the Shipping Act, 1916, as amended;

3. Accessorial and port charges (not including loading and discharging) shall be in addition to the through
rates and will accrue to the initial carrier or to the delivering carrier, as appropriate, over and above its proportion of the through rate;

4. The through rates shall be apportioned on the basis of ___ percent to the initial carrier and ___ percent to the delivering carrier:

5. The expenses of transshipment on such cargo shall be absorbed on the basis of ___ percent by the initial carrier and ___ percent by the delivering carrier:

6. Each carrier will indemnify and hold the other harmless from all liabilities and expenses incurred by the latter which in any way arise from or are connected with any loss, damage, delay or misdelivery of the goods while in the possession or custody of the indemnifying carrier under this agreement, except where the indemnifying carrier can establish that such loss, damage, delay or misdelivery was directly attributable to the neglect or willful misconduct of the other carrier, its agents, servants or employees;

7. Nothing in this agreement shall bind the delivering carrier to transship exclusively from vessels employed in the initial carrier's service;

8. Cargo shall be carried on the terms of either the initial or delivering carrier's bill of lading, as the parties may deem necessary;

9. Neither party hereto shall enter into an agreement with any other party with respect to transportation of cargo within the scope of this agreement on terms at variance with those stated herein;

10. Either party to this agreement may terminate its participation herein by giving ___( ) days' written notice to the other. A copy of such notice shall be promptly furnished to the Federal Maritime Commission.
The Interstate Commerce Commission, in July of 1969, instituted rulemaking in Ex Parte 261. The rule, had it become effective, would have allowed for joint rate filing and thus allow for Interstate Commerce Commission-regulated, international, intermodal movements. The Interstate Commerce Commission adopted the position that it was possessed of sufficient authority by Congress to proceed with this rulemaking, and accordingly on September 30, 1970 served the public with new rules designed to provide for intermodal shipping. The pertinent provisions of the rule prior to the proposed changes and those following its initial publication are:

PRESENT PROVISIONS

§ 1300.67 Export and import traffic-ocean carriers

Ocean carriers between ports of the United States and foreign countries are not subject to the terms of the Interstate Commerce Act or to the jurisdiction of the Commission.

(a) Export and import tariffs.--(1) The inland carriers of property exported to or imported from a foreign country by water must file their rates to the ports and from the ports, and such rates must be the same for all, regardless of what ocean carrier may be designated by the shipper except as otherwise provided by section 28 of the Merchant Marine Act (41 Stat. 999; 46 U.S.C. 884).

(2) When rates are published to apply on export or import traffic, but not on traffic destined to or originating at the port, the tariffs containing such rates shall specify by inclusion
or exclusion the countries to or from which traffic subject to such rates shall move, whether such countries are, or are not, adjacent to the United States.

(3) In the interest of clearness the tariffs should also specify whether or not property destined to or coming from Cuba, the Philippine Islands, Puerto Rico, the Hawaiian Islands, or the Canal Zone are included. For convenience, and without regard to the political status and relation of the Philippines, Puerto Rico, the Hawaiian Islands, and the Canal Zone to the United States, they, together with Cuba, are for these purposes to be classed with foreign countries, and in the absence of statement in tariffs limiting the application of export and import rates, export and import rates will apply on traffic destined to or coming from the above-named territories.

(b) Steamship charges may be shown.-- As a matter of convenience to the public, said inland carriers may also publish as information in their tariffs in connection with the inland rate as above provided the steamship charges to or from foreign destinations. When this is done, such steamship charges may be changed without notice, but the rates of inland carriers to (or from) ports are subject to all provisions of section 6 of the Interstate Commerce Act and of the Commission's rules with respect to notice and form of publication. Tariffs containing such steamship charges must not be concurred in by the ocean carriers.

(c) Through export and import billing.-- Export and import shipments may be forwarded under through billing, but through bills of lading must clearly separate the liability of the inland carrier or carriers and of the ocean carrier, and must show the tariff rate of the inland carrier or carriers.
PROPOSED REVISION

§ 1300.67 Export and import traffic -
ocean carriers

(A) Through routes and joint rates

When a common carrier by water enters
into an arrangement with a common carrier
subject to the Interstate Commerce Act
for joint rates and through routes
covering the transportation of property
subject to the act between points in
the United States and points in foreign
countries, tariffs naming such joint
rates and through routes must be filed
with this Commission, and must be published,
filed and posted in conformity with the
provisions of the act and the rules of
this tariff circular. Filing of tariffs
naming such joint rates and through
routes does not give the Commission
jurisdiction over the ocean carriers
participating therein.

(B) Port combination basis

When the carriers do not enter into
joint rate and through route arrange­
ments as provided in paragraph (A) but
desire to handle traffic on basis of
combinations of rates to and from the
ports, the rates of ocean carriers are
not required to be filed with the Inter­
state Commerce Commission. In these
circumstances, the following will apply:

(a) Export and import tariffs.--
(1) The carriers subject to the Inter­
state Commerce Act transporting properly
exported or imported from a foreign
country by water must file their rates
to the ports and from the ports, and
such rates must be the same for all,
regardless of what ocean carrier may
be designated by the shipper except
as otherwise provided by section 28
of the Merchant Marine Act (41 Stat.

(2) When rates are published to apply
on export or import traffic, the tariffs
containing such rates shall specify by inclusion or exclusion the countries to or from which traffic subject to such rates shall move, whether such countries are, or are not, adjacent to the United States.

(3) In the interest of clarity the tariffs should also specify whether or not property destined to or coming from Cuba, the Philippine Islands, Puerto Rico, the Hawaiian Islands, or the Canal Zone are included. For convenience, and without regard to the political status and relation of the Philippines, Puerto Rico, the Hawaiian Islands, and the Canal Zone to the United States, they together with Cuba, are, for these purposes, to be classed with foreign countries, and in the absence of statement in tariffs limiting the application of export and import rates, export and import rates will apply on traffic destined to or coming from the above-named territories.

(b) Steamship charges may be shown.—As a matter of convenience to the public, said carriers may also publish as information in their tariffs in connection with the rate as above provided, the steamship charges to or from foreign destinations. When this is done, such steamship charges may be changed without notice, but the rates of the Interstate Commerce Commission regulated carriers to (or from) ports are subject to all provisions of the Interstate Commerce Act and of the Commission's rules with respect to notice and form of publication. Tariffs filed with the Interstate Commerce Commission containing such steamship charges may not be concurred in by the ocean carriers.

(C) Through export and import billing

Export and import shipments may be forwarded under through billing, but through bills of lading must clearly separate the liability of the carriers included therein where different, and must show
(1) the tariff rate of the carrier or carriers subject to the act to or from the port, or (2) joint rates or charges when such rates are established and are named in tariffs on file with the Commission as provided in paragraph (A) above.

While the new regulation stated the "filing of tariffs naming...rates...does not give the Commission jurisdiction over the ocean carriers participating therein", these requirements for ocean carriers clearly imposed upon them a responsibility to the Interstate Commerce Commission which disturbed not only the carriers but the Federal Maritime Commission. Vigorous comment in opposition to the promulgation of the new rules resulted in a statement by the Interstate Commerce Commission that "due to our lack of experience in this new field and to the lack of evidence it was unwise to promulgate a new rule." The Interstate Commerce Commission set aside its rulemaking but continued, however, to accept joint rate tariffs based on the statutory authority which it still maintained it possessed, and, rather than formal rules, the Commission issued guidelines in 1972 to assist carriers in the publishing and filing of joint rate tariffs.
Seven years after the commencement of rule-making, the Interstate Commerce Commission finally promulgated its Ex Parte 261 rules for international joint rates and through routes:

EXPORT AND IMPORT TRAFFIC—OCEAN CARRIERS

(a) Ocean carriers not subject to Act. Common carriers by water, or conferences of such carriers, engaged in the foreign commerce of the United States, as defined in the Shipping Act, 1916, that operate between ports of the United States and foreign countries are not subject to the terms of the Interstate Commerce Act or to the jurisdiction of the Interstate Commerce Commission.

(b) Through routes and joint rates.

(1) A common carrier by railroad, pipeline, or water, or a common carrier by railroad jointly with a common carrier by motor vehicle, subject to the Interstate Commerce Act (hereinafter referred to in this section as the domestic carrier), may establish a through route and joint rate with a vessel-operating common carrier by water engaged in the foreign commerce of the United States (hereinafter referred to in this section as the ocean carrier), as defined in the Shipping Act, 1916, for the transportation of property between any place in the United States and any place in a foreign country. Every tariff naming such a through route and joint rate shall be filed with this Commission. The tariff may be filed in the name of the ocean carrier, a conference of ocean carriers, the domestic carrier or the duly appointed tariff publishing agent of such carriers.

(2) The tariff shall be constructed, filed, and posted in conformity with the Interstate Commerce Act, and, except as otherwise specifically authorized, with the regulations in Parts 1300 and 1305 (regulations in both parts included in Tariff Circular No. 20) of this chapter. The tariff shall be printed
in the English language, include the names of all participating carriers, a description of the services to be performed by each participating carrier, a statement of the joint rate, and a clear and definite statement of the division, rate, or charge to be received by the domestic carrier for its share of the revenue covering a through shipment or aggregate of shipments under the tariff. The division, rate, or charge accruing to the domestic carrier must be shown in terms of lawful money of the United States. If shipments and/or loaded containers are to be permitted to be aggregated which are rated under more than one tariff published by the carrier or for its account, each tariff so affected must contain a specific rule, providing for the aggregation in connection with the statement of the domestic carrier's divisions and identifying by ICC designation each of the other tariffs. A tariff filed in the name of a conference need not show "Agent" after the name of the conference unless the conference publishes as an agent. If a tariff provides less-than-carload, less-than-containerload, or less-than-trailerload service, such service must be defined. If the tariff provides containerload rates, such rates must be made subject to a specified minimum weight or minimum measure per container, or a specified minimum charge per shipment per container, and a maximum weight per container. Where the freight is to be packed (loaded) or unpacked (unloaded) into or from the containers by the domestic carrier, the tariff must clearly state that the joint rate includes this service or must provide a separate charge to apply when said service is provided.

(3) Rates or charges may be stated to apply in a unit other than a United States unit provided the unit is defined in the tariff where used. The International System of Units (SI) (the metric system)
may be used and need not be defined.
A rate or charge applying on a unit of
measurement other than weight may be
published, but if the tariff also includes
a rate or charge applying on a unit of
weight on the same traffic, the charges
on the weight basis must alternate with
the charges on the measurement basis
other than weight. In every case the
tariff shall provide a definite method
for determining the measurement of the
shipment and the applicable charges.
"Cargo, N.O.S." may be provided as a
commodity description provided the term
is clearly defined in the tariff where
used. Tariffs governing the application
of the rate tariff need not show a carrier
as a participant when none of the pro-
visions therein apply for such carrier's
account.

