



SPEAK UP

There have been substantive changes to the Uniform Straight Bill of Lading. You may think this will not impact your business because you have your own 'shipper friendly' bill of lading that you use. You would be correct regarding your outbound shipments. However, you have no control of the use of Uniform Straight Bill of Lading for your inbound shipments.

The current Uniform Straight Bill of Lading has been in place since 1997. There have been no proposed changes to the front or the back for the past 17 years until now. To protect shippers, the Transportation and Logistics Council, Inc. (TLC) filed a petition to suspend and investigate the National Motor Freight Traffic Association, Inc.'s (NMFTA) proposed Supplement 2 to NMFC 100 AP, which revises the Uniform Straight Bill of Lading as set forth in the National Motor Freight Classification, its terms and conditions, and the rules in Item 360-B.

In its petition, TLC contends that NMFTA's proposed revisions to the Uniform Straight Bill of Lading are unreasonable because the changes "were made without notice to the public" and "shippers or other members of the transportation community [were not] given any opportunity to comment or protest the changes." TLC states that the proposed revisions would harm shippers by changing the provisions governing carrier liability for loss, damage, or delay, and the time limits for filing claims, to terms less favorable for shippers.

According To The TLC Comments:

- Section 1. (a) The old language made it clear that the carrier "in possession" of the goods would be liable for loss or damage. The new language only refers to the carrier

"shown" on the bill of lading, which raises the question: What if the actual carrier in possession of the goods at the time of the loss or damage is not the carrier "shown" on the bill of lading? This could be because the name of the actual carrier was not inserted in the space on the face of the bill of lading (often shippers insert the name of the broker or intermediary), or if the loss or damage occurs while the goods are in the possession of a connecting or delivering carrier on an interlined shipment. The new language would imply that a carrier that is not "shown" on the bill of lading would not have liability for loss or damage.

- Section 1. (b) Comment: There are two significant changes in the new language. First, it adds "riots or strikes or any related causes" to the list of the common law defenses to carrier liability. But, more importantly it shifts the carrier's burden for proving freedom from negligence to the shipper, who now must prove that the carrier was negligent. The reasoning for not requiring the shipper to prove negligence is obvious. When the shipper tenders his goods to the carrier he doesn't "ride shotgun" with them. He has no way to know what the carrier does with the goods, so it would be virtually impossible for the shipper to prove that the cause of the loss or damage was the carrier's "negligence".
- Section 2. Here the NMFTA has changed the established standard recognized and applied by the courts for a century, which define the carrier's duty to deliver with "reasonable dispatch". As the Supreme Court stated in *New York, P. & N. R. Co. v. Peninsula Produce Exch. of Maryland*, 240 U.S. 34 (1916).
- Section 3.(b) This change shortens the time for filing a claim for a "loss", which could be a "shortage" or a "non-delivery", because it runs from the "date of the bill of lading" rather than the date of delivery. The change also raises additional questions such as what is the "date of the bill of lading"? Is it the date the shipment was picked up? Or is it the date the bill of lading was generated? This change is unreasonable since a shortage or non-delivery would not normally be identified until "a reasonable time for delivery has elapsed"

The Surface Transportation board denied action to suspend the changes before they took effect on August 13, 2016. However, as part of its decision, the STB did announce that it will

consider further comments from the parties, in order to decide whether to investigate further. Any replies or rebuttals of the comments are due by October 3, 2016.

The TLC needs your support on this matter – **SPEAK UP**.

In addition to providing clients with timely and accurate freight bill processing, Data2Logistics wants our clients to be advised about issues that affect their business. If you have questions on this matter please contact Harold B. Friedman, Senior Vice President Global Corporate Development at: harold.friedman@data2logistics.com or +1 609.577.3756.