

Rollin' On . . .

A Facsimile Newsletter for the Transportation Industry

Volume I Issue 2

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February 1995

Revisions to Bill of Lading

As a direct result of the Trucking Industry Regulatory Reform Act of 1994 (TIRRA), modifications are required to the bill of lading forms contained in the National Motor Freight Classification. The process to change the bill of lading forms, which started at the end of last year, is continuing. These revisions will have a significant impact on the way shippers, carriers and third party intermediaries do business. I am serving on a national committee which is involved in making the required modifications. The following is an overview of some of the changes and status as of this time.

Tariff

The word "Tariff" is being changed to refer to (1) any rates, classifications, rules and practices published and filed with the ICC and (2) any individually determined rates, classifications, rules and practices (a) established by the carrier or (b) agreed to by the parties.

The provision at (a) has been included at the insistence of the carriers, as some traffic moves without the shipper requesting a rate. The belief is that for the most part this traffic pertains to occasional shippers who do not earn discounts.

Standardization of terms used to

The Obligatory Disclaimer

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

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identify the publication of individually determined rates, such as "service guides" or "exempt circulars", has met with no success, as the carriers do not want to be required to change terminology that they use in their publications.

Automatic Release

The carriers are proposing to add the following language to the bill of lading:

The carrier may provide liability limits in tariffs maintained at its principal place of business and/or on file with the ICC.

Carriers have historically been allowed to limit their liability, provided that the shipper is given a choice of rates and the option to declare full value. The new language would allow the carrier to publish automatic releases in their tariffs without the shipper's knowledge or consent and without offering an option of full value rates. I believe that this proposed language is improper, since the shipper is not given a choice of rates. In this regard the Oregon Court of Appeals, in a unanimous decision, recently upheld my argument in a deregulated (ground movement prior to movement by an approved foreign air carrier) case involving the flipside of this issue, that a shipper is bound by its election if the shipper releases the cargo at a lower value after having been given a choice of rates.

Class or Rate

The class or rate column will probably remain in the bill of lading, but with the notation "Subject to Correction". The carriers' concern is that they do not want to be bound by a notation made by a shipper and signed by a driver, if the rate was different than the agreed rate. The reverse situation could also occur, where a shipping clerk signs off an erroneous notation made by the driver.

Other revisions are also underway. I will keep you posted.

Shipper Bill of Lading

Shippers have also traditionally prepared their own bills of lading and this practice will undoubtedly continue. Many shippers are in the process of modifying their bill of lading form.

Contracts

As always, the best method of establishing the agreement of the parties is to put it in writing. An oral agreement is just as valid as a written agreement. The problem is in proving the agreement. So get it in writing.

That's all for now. To shippers, carriers and third party intermediaries, keep the cargo rollin'!

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