(4) Allowances, cargo administrative
charges, or reductions shall not be
provided for payment to shippers or
other parties for services performed
by or facilities furnished by other than
the carriers parties to the through
transportation unless (i) such carriers
by tariff publication hold themselves
out to perform such services and furnish
such facilities, (ii) such carriers are
able to perform such services and furnish
such facilities upon reasonable demand,
and (iii) the performance of such services
and furnishing of such facilities are
included in the through joint rate or
charge. This subparagraph does not
apply where such provisions do not affect
the division, rate, or charge accruing
to the domestic carrier or the services
performed by such carrier.

(5) A domestic carrier desiring to
become a participant in a tariff filed
in the name of a conference of ocean
carriers, which conference does not
publish as an agent, must give to its
connecting ocean carrier participating
in such conference tariffs a concurrence
in tariffs issued and filed by the
ocean carrier or the conference, or both.
A limited concurrence may provide for
only those limitations authorized in § 1300.19 of this chapter. The concur-
rence forms prescribed by § 1300.19 shall be modified to show that the author-
ity extends to amendments to the tariff(s) and extends to tariffs filed in the name of the conference, and to show the types of tariffs (such as tariffs contain-
ing joint rail-ocean rates, joint rail-motor-ocean rates, et cetera) in which the domestic carrier desires to participate. Powers of attorney must not be executed unless the conference publishes as an agent.

(6) The following changes may be pub-
lished to become effective upon a speci-
ified date not prior to the date filed with the comission in Washington, D.C., provided the division, rate, or charge accruing to the domestic carrier or a provision governing or affecting such division, rate, or charge does not change.

1. A change in a published rate, charge, rule, regulation, or other provision which results in a reduction or in no change in charges. This includes a change in a rate or charge which results in lessening or canceling a proposed (pub-
lished but not yet effective) increase.

2. The establishment of a rate on a specific commodity not previously named in a tariff which results in a reduction or in no change in charges. The tariff must contain a cargo, N.O.S. rate or similar general cargo rate, which rate would otherwise be applicable to the specific commodity. The specific commodity rate must be equal to or lower than the cargo, N.O.S. or general cargo rate.

Except as otherwise provided in this subparagraph, no new or initial rate, charge, rule, regulation, or other provision and no new point of origin or destination may be published upon
less than 30 days' notice. In no case may the establishment of or a change in a division, rate, or charge accruing to the domestic carrier or a provision governing or affecting such division, rate, or charge become effective upon less than 30 days' notice.

(7) If a tariff includes charges for terminal services, canal tolls, or additional charges not under the control of the carrier or conference, which carrier merely acts as a collection agent for the charges, and the agency making such charges to the carrier increases the charges without notice or without adequate notice to the carrier or conference, such charges may be increased in the tariff by specific publication effective upon a specified date not prior to the date filed with the Commission, in Washington, D.C., whether included in the joint rate or separately stated. If the change occurs in the division, rate, or charge accruing to the domestic carrier, the amendment must contain a statement explaining the change.

(8) Every change made under authority of § 1300.67(b)(6) or (7) must be shown in an amendment (a supplement if the tariff is in bound form or a loose-leaf page if the tariff is in loose-leaf form) to the tariff. The rates, charges, rules, regulations, or other provisions authorized to be changed thereunder may be changed without their having been effective for 30 days prior to the effective date of the change.

(9) The regulations in § 1300.9(k) of this chapter - Suspension of Tariff Schedules - shall govern only when the operation of the division, rate, or charge accruing to the domestic carrier or any provision governing the division, rate, or charge or the service performed by such carrier is suspended by an order of this Commission.

(10) The following reference marks may be used in the exact form shown for the purposes indicated and may not be used for any other purpose:
(R) to denote reductions.
(A) to denote increases.
(C) to denote changes in wording which result in neither increases nor reductions in charges.

An explanation of these reference marks must be provided in the tariff in which used.

(c) Port combination basis. Domestic and ocean carriers may enter into joint rate arrangements, as authorized by paragraph (b) of this section, and domestic carriers may at the same time maintain in effect rates applicable only from and to the ports, usable in combination with ocean carriers' independently established rates. Publication of such rates by the domestic carrier shall be subject to the following:

(1) The domestic carriers shall file their rates to the ports and from the ports, and such rates must be the same for all, regardless of which ocean carrier may be designated by the shipper, except as otherwise provided by section 28 of the Merchant Marine Act (41 Stat. 988, 46 U.S.C. 884).

(2) When the domestic carriers publish rates which are indicated to apply only on export or import traffic, the tariffs containing such rates shall move, regardless of whether such countries are, or are not, adjacent to the United States. Tariffs shall also specify whether or not property destined to or coming from the Republic of Cuba, the Commonwealth of Puerto Rico, Guam, Hawaii, or the Canal Zone is subject to such rates. In the absence of a statement in tariffs limiting the application of export or import rates, such rates will apply on traffic destined to or coming from them.

(3) As a matter of convenience to the public, the domestic carriers may also publish as information in their tariffs the ocean carriers' rates or charges that will apply to or from a foreign
country in connection with the domestic carriers' rates. When this is done, the ocean carriers' rates or charges are in no manner subject to the jurisdiction of this Commission, but the rates of the domestic carriers applying to or from the ports are subject to all provisions of the Interstate Commerce Act and to this Commission's regulations.

(d) Through export and import billing. Export and import shipments may be forwarded under through billing. Through bills of lading must clearly separate the liability of the carriers included therein, where different, and must show (1) the tariff rates or charges of the domestic carriers to or from the port or (2) the joint rates or charges when such rates or charges are established and are named in tariffs on file with this Commission as provided in paragraph (b) of this section. The name of the domestic carrier shall appear in a prominent place on the face of the bill of lading when that carrier originates the shipment. Tariffs which provide for the use of a specified kind of bill of lading shall reproduce all of the terms and conditions thereof.

The new rules demonstrated that the Interstate Commerce Commission would not assert jurisdiction over, or otherwise substantively regulate, ocean carriers, nor over the ocean portion of the rate. A change in a joint through rate, for example, which resulted from change in the ocean portion did not warrant suspension of either the entire rate or the ocean portion; the 30 day notice for suspension provided for in the Interstate Commerce Act is limited to the divisions (of the rate) which accrue to the domestic carrier. Furthermore,
the Interstate Commerce Commission clearly indicated in its final rulemaking, that the provisions of the Interstate Commerce Act would not be invoked by the Interstate Commerce Commission to entertain challenges unless those challenges deal with the domestic carriers' portion of the rate; dual rate, allowances and other permissible features of the Shipping Act, 1916, which are not allowed for domestic carriers, will not be considered as the basis for challenge of any joint rate.79

Other provisions of the new rules which grew out of the discontent on the part of the ocean transportation industry with the 1970 version include: the use of Federal Maritime Commission approved symbols and class ratings in tariff publication by ocean carriers; relaxation of the Interstate Commerce Commission requirement that all rates and charges be stated in United States money (although the division accruing to the Interstate Commerce Commission carriers still must be so stated); and allowance that filings of ocean carriers may be made by the carrier or a conference without the carrier having to be designated an agent. Liberality in the Interstate Commerce Commission's accommodation to the more
relaxed requirements of the Federal Maritime Commission could not be extended to the language requirements for filing tariffs, and despite ocean carrier protests, the Interstate Commerce Commission required tariffs be printed only in English. Following these changes, the Federal Maritime Commission formally withdrew opposition.

The regulations promulgated by each agency concluded, after much strain and conflict, with only so much involvement in intermodalism as the legislation which created the agencies permitted. Try as they might to adapt to the requirements of the container revolution, the agencies could not overcome the dominating constraints of their structures. The result is through rates in which carriers jointly and severally share responsibility for their joint holding out, with each participant's share subject to agreement, a portion (division) of which must, in turn, be approved by each controlling agency. And rather than point-to-point intermodalism, commerce has had to settle for mini-land-bridge and its complications.

VII CONCLUSIONS AND RECOMMENDATIONS

The feature of intermodalism which captures the greatest interest is probably that which deals
with "unity". The container itself, which pushed intermodalism to the forefront is a unitized, universally accepted 8x8x20 (or so) package. For the shipper who, because of containerization, no longer has (or wants) control over cargo routing, the availability of a single document, the through bill of lading, is absolutely essential. The shipper cannot be aware of the specific modes employed in a shipment, and is precluded from making arrangements at interchange points because the new technology moves the cargo faster than the documentation. The rate which covers the intermodal shipment is a single rate which assumes that the collecting carrier will assume sole responsibility for the performance of the through transportation. The exception to this concept of unity which runs throughout intermodalism is the necessary utilization of two or more modes of transportation to move the cargo between the point of origin and point of destination.

It is the "two or more modes" issue which has given rise to the difficulties faced by those who would expand intermodalism. Unfortunately, the modes employed generally involve an ocean carrier and an inland carrier. Because of historical
precedent, regulation of these carriers is the responsibility of two different agencies.

The responsibility each expert body (the administrative agency) is given is not, however, based on its expertise relative to the mode of transportation, e.g. rail, barge, motor carrier, containership, break-bulk ship, LASH, etc. Delineation of jurisdiction is the expertise of the Interstate Commerce Commission and the Federal Maritime Commission; and even the jurisdictional questions are clouded by limitations, such as the exclusion of non-liner operations from the control of the Maritime Commission. The regulation of transportation, then, is by agencies each of which is stopped by the existence of the other from following and regulating a unit of cargo in its course through the extent of legitimate United States interests. Domestic regulations cannot require compliance by foreign inland carriers picking up or discharging cargo at foreign ports. Adding to these obstacles is the Department of Justice, which, in the view of most carriers, be they Interstate Commerce Commission- or Federal Maritime Commission-regulated, stymies any attempt to overcome the jurisdictional conflicts
by insisting on the narrowest construction for the granting, by the Interstate Commerce Commission and the Federal Maritime Commission, of antitrust immunity to ocean conferences/rate bureaus. These groups could, if otherwise permitted, negotiate those single rate tariffs for through routes which are accepted as essential for intermodalism.

In the final analysis, a method of transportation, designed for simplicity, is made complex and capable of being only partially implemented. This is not solely because an intermodal shipment runs afoul of parochial agency constraints. It is the existence of a multiplicity of national policies which are inconsistent with intermodalism that lies at the heart of the problem.

The antitrust policy serves a broad constituency and is served by those whose concerns are neither transportation-oriented (modal) nor jurisdiction-oriented. The policy stated in section 19 of the Shipping Act of 1916 is protectionist in that it directs the Federal Maritime Commission to protect water carriers from the anticompetitive efforts of other water carriers, which presumably leaves open the anticompetitive conduct of water carriers attempting to secure a
favorable market posture relative to non-water carriers. The Interstate Commerce Commission must, if it is to be faithful to the national transportation policy stated in the Interstate Commerce Act, regulate transportation so that the Interstate Commerce Commission carriers' interests are advanced and the inherent advantages of each preserved. Underlying the conflicts are the legitimate interests of the ports which align themselves with that agency which will protect best their existence. Of subtle but not inconsiderable importance lies the ever-varying United States foreign policy, whose implementations by the State Department depends more on flexibility than on the fixed, structured regulation which dominates United States transportation.

To blame the agencies for past (or present) failure or to look to them for salvation and leadership in the future is unfair and unrealistic. The Congress has an obligation to look at intermodal transportation, not as a mix of separate modes, each capable of providing the same service to shipper (and consumer), but as a single mode, a new mode which transcends jurisdictional constraints. Such constraints may still be appropriate for modal (and even multimodal) shipping of
the type which lends itself to joint rates, joint carriage, joint responsibility and joint agency surveillance.

Perhaps the very use of the term "intermodal" poses a problem. To think in terms of the nature of the shipment rather than the multi-modal nature of the carriage may be a more meaningful base upon which to examine what must be a basic policy shift. Since through routing is the major benefit of modern transportation techniques, "Thruship" or some other variation of terms relating to the shipment, rather than the carriage, might be appropriate.

Once recognition is given the unitary nature of "thruship", the Congress may indeed be able to structure policy which is not based on a need for harmony with the policies stated in the Shipping Act or the Interstate Commerce Act, but which is based on the benefits to commerce and to the consuming public of "thrushipping". It may well be that "thrushipping" requires no regulation.
Notes

1. Hearings on Intermodal Transportation, Committee on Merchant Marine and Fisheries, 92 Congress, 2d Session, p.15.


4. 46 C.F.R. 514.4(b)(1).


7. See note 2, supra.


11. Statement of Miriam E. Wolff, Port Director, Port of San Francisco before the Committee on Merchant Marine and Fisheries, September 25, 1972, San Francisco, Calif.


16. See note 14, supra.


19. Id.


26. See note 13, supra, at 56.


30. See note 21, supra.

32. See note 17, supra.


34. Id.

35. 24 Stat. 379 (1887).

36. See, Hill v. Nashville C. & St.L.Ry., 44 ICC 582 (1917); Lykes SS. Co., v. Commercial Union, 13 ICC 310 (1908); Pacific Mail SS. Co. v. Western Pacific Ry., 251 Fed. 218 (9th Cir. 1918).

37. 41 Stat. 498 (1920).

38. See note 18, supra.


41. 64 Stat. 574.

42. 84 MCC 5 (1960).

43. 54 Stat. 901 et seq. (1940).

44. 54 Stat. 899 (1940), 49 U.S.C. preceding sec. 1.

45. 54 Stat. 929, sec. 302(i)(3); 49 U.S.C. 902.

46. See note 23, supra.


49. Id., at (f).

50. See note 44, supra.

51. Hearings on Intermodal Transportation, Committee on Merchant Marine and Fisheries; HR Docs. 92-33, 93-41, 94-37.
52. Id., 94-37 at 109.
53. Ibid.
54. Id., at 110.
55. See note 51, supra, 93-41 at 120-121.
56. See note 52, supra.
58. FORBES, April 1, 1968, p. 31.
60. Id. at 2.
63. Intermodal Service to Portland, Oregon, FMC Docket 70-19 (1973).
65. See note 52, supra, at 112.
70. See note 66, supra.
73. Id.
75. 46 C.F.R. 522.2(a)(6); G.O. 24, 33 F.R. 11656, Aug. 16, 1968.

76. 46 D.F.R. 522.6(f).

77. See note 39, supra.

78. 49 C.F.R. 1307.49.

79. 351 ICC 491 (1976).

80. Id., at 492-493.

APPENDIX A: Federal Maritime
Commission Tariff Example

MID-PACIFIC FREIGHT FORWARDERS

LOCAL FREIGHT TARIFF NO. 7

Bearing

RATES AND CHARGES

On

Freight, All Kinds, In Freight Containers
As Described Below

And

RATES AND REGULATIONS RELATING THERETO

Between

Los Angeles, Oakland, San Diego, and San Francisco, California, Portland, Oregon
And Seattle, Washington

And

Honolulu, Kahului, Kilo and Nawiliwili, Hawaii

ISSUED: March 31, 1972
EFFECTIVE: May 10, 1972

ISSUED BY: RAYMOND E. BROWN, PRESIDENT
3770 E. 26th STREET
VANCOUVER, CALIFORNIA 90023
### CORRECTION NUMBERS FOR TARIFF

Upon receipt of revised or new pages a check mark should be placed opposite the "Correction Number" (shown below) corresponding to number shown in lower left hand corner of new revised page. If "Correction Numbers" are checked properly as received, check marks will appear in consecutive order with no omissions. If check marks indicate that a "Correction" has not been received, request should be made at once for a copy of same.

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**Section 1 - Rules and Regulations**

- **Ad Valorem:**
- **Advancing Charges on Shipments:**
- **Articles of Less Value than Freight Charges:**
- **Bills of Lading:**
- **C.O.D., Partial Delivery, Etc.:**
- **Collection of Charges:**
- **Collect on Delivery or order Notify Shipper:**
- **Exceptions to General Application of Tariff:**
- **General application of Rates:**
- **Gross Weight versus Cubic Measurement:**
- **Impracticable Operation:**
- **Order Bill of Lading:**
- **Refused or Unclaimed Freight:**
- **Service:**
- **Terms and Conditions which together with Provisions of the Fares Herein Constitute the Contract of Carriage:**
- **Weight and Cubic Feet to be shown on Bill of Lading:**

**Section 2 - Specific Commodity Rates:**

For explanation of abbreviations, reference marks or symbols, see Page 3.

**ISSUED: March 31, 1972**

**EFFECTIVE: May 10, 1972**

**ISSUED BY: RAYMOND L. BROWN, PRESIDENT**

**3770 E. 26th STREET**

**VERNON, CALIFORNIA 90233**
## Local Freight Tariff No. 7

<table>
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<th>LOCATION OF SHIPPER'S TERMINAL</th>
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<td>To Hawaii</td>
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### EXPLANATION OF ABBREVIATIONS, REFERENCES MADE IN symbols

- AQ - Any Quantity (see Definition of Technical Terms, Page 4)
- Cal. or Calif. - California
- C.O.D. - Collect On Delivery
- F - Freight
- FMC - Federal Maritime Commission
- lb. or lbs. - Pound or Pounds
- min. - Minutes
- No. of Ros. - Number of Reasons
- Ores. - Oregon
- Wt. - Weight
- Wash. - Washington
- ▲ - Reduction
- ▲ - Increase
- ▲ - Change in wording resulting in neither increase nor reduction in charges
- ◊ - Addition
- ◊ - No Change in Rate
- ◊ - And
- ¢ - Cent or Cents
- $ - Dollar or Dollars
- % - Per Cent

For explanation of abbreviations and reference marks or symbols, see Page 3.

**ISSUED:** March 31, 1972  
**EFFECTIVE:** May 10, 1972

ISSUED BY: RAYMOND E. ROACH, PRESIDENT  
3770 E. 26 STREET  
VERNON, CALIFORNIA 90203
The following terms when used herein shall have only the meanings designated:

(A) All or ANY QUANTITY means any quantity of the same commodity or mixed commodities.

(B) CARRIER as used herein, refers to Mid-Pacific Freight Forwarders.

(C) CONSIGNEE means the person, firm or corporation shown on the shipping document as the receiver of the property transported by the Carrier.

(D) FREIGHT CONTAINERS means a box, not owned or furnished by the Carrier, into which smaller packages are loaded for transportation, the dimensions of which are not greater in length, width or height than is permissible to be transported over the Public Highways in the State of California, Oregon, and Washington, and having not less than 60 cubic feet of space, inside dimensions.

(E) HOLIDAYS means New Year’s Day (January 1), Washington's Birthday (the third Monday in February), Memorial Day (the last Monday in May), Fourth of July, Labor Day (the First Monday in September), Thanksgiving Day, the Day after Thanksgiving, December 24 and Christmas Day (December 25), and within Pacific Coast Port Areas, Admission Day, and within the Hawaiian Islands Port Areas, the 26th Day of March (Easter Day), the Friday preceding Easter Sunday (Good Friday), the 11th Day of November (Veterans Day), and the 15th Day of June (Juneteenth Day). The term “holiday” also means any full day designated as a holiday nationally by statute or by proclamation or such holidays as are designated by applicable collective bargaining agreements. When a holidays falls on a Sunday, the following Monday will be considered as a holiday.

(F) PACKAGE OR PACKAGES means any container other than trucks, or in shipping form other than “in bulk”, or “on skids other than lift truck skids”, providing such container or form of shipment will render the transportation of the freight reasonably safe and practicable.

(G) POINT OF DESTINATION as used in this Tariff, means the precise location at which goods are delivered in accordance with the terms and conditions of the Mid-Pacific Freight Forwarders Bill of Lading.

(H) POINT OF ORIGIN as used in this Tariff, means the precise location at which goods are physically received by Mid-Pacific Freight Forwarders or its authorized agents for transportation.

(I) SHIPMENT means a quantity of property physically tendered by one consignor at one point of origin at one time for one Consignee at one point of destination, for which a single shipping document has been issued.

(J) TERMINAL shall be the carrier’s established place of business as shown on Page 3.

For explanation of abbreviations, reference marks or symbols, see Part 3.
Local Freight Tariff No. 7

### Rules and Regulations

**General Application of Rates**

Except as otherwise provided in individual items of this tariff:

**Terminal to Terminal Rates**

(A) Rates published in this tariff apply between carrier's terminals at San Francisco, California; Oakland, California; San Diego, California; Los Angeles, California; Portland, Oregon and Seattle, Washington, on the one hand and on the other hand, carrier's terminals at Honolulu, Kahului, Hilo and Haveliwilti, Hawaii and do not include pickup at origin or delivery at destination.

**Accessorial Charges Not Included in Rates**

(B) Rates provided herein do not include tolls, loading or unloading or rail cars or floating equipment or trucks, switching of rail cars, lightage, transfer, storage, rail car demurrage, or any other accessorial charges except as otherwise provided for in this tariff.

**Marine Insurance**

(C) Rates provided herein include Marine Insurance when requested.

**Proportional Rates**

(D) Rates provided herein will, subject to the rules set forth in this tariff, also apply as proportional rates on traffic received from or delivered to carrier's who are not parties to this tariff.

**Protection Against Heat or Cold**

(E) Except as otherwise provided herein, the rates published in this tariff, do not include refrigeration or heated space service.

**Taxes**

(F) Rates provided herein do not include any Federal or State taxes applicable to freight charges.

**Weight or Measurement Rates**

(G) Where rates are published herein on a weight or measurement basis, the rate giving the greater revenue to the carrier will be applied. Except as otherwise provided, the application of gross weight and or cubic measurements will be determined as provided in item 30.

**Wharfage**

(H) Rates named in this tariff include wharfage.

**Shipping Weights**

(I) Shipping weights or measurements shown on Bills of Lading by Shippers are subject to checking by the Carrier, and the actual scale weight or cubic measurement of the shipment as determined by the Carrier will govern the Billing.

### Exceptions to General Application of Tariff

This tariff is subject to the following conditions and exceptions:

1. The rates published in this tariff are net rates and the carrier will not pay freight brokerage fees or commissions to any person, firm or corporation.

2. Carriage of freight which is subject to Prior Booking Arrangements:
   (a) Explosives (including detonating fuses, dynamite and all other Class A explosives).
   (b) Articles which in the judgment of carrier is objectionable or contaminating to other cargo and inflammable articles, or articles which because of size or weight must be given special handling.

For explanation of abbreviations, reference marks or symbols, see Page 3.

**Issued:** March 31, 1972  
**Effective:** May 10, 1972

**Issued By:** RAYMOND E. BROWN, PRESIDENT  
3770 E. 26th STREET  
VERNON, CALIFORNIA 90058
The following articles or property will not be accepted for transportation nor as premiums accompanying other articles:

(a) Ammunition, small arms and high explosive shells.
(b) Animals, live, domestic or wild (including pets), or carcasses.
(c) Articles or parts thereof, the transportation of which is prohibited in Interstate Commerce, or the transportation of which into or out of the District of Columbia, a Territory, State or sub-division thereof or U.S. Coast Guard Regulations.
(d) Articles or parts thereof, which are permitted by law to be transported to or from State, to or from another State (Gambling Devices, for example - see Public Law 906-851 Congress), will only be accepted when the shipper certifies in writing at the time of shipment, that such transportation is permitted by law and that all packages in the shipment are actually marked in accordance with the requirements of the law.
(e) Bank bills, coin or currency; deeds, drafts, notes or valuable papers of any kind; jewelry; postage stamps or letters and packets of letters with or without postage stamps affixed; precious metals or articles manufactured therefrom; precious stones; revenue stamps; or other articles of extraordinary value.
(f) Corpses or cremated remains.
(g) Dangerous Articles, viz.: Cargo requiring red or white or poison label stickers; radioactive materials, NOS.
(h) Decorations, viz.: Boughs; Christmas trees; plants or trees, natural, preserved.
(i) Eggs, hatching.
(j) Fireworks of any description.
(k) Freight transported in bulk (not packaged).
(l) Fruit or vegetables, fresh.
(m) Meats, fresh; or poultry or rabbits, dressed.
(n) Nursery stock.
(o) Poultry or pigeons, live (including birds, chickens, ducks, pheasants, turkeys and any other fowl).
(p) Silver articles or ware, sterling.
(q) Shipments measuring more than 39 feet in length and/or 9 feet in height or width.
(r) The transportation of livestock.
(s) The transportation of used property, viz.: Househould goods or office or store fixtures and equipment not released to valuation of ten cents per pound.
(t) Except as otherwise provided herein, articles tendered for transportation will be refused for shipment unless in such condition and so prepared for shipment as to render transportation reasonably safe and practicable. Provisions for the shipment of articles not enclosed in containers does not obligate the carrier to accept such articles or offer for transportation when enclosure in a container is reasonably necessary for protection and safe transportation.

For explanation of abbreviations, reference marks or symbols, see Page 3.

ISSUED: March 31, 1972
EFFECTIVE: May 10, 1972

ISSUED BY: RAYMOND E. BROWN, PRESIDENT
3770 E. 26th STREET
VERNON, CALIFORNIA 90052
### RULES AND REGULATIONS (CONTINUED)

#### GROSS WEIGHT VERSUS CUBIC MEASUREMENT

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<tr>
<td>A-7</td>
<td>Gross Weight Versus Cubic Measurement</td>
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</table>

- **(A)** Charges assessed on a weight basis shall be computed on gross weight of the shipment. No allowance shall be made for the weight of the package or packaging.
- **(B)** Charges based on cubic measurement will be assessed on the total cubic footage of the shipment, computed on the gross or overall cubic measurement of the individual pieces or packages.

Cubic measurement for the individual pieces or packages will be computed in accordance with the following rules:

1. All fractions under one-half inch are dropped.
2. All fractions over one-half inch are extended to the next full inch.
3. Where there is a fraction of exactly one-half inch in one dimension, it is extended to the next full inch.
4. Where there are fractions of exactly one-half inch in two dimensions, the one in the smaller dimension is extended to the next full inch and the other is dropped.
5. Where there are fractions of exactly one-half in three dimensions, those in the largest and smallest dimensions are extended to the next full inch and the other dropped.

When a total cubic footage of the shipment contains a fraction of a cubic foot, such fractions when less than one-half cubic foot may be dropped, when such fractions are one-half cubic foot or over, such fractions must be extended to the next cubic foot.

#### AD VALOREM

The rates named in this tariff, except as otherwise herein specifically provided, are based on valuation of the goods at their actual invoice cost, or where there is no invoice, the value of the goods at time and place of shipment, but in either case not exceeding $500.00 per package or, in case of goods not shipped in packages per customary freight unit. Shipments containing packages exceeding $500.00 per chargeable valuation, not taken.

#### BILL OF LADING

- **(A)** Bills of Lading must show the name and address of both Consignor and Consignee; and on shipments consigned "To Order" the name and address of the party to be notified must also appear.
- **(B)** Shipments on straight Bills of Lading may be delivered by Carrier without requiring surrendered to Carrier before delivery must secure an Order Bill of Lading.
- **(C)** Consignors requiring that original Bill of Lading property endorsed be surrendered to Carrier before delivery must secure an Order Bill of Lading.
- **(D)** If Order Bill of Lading has been lost, delayed or otherwise not immediately available, carrier may deliver shipment to a party claiming in writing to be lawfully entitled to possession of the property upon security in the form of:
  1. Currency or bank cashier's check in an amount equal to 125 percent of the invoice value of the property; or at carrier's option.
  2. A bond of indemnity with corporate surety duly authorized to write surety bonds, in an amount equal to twice such invoice value.
# Local Freight Tariff No. 7

**Rules and Regulations (Continued)**

**HYPOTHETICAL OPERATIONS**

Nothing in this tariff shall require Carrier to receive, deliver, transport, or arrange for the transportation of goods when conditions prevent it from doing so because of fire, acts of God, acts of war, riots, civil commotions, and strikes, lockouts, stoppages or restraint of labor, or other labor disturbances.

**SERVICE**

Carrier does not agree to transport shipments on any particular vessel nor in time for any particular market and will not be responsible for losses occasioned by unavoidable delays, but agrees to use all reasonable diligence in transporting all shipments.

**COLLECTION OF CHARGES**

(A) Except as otherwise provided in this Item, transportation and accessorial charges shall be collected by the carrier prior to relinquishing physical possession of shipments entrusted to them for transportation.

(B) Upon taking precautions deemed by it to be sufficient to assure payment of charges within the credit period specified, carrier may relinquish possession of freight in advance of the payment of the charges thereon and may extend credit in the amount of such charges to those who undertake to pay them, such persons herein being called Consignors, for a period of 7 days, excluding Sundays and legal holidays other than Saturdays half-holidays. When the freight bill covering a shipment is presented to the consignor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following delivery of the freight. When the freight bill is not presented to the Consignor on or before the date of delivery, the credit period shall run from the first 12 o'clock midnight following the presentation of the freight bill.

(C) Freight bills for the transportation and accessorial charges shall be presented to the Consignor within 7 calendar days from the first 12 o'clock midnight following delivery of the freight.

(D) Consignors may elect to have their freight bills presented by means of the United States mail, and when the mail service is so used the time of mailings by the Carrier as evidenced by the postmark, shall be deemed to be the time of presentation of the freight bills.

(E) The mailings by the consignor of valid checks, drafts, or money orders, which are satisfactory to the carrier, in payment of freight charges within the credit period allowed such Consignor may be deemed to be the collection of the charges within the credit period for the purpose of these Rules. In case of dispute as to the time of mailings, the postmark shall be accepted as showing such time.

**REFUSED OR UNCLAIMED FREIGHT**

(A) Except as otherwise provided, all freight which Carrier may, after diligent effort, be unable to deliver within forty-eight hours from the time notification of its arrival has been given personally, by telephone, or deposit of postal card in the United States mail, properly addressed to the address shown on shipping receipt, will be held as unclaimed, and Carrier's liability thereafter becomes that of warehousman only. (See Note)

(B) Carrier reserves the right, after notification to shipper, to thereafter place such freight in public storage, all charges accruing at Shipper's or Consignee's expense and Carrier's liability thereafter terminates.

NOTE: When portable shipment is refused or unclaimed at destination, Consignor will be notified by wire at his own expense. If disposition is not furnished promptly, or if freight is likely to be damaged or to deteriorate by reason of delay, shipment will be sold and all transportation and other charges incidental to transportation and sale will be paid out of the amount realized from the sale, and the balance, if any, will be remitted to the consignor or owner. Portable shipments will not be returned to consignor except upon his specific instructions.

---

**ISSUED:** March 31, 1972  
**EFFECTIVE:** May 10, 1972  
**ISSUED BY:** Raymond E. Brown, President  
**VERNON, CALIFORNIA 90053**

For explanation of abbreviations, reference marks or symbols, see page 1.  

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**Local Freight Tariff No. 7**

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<td>Carrier does not agree to transport shipments on any particular vessel nor in time for any particular market and will not be responsible for losses occasioned by unavoidable delays, but agrees to use all reasonable diligence in transporting all shipments.</td>
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**COLLECTION OF CHARGES**

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<td>Freight bills for the transportation and accessorial charges shall be presented to the Consignor within 7 calendar days from the first 12 o'clock midnight following delivery of the freight.</td>
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**REFUSED OR UNCLAIMED FREIGHT**

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<td>Carrier reserves the right, after notification to shipper, to thereafter place such freight in public storage, all charges accruing at Shipper's or Consignee's expense and Carrier's liability thereafter terminates.</td>
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**Note:** When portable shipment is refused or unclaimed at destination, Consignor will be notified by wire at his own expense. If disposition is not furnished promptly, or if freight is likely to be damaged or to deteriorate by reason of delay, shipment will be sold and all transportation and other charges incidental to transportation and sale will be paid out of the amount realized from the sale, and the balance, if any, will be remitted to the consignor or owner. Portable shipments will not be returned to consignor except upon his specific instructions.
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<th>BILL OF LADING</th>
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<td>WEIGHT AND CUBIC FEET TO BE SHOWN</td>
<td>ITEM NO.</td>
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<td>On each bill of lading there must be shown separately for each shipment the total weight in pounds and total measurements in cubic feet. (See Note 1).</td>
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NOTE 1: To ascertain the "cubic feet" multiply the three extreme dimensions of the package and where the result is in cubic inches, divide by 1,728 to reduce to cubic feet.

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Charges directly incidental to the transportation of shipments, on which Carrier receives a haul will be advanced to connecting railways, shippers, transportation companies, warehouses or storage houses, but only when, in the estimation of Carrier, the shipment is worth in excess of the express or other charges at forced sale. The cost of the article shipped, or any part thereof, must not in any case be advanced, in case the shipment is of character on which pre-payment or guarantee is required by tariff or classification governing, advances will be subject to the same requirements. Parties to whom such charges are advanced must furnish satisfactory guarantee covering refund thereof in event collection cannot be made at destination.

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**ARTICLES OF LESS VALUE THAN FREIGHT CHARGES**

Any shipment which in the judgment of the carrier, would not, at forced sales, bring the amount of freight charges at destination must be prepaid or guaranteed by the shipper in writing.

**COLLECT ON DELIVERY OR ORDER NOTIFY SHIPMENTS**

(A) In the handling of C.O.D. shipments Carrier shall, promptly upon collection of any and all monies, and in no event later than ten (10) days after delivery to the Consignee, unless Consignor, in writing instructs otherwise, remit to Consignor all monies collected by it on such shipments.

(B) The charge for collecting and remitting the amount of C.O.D. bills collected on C.O.D. shipments or handling shipments made on Order Notify (Sight Draft), basis shall be as follows:

One percent (1%) of the amount collected or amount for which sight draft is drawn but not less than $3.57.

(C) The full amount of the C.O.D. and all transportation and other charges is payable in cash, cashier's certified or traveler's check, or by any bank, express, or postal money order, at the time of delivery.

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**S.O.D. PARTIAL DELIVERY, ETC.**

Examination, trial, or partial delivery of C.O.D. shipments will not be permitted. All amounts must be paid at the time of delivery as provided in Item 140 herein.

<table>
<thead>
<tr>
<th>ITEM NO.</th>
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<tbody>
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<td>150</td>
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</table>

For explanation of abbreviations, reference marks or symbols, see Page 2.

**ISSUED:** March 31, 1972  
**EFFECTIVE:** May 10, 1972

**ISSUED BY:** RAYMOND E. BROWN, PRESIDENT  
3770 E. 26th STREET  
VERNON, CALIFORNIA 90058

<table>
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<th>ITEM NO.</th>
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</table>
**MID-PACIFIC FREIGHT FORWARDERS**

**Local Freight Tariff No. 7**

**Section 1**

**RULES AND REGULATIONS (CONTINUED)**

**ITEM NO. 200 - BILL OF LADING**

**UNIFORM THROUGH EXPORT BILL OF LADING**

**MID-PACIFIC FREIGHT FORWARDERS**

**ORDER BILL OF LADING**

**均匀通过出口提单**

**MID-PACIFIC FREIGHT FORWARDERS**

** rules and regulations (continued)**

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<tr>
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<tr>
<td>Address</td>
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**SHIPS AND CARGO**

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**TRANSPORTATION CHARGES**

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<td>Terminal charge</td>
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<td>Consolidation fee</td>
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<td>Forwarder's fee</td>
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<td>1st Destination - Commercial port fees</td>
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<tr>
<td>Delivery to consignee</td>
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<tr>
<td>MISC. Service charges</td>
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<td>SHIPPER'S CSS.</td>
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<td>Handling</td>
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<td>WHARFAGE</td>
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**INSURANCE**

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**Charges**

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</table>

**Collect**

**Delivery Agent**

**ISSUED:** March 31, 1972

**EFFECTIVE:** May 10, 1972

**ISSUED BY:** Raymond D. Beaman, President

3770 S. 26th Street

Vernon, California 90303

For explanation of abbreviations, reference marks or symbols, see page 3.
CLAUSE BAILMENT: RECEIVED from the Shipper herein named, the goods or packages said to contain goods herein mentioned, transparent good order and condition, except as otherwise indicated herein, to be transported to the port of discharge, or so near thereunto as the ship can get, lie and leave always in safety and affixed under all conditions of tide, water and weather, and there to be delivered to the Consignee or on-carrier, as the case may be, on payment of all charges due and owing hereunder and on due performance of all obligations of the shipper and consignee and each of them.

It is agreed that the receipt, custody, carriage and delivery of the goods are subject to the terms appearing on the face and back of this bill of lading, whether printed, typed, stumped or written, which shall govern the relations, whatsoever they may be, between Shipper, Consignee and the Carrier, master and ship in every contingency, wherever and whatsoever occurring and whether the Carrier be acting as such or as bailiff, and also in the event of, or during deviation, or of conversion of the goods or of unseaworthiness of the ship at the time of loading or inception of the voyage or subsequently. The terms of this bill of lading shall not be deemed waived by the Carrier except by express waiver, signed by a duly authorized agent of the Carrier.

As the terms are used herein:

1. Without limitation of any definition in any applicable Carriage of Goods by Sea Act, Ordinance or Rules herein mentioned, and accept when inconsistent with the context hereof, the work "ship" shall include the vessel named in this bill of lading, any substituted vessel, craft, lighter or other means of conveyance whatsoever owned, chartered, operated or controlled and used by the Carrier in the performance of his contract; the work "Carrier" shall, except in the provision against waiver of the terms hereof, include the ship as defined herein, her owner, operator or demise charterer and also any time charterer or person to the extent bound by this bill of lading whether acting as Carrier or bailie; the word "on-carrier" shall include any person, other than a person included in the word "Carrier" above, owning, chartering or otherwise operating any vessel, craft, lighter or other means of transportation by which the goods are to be or may be forwarded or trans-shipped to final destination or otherwise as provided in this bill of lading, and shall also include any such vessel, craft or lighter and the master thereof; the word "Shipper" shall include the person named as such in this bill of lading and the person for whose account the goods are shipped, the holder of this bill of lading, properly endorsed, and the owner or consignee of the goods; the word "Consignee" shall include the holder of this bill of lading properly endorsed or the person to whom or on behalf of whom any person named as consignee or on-carrier, or the person who owns or is entitled to or receives delivery of the goods; the word "person" shall include an individual, corporation, partnership or any other entity; the word "goods" shall include the packages said to contain goods and the goods themselves herein mentioned or described; the word "package" shall include any piece or shipping unit; the word "charges" shall include freight, dead-freight, subsistence, demurrage, storage, advance charges, general average or salvage obligations or both, and all other expenses, costs, indemnities, damages or money obligations whatsoever payable by or chargeable to or for account of the goods, Shipper or Consignee or any of them, regardless of whether sustained, incurred or paid by the Carrier in the first instance; the words "at the risk and expense of the goods" mean, in addition, at the risk and expense of the Shipper and Consignee; the words "loss or damage" shall include, in addition to physical loss of or damage to the goods, any loss or damage whatsoever sustained by the Shipper or Consignee in connection with the goods, including that by reason of delay, nondelivery, misdelivery, deviation or conversion; the words "transshipment and/or forwarding by any means" shall mean and refer to transportation by rail, water, land or air or by two or more of such means and whether operated by the Carrier or others or whether under another flag and the words "government" and "authorities" include the United Nations and any other similar international organization, and also other persons having or purporting to exercise power, control, or other functions of a governmental or military nature whether in the sense of a sovereign state or of a political subdivision thereof.
2. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the Carrier by any of its rights, immunities or limitations or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

The provisions stated in said Act (except subdivision (2) (j) of Sec. 4 thereof and except as otherwise specifically provided herein) shall govern before the goods are loaded on and after they are discharged from the ship and throughout the entire time the goods are in the custody of the Carrier. The Carrier shall not be liable in any capacity whatsoever for any loss or damage occurring before the goods are loaded on or after they are discharged from the ship, arising or resulting from hostilities, or from acts of sabotage or of malicious persons, or from strikes, lockouts, stoppages or restraints or lack of labor or labor troubles from whatever cause, whether of employees of the Carrier or others, and whether partial or general, or whether existing or anticipated at the time of delivery of the goods to the Carrier or at any other time.

The Carrier shall not be liable in any capacity whatsoever for any loss or damage occurring while the goods are not in the actual custody of the Carrier.

This bill of lading, if issued in a locality where there is in force a Carriage of Goods by Sea Act or ordinances or statutes of a similar nature to the "International Convention for the Unification of Certain Rules Relating to Bills of Lading," dated at Brussels, August, 1924, is subject to the provisions of such Act, ordinance or statute and rules thereto annexed. There shall be no inference or negligence or unseaworthiness or lack of due diligence from the fact, nature or extent of loss or damage. The terms of this bill of lading shall be separable, and if any part or term thereof is invalid or unenforceable, such circumstances shall not affect the validity or enforceability of any other part or term thereof.

The Carrier shall be entitled to all limitations of or exemption from liability provided in or authorized by Sections 4281 to 4286, inclusive, and Section 4289 of the United States Revised Statutes and amendments thereto. The Carrier shall also be entitled to all limitations or exemptions from liability included therein as to any person or to Carriers by any statute or rule or law for the time being in force in the United States or any other country or place whose laws shall be applicable.

This bill of lading shall not be deemed to be or give rise to a personal contract of the Carrier. Nothing in this bill of lading, expressed or implied, shall be deemed to waive or operate to deprive the Carrier of or lessen the benefits or rights of any such limitations or exemptions.

4. The scope of the voyage contemplated in the carriage of cargo, passengers, mail, baggage and other property, or any of them, in the carrier's general trade which, for such or any other incidental purpose may or may not include all usual, scheduled, geographic, direct, customary, ordinary or advertised routes, ports or places, whether named in this bill of lading or not, and other routes, ports, places or procedures referred to below. As often as and for any reason whatsoever the Carrier or master may deem advisable, including but not limited to the loading or discharge of cargo, mail, baggage or other property whatsoever, or the embarking or landing of passengers, crew, workmen or other persons whatsoever, or for the fueling, supplying or repair of the ship or the care or safety of ship, cargo or persons, regardless of whether such reason or action relates to the current or prior, intermediate, subsequent or overlapping voyage, or to matters occurring, known or anticipated before or after receipt or loading of the goods, and whether or not the voyage may be commenced, the ship, at any stage of the voyage and without notice to Shippers or Consignees: (a) may proceed under any conditions of sea and weather, return to the loading port, depart from or change the intended route and proceed in any direction by any other route or routes whatsoever, proceed or return to or call at or stay or delay at any ports or places whatsoever in any rotation, sequence or order, backward or forward or otherwise, return to port of discharge, or make calling at any ports or places, regardless of whether such routes, ports or places or any of them may be within...
or in a direction contrary to or outside of or beyond the advertised, scheduled, geographic, direct, customary, usual or ordinary route or itinerary; (b) may also, at any time or place whatever, with or without the goods aboard, proceed under sail or in tow, adjust compasses, carry livestock, deck cargo and dangerous goods, drydock, go on ways or to repair yard, shift berth or places in port, remain in port, lie on bottom or aground in berths, make trial trips or tests, take fuel or stores at any place, lie at anchor or moorings, sail in or out of ports or elsewhere without pilots whether or not pilots are compulsory or customary and available, proceed under tow, tow and assist vessels to any situation, or save or attempt to save life or property whether the property be that of the Carrier or others, including the liberty to depart from her course to any extent for any of such purposes, the provisions of this clause are not restricted by any words of this bill of lading, whether written, typed, stamped, printed or incorporated herein.

5. In any situation whatsoever and wheresoever occurring and whether existing or anticipated before the commencement or during the voyage, which in the judgment of the Carrier or the master is likely to give rise to risk of capture, seizure, arrest, detention, injury, damage, delay, delay to strikes, labor disturbances or any other causes whatsoever, danger or disadvantage to or loss of the goods, the ship or any part of her cargo or any of her passengers or other persons on board or to make it unsafe, imprudent, inadvisable, or unlawful for any reason to receive, keep or load the goods or commence or proceed on or continue the voyage or to enter or discharge or disembark the goods or passengers at the port of discharge, or to give rise to delay or difficulty in arriving, discharging, or disembarking at or leaving the port of discharge or the usual, agreed or intended place of discharge or debarkation in such port, the Carrier or the master, before, during or after receipt or loading of the goods or before the commencement of the voyage may decline to receive, keep or load or may discharge the goods or any part thereof, may require the Shipper or other person entitled thereto, to take delivery of the goods at port of shipment or elsewhere and if he fails to do so, may warehouse or otherwise store or hold the goods or any part thereof, at the risk and expense of the goods; or the Carrier or master, whether or not the ship is proceeding toward or entering or attempting to enter the port of discharge or reaching or attempting to reach the usual agreed or intended place of discharge therein or attempting to discharge the goods there, may discharge the goods into depot, lazaretto, craft or other place; or the ship may proceed or return, directly or indirectly to or stop at any port or place, and discharge the goods or any part thereof, at any such port or place into craft, or into or in any other place, whatsoever, or the Carrier or the master may retain the goods, or any part thereof, on board until the return trip or until such time as the Carrier or the master deems advisable and discharge the goods, or any part thereof into craft or into or on any place whatsoever at port of shipment or elsewhere; or the Carrier or the master may, at port of shipment or elsewhere; substitute another vessel or may transfer or forward the goods, or any part thereof, by any means, but always at the risk and expense of the goods. Any measure or action, authorized by this clause may be taken without notice to the Shipper or Consignees. Whenever the goods are discharged from the ship or are warehoused, stored or held ashore, as herein provided, they shall be at their risk and expense, such discharge or other procedure as the case may be shall constitute complete delivery of the goods and performance of this contract by the Carrier who shall be free of further responsibility, any measures or action with respect to the goods taken thereafter by the Carrier or the master, shall be considered as having been taken by it and or as agent for the Shipper and Consignees at their risk and expense, but without prejudice to any lien of the Carrier. For any service rendered as herein provided, the Carrier shall be entitled to extra compensation and if in following the measures or actions authorized herein, the length or duration of the voyage is increased, the Shipper and Consignees shall pay proportionate additional freight.

6. The Carrier, master and ship shall have liberty to comply with any orders, directions, regulations, recommendations, authorizations, requirements, requests or suggestions, including any such which may be given or affected pursuant to or by reason of any agreement or undertaking executed from or considered advisable by the Carrier or master, as to priorities, allocations, reactor handling, docking, embarking, unembarking, steaming, manning,
## Section 1

### TERMS AND CONDITIONS WHICH TOGETHER WITH PROVISIONS OF THE FACE HEREOF CONSTITUTE THE CONTRACT OF CARRIAGE (CONTINUED)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DESCRIPTION</th>
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<tr>
<td>1</td>
<td>The Carrier, in its or his discretion, at any time and place, whether or not the reason for its or his action or inaction was known at time if receipt of the goods, once or otherwise and without notice to Shipper or Consignee: (a) may substitute another ship, whether owned, operated or charted by the Carrier or others, or of a different flag, or of a different type or speed, or whether before during or after loading the goods or any part thereof, whether the substituted ship arrives or departs or is scheduled to do so before or after the ship named herein; (b) may, in case the goods or any part thereof are shut out from the ship named herein or if the loading or the ship is or is likely to be delayed, or have the ship proceed without the goods or a part thereof and the goods may be forwarded in whole or in part by any means to or toward the port of discharge at the risk and expense of the goods; (c) may, if the goods wherever situated, or any part of them, are damaged or lost or in danger of damage or loss or becoming worthless or subject to charges disproportionate to their value, or have suffered damage or because of the condition of the goods or for any reason deemed sufficient, take any measures to save, protect, handle, recondition, recover possession of, sell, return to shipper, have stored, or otherwise deal with or dispose of the goods or any part of them; or forward the goods or any part of them by subsequent vessel or any means to or toward point of discharge, and all such measures procedures or acts shall be at the shipper's risk and expense of those goods; (d) may, in case of lack of discharging facilities or a failure to find or identify the goods at the port of discharge or elsewhere, carry the whole or any part of the goods beyond the port of discharge and return the goods in the ship or forward the goods in whole or in part to the port of discharge by any means; (e) may, if there shall be a forced interruption, abandonment or frustration of the voyage at the port of loading or elsewhere or because of the need of repair of the ship or of the inability of the ship to promptly prosecute the voyage at the port of loading or elsewhere, substitute another vessel or may forward the goods or any part thereof by any means at the risk and expense of the goods. The Carrier is not required so, and does not undertake to deliver the goods at port of discharge or elsewhere at any particular time or to meet any market or in time for any particular purpose or use nor does it undertake that the ship or substitute ship will sail or arrive at any stated or scheduled time. The Carrier shall not be liable for any loss or damage arising or resulting from delayed or early arrival of the goods or any damage or expense incurred by the Shipper or Consignee because of any change in date or time of sailing or arriving. Any under or over carriage shall not be considered a deviation, nor shall it vitiate any of the terms of this bill of lading. All forwarding shall be in accordance with and in the manner permitted by the terms of this bill of lading, including clause in hereof.</td>
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### Notes

- **ISSUED:** March 31, 1972
- **EFFECTIVE:** May 10, 1972

**FOR EXAMPLE OF ABBREVIATIONS, REFERENCE MARKS OR SYMBOLS, SEE PAGE 2.**
8. The Shipper, whether principal or agent: (a) represents and warrants that the goods are properly marked, secured and packed in adequate containers and may be handled in ordinary courses without damage to the goods, ship, or other property or persons; (b) guarantees the correctness of the particulars and description of the goods and agrees to ascertain and to disclose in writing on shipment, any condition, character or characteristic of the goods of, or which might indicate they are of, an inflammable, explosive, noxious, hazardous or dangerous nature, or any condition, character or characteristic that may cause damage, injury or detriment to the goods, other property, the ship or persons, and the Shipper agrees to be liable for, fully indemnify the Carrier and hold it harmless in respect of any injury or death of any person, loss or damage to cargo or property, judgement, fine, claim, legal expense, or any other loss, damage, detriment, charge or expense whatsoever arising or resulting in whole or in part from the Shipper's failure to do so, or to comply with its agreements, guarantees and undertakings as aforesaid; and (c) agrees to declare in writing, on shipment the true gross weight of each piece or package, exceeding two long tons in weight, and in clearly and durably place in letters and numbers at least two inches high on the outside of each piece or package, such weight, together with the name of the port of discharge and the marks necessary to identify the goods.

If at any time the goods, whether sahore or afloat, are, in the judgement of the Carrier or master of the health or other authorities of any place, spelling, decayed, injured, offensive, unfit for further carriage or storage, or dangerous to health or other property, or if the goods are condemned or ordered destroyed by any such authorities, the goods may, forthwith and without notice, be thrown overboard, destroyed, discharged stored, put ashore at any place or aboard lighters or craft or otherwise disposed of by the Carrier, master or others, solely at the risk and expense of the goods, and the Carrier shall not be liable for any loss or damage whatsoever.

Any goods that are in fact or may be considered by any civil or military authorities or the master, inflammable, explosive, noxious, hazardous or dangerous, shipped without full disclosure, or if shipped with the knowledge and consent of the Carrier or master as to their nature and character, shall become a danger to the ship or those aboard, the goods or other property or any part thereof, may at any time or place be landed, thrown overboard, destroyed or rendered innocuous without compensation to the Shipper, Consignee or owner thereof, and extra charges and expenses, if any, for discharging, lightering, handling, caring for, disposing of or otherwise occasioned by such goods shall be borne by the goods. Goods or other articles of such nature or character may be carrier on deck, as well as any other goods whose nature or bulk requires them in the discretion of the Carrier or master to be so carried, and the same shall be carried and discharged at the risk of the goods.

The particulars and description of the goods or packages appearing in this bill of lading are furnished by the Shipper and are not conclusive on and do not constitute admission of or representation by the Carrier of the correctness of marks, numbers, quantity, measurement, weight, gauge, contents, nature, condition, condition of containers, quality, value or declared value stated herein. Single pieces or packages exceeding 4400 lbs., in gross weight or which because of shape, size, or any other nature or characteristic may be considered to be hazardous, shall be liable to pay extra charges for loading, handling, transshipping or discharging.

9. Gold, silver, specie, bullion, or other valuables, including those named or described in Sec. 4281 of the Revised Statutes of the United States will not be received by the Carrier unless their true character and value is disclosed to the Carrier and a special written agreement therefore has been made in advance, and will not, in any case, be loaded or landed by the Carrier. So such valuables shall be considered received by or delivered to the Carrier until brought aboard the ship by the Carrier and there put in the actual possession of, and a written receipt therefore is given by, the master or other officer in charge. Such valuables will only be delivered by the Carrier aboard the ship on presentation of bills of lading properly endorsed, and upon such delivery on board, the carrier's responsibility shall cease. If delivery is not so taken promptly after the ship's arrival at the port of discharge, the goods may be retained aboard or landed or carried on, solely at the risk and expense of the goods.

For explanation of abbreviations, reference marks or symbols, see Page 3.

**MID-PACIFIC FREIGHT FORWARDERS**

**Local Freight Tariff No. 7**

**TERMS AND CONDITIONS WHICH TOGETHER WITH PROVISIONS OF THE FACE HEREOF CONSTITUTE THE CONTRACT OF CARRIAGE (CONTINUED)**

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<th>Item No.</th>
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<td>150</td>
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**ISSUED:** March 31, 1972  
**EFFECTIVE:** May 10, 1972

**ISSUED BY:** RAYMOND E. BROWN, PRESIDENT

3770 E. 26th STREET  
VERNON, CALIFORNIA 90058
## Terms and Conditions Which Together with Provisions of the Face Hereof

**Section 10.** Fruits, vegetables, meats and any other goods of a perishable nature may be carried in ordinary cargo compartments or on deck and without special facilities or attention, unless the Carrier has made and inserted in this bill of lading a written agreement that such goods will be carried in a refrigerated, chilled, specially ventilated, or otherwise specially-equipped compartment. The refrigerating, chilling or ventilating machinery and any other such special equipment shall be considered part of the machinery and equipment of the ship and the terms of this bill of lading shall be applicable thereto and to the goods carried in such compartment.

Unless a special agreement is made and inserted in this bill of lading, the Carrier does not undertake and shall not be liable for failure (a) to give the goods, whether or not of a perishable nature, whether on deck, on shore, in storage, in craft, on board the ship or at any other time or place, any unusual or special care, handling, storage, or facilities not given ordinary non-perishable general cargo, and the Shipper represents and warrants the goods do not require it, or (b) to receive, keep, store, carry, discharge or deliver the goods into or in any refrigerated, chilled, cooled, ventilated, insulated, heated, drained, dry, moist, or specially equipped place, compartment or other facility.

**Section 11.** The ship is not equipped for the carriage of live animals, birds, reptiles and fish, and they are received, kept, and carried solely at Shipper's risk of accident, disease or mortality and without any warranty or undertaking whatsoever by the Carrier that the ship in seaworthy, fitted, manned, equipped and supplied for their reception, carriage and preservation. In case of loss or damage, the Carrier shall be entitled to all and the same rights, immunities, exceptions and limitations as provided in Sec. 12 subdivisions (2) (a) to (p) inclusive of the aforesaid United States Carriage of Goods by Sea Act and the corresponding provisions of any similar Act that may be applicable. In no event shall the Carrier be liable for any loss or damage to such shipments arising or resulting from any cause whatever unless due to the fault of neglect of the Carrier, and the Carrier shall not be liable for fault or neglect in the navigation or management of the ship. Except as provided above and as may not be inconsistent with the above, such shipments shall be subject to the terms of this bill of lading.

**Section 12.** The Shipper represents that the goods need not be stowed under deck unless the Shipper informs the Carrier in writing before delivery of the goods to the Carrier that under-deck stowage is required. The goods may be stowed in poop, forecastle, deckhouse, shelter deck, passenger space, storeroom, bunk space or any other covered-in-space and when so stowed shall be deemed for all purposes, including General Average to be stowed under deck.

In respect of goods carried on deck, and stated therein to be so carried, all risk of loss or damage by peril inherent in or incident to such carriage shall be borne by the Shipper and Consignee, but in all other respects the custody and carriage of such goods shall be governed by the terms of this bill of lading and the Carrier shall have the benefit of all the same rights, immunities, exceptions and limitations as contained in said Carriage of Goods by Sea Act, notwithstanding Section 1 (c) thereof, and the corresponding provision of any similar Act that may be applicable.

**Section 13.** Whenever the port to which the goods are to be transshipped or on-carried stated in this bill of lading is a place other than the "port of discharge" or in case of transshipment or abandonment of the voyage or whenever Carrier or master, in the exercise of his or his discretion considers it advisable, and although transshipment or forwarding of the goods may not have been contemplated or provided for herein, the Carrier or master may substitute another vessel or may transship or forward the goods or any part thereof by any means at the risk and expense of the goods. The Carrier or master may so substitute, transship or forward at any time or place whatsoever, whether before or after loading on the ship named herein and whether the substituted vessel or the means of transshipping or forwarding departs or arrives before the ship named herein does or is scheduled to do, and by any route whether in or outside the scope of the voyage or beyond the port of discharge or destination of the goods and without notice to the Shipper or Consignee.

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**For explanation of abbreviations, reference marks or symbols, see Page 3.**

**Issued:** March 31, 1972  
**Effective:** May 10, 1972

**Issued by:** Raymond E. Brown, President  
3700 E. 26th Street  
Vernon, California 90052
The Carrier or master may delay such substitution, transshipping or forwarding for any reason, including but not limited to avoiding a vessel or other means of transportation whether owned, chartered, operated or controlled by the Carrier or others or by any on Carrier or other means of transportation selected by the Carrier or master.

The Carrier or master in making arrangements with any person for or in connection with all transshipping or forwarding of the goods or the use of any means of transportation not used or operated by the Carrier, including, but not limited to any trucking, lightersage, transportation, storage or handling at place of transshipment or forwarding, shall be considered solely the forwarding agent of the Shipper or Consignee and without any other responsibility whatsoever or for the cost thereof. The receipt, custody, carriage and delivery of the goods by any such person or on Carrier and all transshipping and forwarding shall be subject to all the terms whatsoever of such person’s or on-Carrier’s form of bill of lading, freight note, contract or other shipping document then in use, whether or not such document is issued for the goods, and even though such terms may be less favorable to the Shipper or Consignee than the terms of this bill of lading and may contain more stringent requirements as to notice of claim or commencement of suit and may validly exempt such person or on-Carrier from all liability, including but not limited to liability for negligence, unseaworthiness, conversion or deviation. The Shipper authorizes the Carrier or master to arrange with any such person or on-Carrier that the lowest valuation of the goods or limitation of liability contained in the bill of lading or other shipping document of such person or on-Carrier shall apply even though different or lower than the valuation applicable under the terms of this bill of lading or to the carriage thereunder.

All responsibility of the Carrier in any capacity shall altogether cease and the goods shall be deemed delivered by it under this bill of lading and this contract of carriage be deemed fully performed on actual or constructive delivery of the goods to any such person or on-Carrier at port of discharge or elsewhere in case of an earlier substitution, transshipment or on-carriage.

The Shipper and Consignee shall be liable to this Carrier for and shall indemnify it against all expenses of forwarding and transshipping, including any increases in or additional freight or other charges whatever. Pending or during forwarding or transshipping this Carrier or the master may store the goods ashore or afloat solely as agent of the Shipper and at the risk and expense of the Shipper. This Carrier shall not be liable in any capacity or under any circumstances whatsoever for any loss or damage arising or occurring after the goods have been discharged from the ship, ashore or afloat and not in the Carrier’s actual custody and this Carrier shall not be responsible for the acts, neglect, delay or failure to act of anyone to whom the goods are entrusted or delivered for storage, handling, moving, transshipping or forwarding, or any service incidental thereto.

The provisions of this clause are not to be considered as restricting or restricted by any other provision of this bill of lading, but are in addition to any other rights, exception from or limitation of liability available to the Carrier under this bill of lading.

14. The Carrier or master, in the exercise of its or his discretion, may at any time, whether or not customer and without notice, lighten the goods or any part thereof, to or from the ship at the risk and expense of the goods. In making arrangements for lightage or use of craft, the Carrier or master shall be considered solely the agent of the Shipper and Consignee and without any responsibility whatsoever, the Carrier shall not be responsible for any loss or damage to the goods while on such lighter or craft or in the custody of the lighteners who shall be considered independent contractors, including, but without limitation, responsibility for the choice of, condition, seaworthiness or manning of such lighter or craft.

If the Carrier elects to lighten the goods in or with lighters or craft operated or controlled by it, the Carrier shall have the benefit of all of the terms of this bill of lading with respect to such lightage and may collect the cost thereof from Shipper or Consignee.
SECTION 1

TERMS AND CONDITIONS WHICH TOGETHER WITH PROVISIONS OF THE FACE HEREOF
CONSTITUTE THE CONTRACT OF CARRIAGE (CONTINUED)

15. The port authorities are hereby authorized to grant a general order for discharging immediately on arrival of the ship and the Carrier or master, without giving notice of arrival or discharge, may discharge the goods whether perishable or whatever their nature, directly they come to hand at or upon any dock, wharf, craft or place that the Carrier or master may select and continuously, Mondays and holidays included, at all such hours by day or by night, as the Carrier or master in his or his discretion may determine, regardless of the state of the weather or any custom of the port, the Carrier or master having the right to appoint stevedores, mastersporters or other agents and the Consignee shall receive and take delivery from ship's tackle or elsewhere as required by the Carrier or master, whether the goods are damaged, unmerchantable or have lost their identity, and shall furnish lighters, craft, refrigeration, cranes, storage, elevators and all facilities whatsoever in order to do so, all at the risk and expense of the goods and all responsibility of the Carrier shall then terminate.

When possession of the goods is received or taken by the customs or other authorities or by the operator of any lighter, craft, dock, wharf, pier, store, warehouse, refrigerator, elevator or other facility, whether selected by the Carrier, Shipper or Consignee, and whether public or private, such authority or operator shall be considered as having received possession and delivery of the goods solely as agent of the Consignee, at the risk and expense of the goods and subject to any lien of the Carrier thereon.

The Consignee does not take possession and delivery of the goods if as soon as the goods are at the disposal of the Consignee for removal, the goods shall be at their own risk and expense, delivery shall be considered complete and the Carrier may, subject to Carrier's lien, send the goods to store, warehouse, put on lighters or other craft, put in possession of authorities, dump, permit to lie where landed or otherwise dealt with or disposed of them, always at the risk and expense of the goods and the Carrier and Consignee shall pay, be liable for, indemnify the Carrier against and hold the Carrier harmless from, and there shall be a lien on the goods for any loss, damage, fine, charge or expense whatsoever, including, but not by way of limitation, the cost of preserving, protecting, handling, selling, demurrage or making whatever disposition of the goods the Carrier or master to his or his discretion, considers advisable, and all loss, damage and expense resulting from detention of the ship or her cargo that may be incurred or suffered by the Carrier by reason of the Consignee's failure or delay in taking possession and delivery as provided herein.

The Carrier shall not be required to give any notification whatsoever of arrival, discharge, or any disposition of or action taken with respect to the goods, any custom or practice of the Carrier or others to the contrary notwithstanding, though the goods are consigned to order with provision for notice to a named person and the Carrier shall not be under any responsibility for not giving any such notice.

16. The Carrier shall not be liable for delay in or failure of delivery in accordance with marks or otherwise unless the goods shall have been marked as herein required and unless such marks shall be clearly legible at the port of transshipment or of discharge. The Carrier shall not be required to separate or deliver in accordance with brands, marks, numbers, sizes or types of packages, but only in accordance with leading marks. The goods that cannot be identified as to leading marks, goods out of or separated from their containers or packages, cargo sweepings, liquid residues and any unclaimed goods not otherwise accounted for shall for the purpose of completing delivery, be allocated to the various Consignees of cargo of substantially or general like character in proportion to any apparent shortage, loss of weight or damage, and shall be accepted as good delivery. Loss or damage to goods in bulk stored without separation from other cargo in bulk of substantially or general like character shipped by the Shipper or by others shall be divided and accepted in proportion among the several shipments.

For explanation of abbreviations, reference marks or symbols, see Page 3.

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ISSUED BY: RAYMOND E. NORM, PRESIDENT
3770 S. 24th STREET
VERMONT, CALIFORNIA 90023
Liquid cargo in bulk shall be pumped aboard by Shipper as fast as ship can receive at Shipper's risk and expense so far as the ship's connection and shall be received at port of discharge at ship's connection as soon as and as fast as Carrier is prepared to deliver.

17. The Shipper and Consignee shall be liable for, indemnify the Carrier and the ship and hold them harmless against, and the Carrier shall have a lien on the goods for all expenses of, or charges for reading, coagulation, bailing, repainting or reconditioning the goods or their containers, and all other expenses incidental to or incurred in protecting, curing for or otherwise made for the benefit of the goods, whether the goods be damaged or not; also for any payment, expense, penalty, fine, duty, tax, or import, loss, damage, detection, demurrage, or liability of whatsoever nature, however and wherever sustained or incurred by or levied upon or required from the Carrier or the ship in connection with the goods or by reason of the goods being or having been on board or because of shipper's failure to procure consular or other proper permits, certificates or any papers that may be required at any port or place or shipper's failure to supply information or otherwise to comply with all laws, regulations and requirements of law in connection with the goods or from any other act or omission of the Shipper or Consignee; also for all damages charges, legal fees, expenses or disbursements which the Carrier may suffer, incur or pay in connection with or arising out of claims to or attachment, seizure of our execution against the goods or claims or legal proceedings of any description by third parties involving the goods and any proceedings by way of interpleader or otherwise in which the Carrier may bring to determine the right of ownership or possession in or to the goods, also for expense of or charges for regaining or attempting to regain possession of the goods. The Shipper authorizes the Carrier to pay and/or incur all such charges, expenses and other matters mentioned above and the Carrier or master may solely as agent for the Shipper engage other persons to search, cooper, bale repair or recondition packages or goods, regain or seek to regain possession of the goods and to do all things deemed advisable for the benefit of the goods.

18. Freight shall be payable, at Carrier's option, on gross intake or discharged weight or measurement or on an ad valorem or other basis. Freight may be calculated on the basis of other particulars concerning the goods furnished by the Shipper, but the Carrier may at any time weight, measure and value the goods, and open packages to examine contents. If Shipper's particulars are found to be erroneous and additional freight is payable, the Shipper and Consignee shall be liable for any expenses incurred in examining, weighing, measuring and valuing the goods. Full freight to the port of discharge named herein and all advanced charges against the goods shall be considered completely earned on receipt of the goods by the Carrier, whether the freight or charges be prepaid or be stated or intended to be prepaid or to be collected at destination or subsequently, and the Carrier shall be entitled absolutely to all freight and charges, whether actually paid or not, and to receive and retain them under all circumstances whatever, ship and/or cargo lost or not lost, or the voyage changed, broken up, frustrated or abandoned. Full freight shall be paid although the goods may be damaged, unclean or worthless or if packages be empty or partly empty. Any error in freight or other charges is subject to correction and if on correction the freight or charges are higher the Carrier may collect the additional amount. All charges or sums payable to the Carrier are due when incurred and such charges, sums and all freight shall be paid in full without any offset, counterclaim or deduction, and such payment shall be made in United States currency or, at Carrier's option, in its equivalent in the currency of the port of loading or the port of discharge. The Carrier shall have a lien on the goods, which shall survive delivery, for all freight, charges and other amount due hereunder and may enforce this lien, by all available means, including public or private sale and without notice upon the goods or any part thereof and any other property belonging to the Shipper or Consignee which may be in the Carrier's possession.
Section 1.

The net proceeds of any such sale, after deducting all costs and expenses of the Carrier in executing the lien, shall be applied towards the settlement of the freight, charges and any other amount due the Carrier and the Carrier shall not be under any further obligation in respect thereof except to account for the balance, if any, of such proceeds. The Shipper and Consignee shall be jointly and severally liable to the Carrier for the payment of all freight, charges and other amounts due the Carrier and for any failure of either or both to perform his or their obligations under the terms of this bill of lading and to indemnify the Carrier against and hold it harmless from all liability, loss damage and expense which the Carrier may sustain or incur arising or resulting from any such failure of performance by the Shipper and Consignee or either of them.

19. If the ship comes into collision with another vessel and as a result of the negligence of the other vessel and any act, neglect or default of the master, mariner, pilot or of the servants of the Carrier, in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying vessel or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever, of the owners of said goods, paid or payable by the other or non-carrying vessel or her owners to the owners of said goods and set-off, recouped or recovered by the other or non-carrying vessel or her owners, as part of their claim against the carrying ship or Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision, contact, stranding or other accident.

20. General average shall be adjusted, stated and settled according to York-Antwerp Rules 1950 at the Port of New York or last port of discharge, at Carrier's option, and as to matters not provided for in these Rules, according to the laws and usages at the port of New York. Average agreement and bond, together with such additional security as may be required by the Carrier, shall be furnished before delivery of the goods.

In the event of accident, damage, collision, or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which, the Carrier is not responsible, by statute, contract, or otherwise, the goods, Shippers, Consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belonged to strangers.

21. Without waiver or limitation of any exemption from or limitation of liability afforded by law or by this bill of lading, neither the Carrier or any corporation owned by, subsidiary to, or associated or affiliated with the Carrier shall be liable for any loss or damage whatsoever and whenever occurring by reason of any fire whatsoever, including that occurring before loading or after discharge from the ship, unless such fire shall have been caused by the design or neglect or by the actual fault or privity of the Carrier or of such corporation, respectively. In any situation where such exemption from liability may not be permitted by law neither the Carrier nor any such corporation shall be liable for any loss or damage by fire unless caused by negligence, including that imposed by law, for which the Carrier or such corporation is liable respectively.
22. In the event of any loss, damage or delay to or in connection of goods exceeding in actual value $500.00 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be $500.00 per package or per customary freight unit, as the case may be, and the Carrier's liability, if any, shall be determined on the basis of a value of $500.00 per package or per customary freight unit, unless the nature of a higher value shall be declared by the Shipper in writing before shipment and inserted in this bill of lading. In the event of a higher value is declared by the Shipper in writing and inserted in this bill of lading and extra freight paid thereon if required, the Carrier's liability, if any, for loss, damage or delay to or in connection with the goods shall be determined on the basis of such declared value and pro rata of such declared value in the case of partial loss or damage provided such declared value does not exceed the actual value of the goods. In the event of any loss, damage or delay to or in connection with the goods of a value of $500.00 or less than $500.00 per package, lawful money of the United States or in case of goods not shipped in packages per customary shipping freight unit, the Carrier's liability, if any, shall be limited to the invoice value of the goods unless otherwise stated herein, on which basis the rate of freight is adjusted. It is not intended that such invoice shall be an agreed valuation and it is agreed that in no event shall this clause operate to increase the extent of the Carrier's liability beyond the market value at port of discharge if that be less than invoice value. It is understood that the meaning of the word "packages" includes pieces and all articles of any description except goods shipped in bulk. In no event shall the Carrier be liable for more than the loss or damage actually sustained. The Carrier shall not be liable for any consequential or special damage and shall have the option of replacing any lost goods and of replacing or repairing any damaged goods.

23. Unless written notice of claim, except as otherwise provided, in this clause is given to the Carrier within twenty days after delivery of the goods, or where the goods are not delivered, within ten days after the vessel completes discharge, the Carrier and the ship shall be discharged from all liability. This requirement shall not apply where the Shipper is the real party in interest and as such has the right to bring suit on such claim. Any claim against the Carrier for any adjustment, refund of, or with respect to freight, charges or expenses must be given to the Carrier or its agent in writing by or before the date when the goods are to have been delivered. In no event, the Carrier and the ship shall be discharged from all liability for any loss of, or damage to, or delay of the goods or with respect to freight, charges or expenses, or the refund thereof or any other claim of whatsoever description, unless suit or appropriate proceeding is brought within one year after delivery of the goods or the date when the goods should have been delivered. Suit shall not be deemed barred on the ground that a suit against the Carrier or ship until jurisdiction shall have been obtained of the Carrier or the ship, or both, or if brought in admiralty, until process or written notice of the filing of a lien shall have been served or delivered to the Carrier.

For explanation of abbreviations, reference marks or symbols, see Page 3.

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ISSUED BY: RAYMOND G. BROWN, PRESIDENT
3770 E. 14th STREET
VERNON, CALIFORNIA 90058
## SPECIFIC COMMODITY RATES

### In Cents Per Cubic Foot, subject to Item No. 20

<table>
<thead>
<tr>
<th>COMMODITY</th>
<th>CALIFORNIA</th>
<th>HAWAII</th>
</tr>
</thead>
<tbody>
<tr>
<td>FREIGHT, All Kinds, in containers (Subject to Notes 1, 2, 3, 4, and 5)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>OAHAI</td>
<td>Honolulu</td>
<td>-</td>
</tr>
<tr>
<td>SUPERIOR</td>
<td>-</td>
<td>Miki</td>
</tr>
<tr>
<td>WASHINGTON</td>
<td>-</td>
<td>Medinelli</td>
</tr>
</tbody>
</table>

### Notes:
1. Rates apply terminal to terminal only. See Item 5 herein.
2. Rates provided herein apply only when carrier has been furnished freight containers for loading, by the underlying water carrier. Such rates include cost of loading and unloading the freight containers.
3. Rates shown are subject to a minimum charge of $5.00 per shipment.
4. Shipment with a density exceeding 50 pounds per cubic foot will be assessed on the basis of one cubic foot per 50 pounds.
5. Shipments consigned in rail cars for shipment to Hawaii shall be subject to a charge of twenty-eight cents (28c) per one hundred pounds for unloading rail cars in addition to all other rates and charges named in this Tariff.
   - Railroad damage, tracing, telephone calls, cable expenses, and messenger shall be for the account of Consignee and these charges shall be in addition to all other rates and charges named in this Tariff.

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For explanation of abbreviations, reference marks or symbols, see Page 3.

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**ISSUED BY:** RAYMOND C. BOWEN, PRESIDENT  
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